THE DISCRETION DILEMMA: REVISITING VIDARBHA INDUSTRIES POWER LTD. V. AXIS BANK LTD. AND THE UNCERTAIN CONTOURS OF ADJUDICATORY POWER UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Neha Thakur, B.A. LL.B. (Hons.), Kirit P. Mehta School of Law, NMIMS, Mumbai

ABSTRACT

The Supreme Court's decision in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*[1] marks one of the most consequential and most contested interventions in the jurisprudence surrounding the Insolvency and Bankruptcy Code, 2016 ("IBC" or "the Code"). By reading the word "may" in Section 7(5)(a) of the Code as conferring genuine discretion on the Adjudicating Authority, the Court departed from nearly five years of settled precedent that had treated the existence of a financial debt and default as a virtually mechanical trigger for admission of a corporate debtor into the Corporate Insolvency Resolution Process. This article undertakes a doctrinal case study of *Vidarbha Industries*, tracing its factual matrix, its reasoning, and the considerable disruption it caused to the creditor-in-control philosophy that underlies the Code. It examines the divergent responses of the National Company Law Tribunal and the National Company Law Appellate Tribunal in the ten months that followed the judgment, and evaluates the Supreme Court's subsequent attempt at course correction in *M. Suresh Kumar Reddy v. Canara Bank*[2]. The article argues that while *Suresh Kumar Reddy* has substantially restored the pre-2022 position, it has not and, given the doctrine of precedent, perhaps cannot formally overrule *Vidarbha Industries*, leaving open an interpretive fault line that continues to be litigated. The article closes with recommendations for legislative clarification of Section 7(5)(a) to prevent recurrence of the uncertainty that this case study documents.

Keywords: Insolvency and Bankruptcy Code, 2016; Section 7; Corporate Insolvency Resolution Process; Adjudicating Authority; discretion; creditor-in-control model; Vidarbha Industries; NCLT.

---

[1] Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 32 (India).

[2] M. Suresh Kumar Reddy v. Canara Bank, Civil Appeal No. 7121 of 2022 (Supreme Court of India, decided May 11, 2023).

I. INTRODUCTION

Few provisions of the Insolvency and Bankruptcy Code, 2016 have generated as much interpretive turbulence in as short a span as Section 7. On its face, the provision appears unremarkable: it permits a financial creditor to apply to the Adjudicating Authority the National Company Law Tribunal ("NCLT") for initiation of the Corporate Insolvency Resolution Process ("CIRP") against a corporate debtor, and directs that where the Authority is "satisfied" that a default has occurred and the application is complete, it "may, by order, admit such application."[3] For the first five years of the Code's operation, this language was read, almost without exception, as leaving the Adjudicating Authority no real room for manoeuvre once debt and default were shown to exist. That consensus was upended on 12 July 2022, when a two-judge Bench of the Supreme Court, in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*, held that Section 7(5)(a) is discretionary rather than mandatory, and that the NCLT may decline to admit an otherwise complete and undisputed application if it considers admission inappropriate having regard to the financial health and viability of the corporate debtor.

This case study examines *Vidarbha Industries* not merely as a single precedent but as an episode in the doctrinal life of the Code one that illustrates how a single sentence of statutory construction, applied to an unusual set of facts, can destabilise an entire adjudicatory ecosystem. The choice of this judgment for detailed analysis, rather than more frequently discussed decisions such as *Swiss Ribbons*[4] or the *Essar Steel* resolution plan litigation, is deliberate. Unlike those decisions, which largely consolidated the architecture of the Code, *Vidarbha Industries* is a rare instance in which the Supreme Court itself introduced instability into a settled area of law, and then found itself compelled through a review petition and, ultimately, a fresh two-judge Bench in *M. Suresh Kumar Reddy v. Canara Bank* to walk large parts of that instability back without formally disowning its earlier reasoning. The trajectory of this one provision, traced across roughly three years of litigation, offers a compact but revealing window into the tension between textualism and purposive interpretation that runs through the Code's short but eventful history.

Part II of this article sets out the statutory architecture of Section 7 and the pre-*Vidarbha*

[3]The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, § 7(5)(a) (India).
[4]Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17 (India).

consensus built principally around *Innoventive Industries Ltd. v. ICICI Bank Ltd.*[5] Part III narrates the factual background of *Vidarbha Industries* itself. Part IV identifies the issues before the Supreme Court, and Part V summarises the competing submissions. Part VI sets out the holding and the Court's reasoning. Part VII offers a critical analysis of that reasoning, organised around four themes: the strength of the textual argument, the erosion of the creditor-in-control model, an anomaly the judgment creates between Sections 7 and 9 of the Code, and the resulting precedential instability. Part VIII documents the divergent tribunal-level response to the judgment, and Part IX briefly addresses the review petition. Part X analyses the course correction in *Suresh Kumar Reddy*, and Part XI assesses whether that correction has, as a matter of precedent, actually resolved the underlying tension. Part XII draws out the larger lessons for the IBC ecosystem, Part XIII offers recommendations, and Part XIV concludes.

II. THE STATUTORY ARCHITECTURE OF SECTION 7 AND THE PRE-VIDARBHA CONSENSUS

Section 7 of the Code permits a financial creditor, either by itself or jointly with other financial creditors, to file an application before the NCLT for initiating CIRP against a corporate debtor when a default has occurred. Section 7(5)(a) provides that where the Adjudicating Authority is satisfied that a default has occurred, the application is complete, and no disciplinary proceeding is pending against the proposed resolution professional, it "may, by order, admit such application." Section 7(5)(b) correspondingly directs rejection of the application where these conditions are not met.

The Bankruptcy Law Reforms Committee, whose report forms the intellectual foundation of the Code, had been emphatic that the trigger for CIRP under Section 7 ought to be a purely factual inquiry into the existence of debt and default, deliberately insulated from any assessment of the debtor's commercial prospects or the wisdom of the creditor's decision to seek insolvency proceedings.[6] This design choice reflected the Code's foundational shift from the erstwhile "debtor-in-possession" regime under the Sick Industrial Companies Act framework to a "creditor-in-control" model, under which financial creditors who bear the risk of non-payment and possess the institutional expertise to assess viability are trusted to make the commercial call on whether an enterprise should be rehabilitated or liquidated, once the

[5] Innoventive Industries Ltd. v. ICICI Bank Ltd., (2018) 1 SCC 407 (India).
[6] Report of the Bankruptcy Law Reforms Committee, Vol. I: Rationale and Design, Ministry of Finance, Government of India, 11-16 (Nov. 2015).

resolution process has begun.

This design was given interpretive force in *Innoventive Industries*, the first major Supreme Court pronouncement on Section 7. The Court there held that once the Adjudicating Authority is satisfied that a default has occurred, "the application must be admitted unless it is incomplete,"[7] and that the corporate debtor has no independent right at that stage to resist admission on the ground of a bona fide dispute or the availability of a defence on merits a threshold reserved, under Section 9, for operational-creditor applications. *Innoventive Industries* was reaffirmed on several later occasions, including in *E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd.*[8], where the Court held that the NCLT could not use its inherent powers to compel settlement negotiations in lieu of admitting an application once debt and default were established. By 2022, the proposition that Section 7(5)(a) left virtually no discretion to the Adjudicating Authority had hardened into settled law, reinforced further by the Constitution Bench-adjacent observations in *Swiss Ribbons* upholding the constitutional validity of the Code's differential treatment of financial and operational creditors precisely on the footing that the former's claims are more readily and objectively verifiable.

III. FACTUAL BACKGROUND OF VIDARBHA INDUSTRIES

The corporate debtor, Vidarbha Industries Power Limited, operated a 600 MW coal-fired thermal power generation plant in Maharashtra and supplied electricity to Reliance Infrastructure Limited under power purchase arrangements approved by the Maharashtra Electricity Regulatory Commission ("MERC"). In 2016, the debtor applied to MERC for a revision of its tariff and a truing-up of its Aggregate Revenue Requirement on account of increased fuel costs. MERC's determination was, in the debtor's contention, inadequate, and the resulting shortfall in revenue was said to have precipitated the debtor's default on its financial obligations to Axis Bank Limited, its financial creditor. The debtor had, in parallel, pursued an appeal before the Appellate Tribunal for Electricity ("APTEL") and, thereafter, a civil appeal pending before the Supreme Court itself, seeking a higher tariff determination that, if allowed, would substantially cure the very default underlying Axis Bank's Section 7 application.

[7]Innoventive Industries, supra note 2, at 427 ("the moment the adjudicating authority is satisfied that a default has occurred... the application must be admitted unless it is incomplete").
[8]E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd., (2022) 3 SCC 161 (India).

Axis Bank filed its Section 7 application before the NCLT, Mumbai. The debtor sought a stay of those proceedings pending disposal of its own civil appeal on the tariff question, on the footing that a favourable outcome would restore its solvency and eliminate the default altogether. The NCLT declined to grant a stay, and the NCLAT, on appeal, likewise refused to interfere, holding that the twin test of debt and default under Section 7 had been satisfied and that the pendency of the debtor's unrelated litigation on tariff revision could not affect the admission of an otherwise complete application. The debtor then approached the Supreme Court.

IV. ISSUES BEFORE THE SUPREME COURT

Two questions, closely intertwined, fell for the Court's determination: first, whether Section 7(5)(a) of the Code confers discretion on the Adjudicating Authority to decline admission of an application even where debt and default stand established; and second, if such discretion exists, whether it was properly exercised or, on the facts, ought to have been exercised in favour of staying or declining admission of Axis Bank's application pending resolution of the debtor's pending tariff appeal.

V. SUBMISSIONS OF THE PARTIES

Counsel for the debtor argued that the use of the word "may" in Section 7(5)(a), when read alongside Rule 11 of the National Company Law Tribunal Rules, 2016 which preserves the Tribunal's inherent powers demonstrated that Parliament had deliberately withheld from the Adjudicating Authority any mandatory obligation to admit an application merely on proof of debt and default. It was submitted that a mechanical reading of Section 7(5)(a) as leaving no discretion would produce absurd consequences in cases, such as the present one, where the corporate debtor's inability to pay was traceable not to any inherent commercial failure but to the wrongful or inadequate determination of a statutory regulator, itself under challenge in ongoing litigation.

Counsel for Axis Bank, by contrast, relied heavily on *Innoventive Industries* and the design philosophy of the Code as reflected in the Bankruptcy Law Reforms Committee's report, submitting that the entire object of Section 7 was to provide financial creditors a swift, largely non-adversarial gateway into CIRP, uncomplicated by inquiries into the debtor's reasons for default or the debtor's prospects in unrelated proceedings. It was argued that permitting such inquiries at the admission stage would collapse the very distinction between financial and operational creditors that *Swiss Ribbons* had upheld as constitutionally sound, and would re-introduce, through judicial interpretation, precisely the kind of debtor-favourable delay that the Code was enacted to eliminate.

VI. THE JUDGMENT: HOLDING AND REASONING

The Division Bench, speaking through Ramasubramanian, J., allowed the debtor's appeal and set aside the orders of the NCLT and NCLAT.[9] The Court held that Section 7(5)(a) is couched in markedly different language from Section 7(5)(b), and from the corresponding provisions governing admission of applications by operational creditors under Section 9, and that this drafting choice was not accidental. Whereas rejection of an application under Section 7(5)(b) was treated as following automatically from the absence of debt or default, admission under Section 7(5)(a) was, in the Court's reading, conditioned on the Adjudicating Authority's satisfaction a term the Court treated as importing an evaluative, and not merely a fact-finding, exercise.

On this reasoning, the existence of a financial debt and a default in its payment was held to give the financial creditor only the *right to apply* for initiation of CIRP; it was not, without more, sufficient to compel admission. The NCLT, the Court held, was thereafter required to apply its mind to the overall financial health and viability of the corporate debtor, the feasibility of initiating CIRP against an entity operating under statutory regulatory control, and the potential impact of the pending APTEL and Supreme Court proceedings on the debtor's capacity to discharge its obligations.[10] On the facts, the Court found that the NCLT and NCLAT had erred in failing to consider these factors and, in particular, in failing to appreciate that the debtor's default was substantially attributable to MERC's tariff determination, itself the subject of pending appellate proceedings that could, if resolved favourably, cure the default. The matter was remanded to the NCLT for fresh consideration in light of these observations.

VII. CRITICAL ANALYSIS

A. The Textual Argument Reconsidered

The Court's central textual move treating the word "may" in Section 7(5)(a) as conferring discretion, in contradistinction to the ostensibly mandatory language of Section 7(5)(b) is open

[9] Vidarbha Industries, supra note 5 (per Ramasubramanian, J., for the Division Bench comprising Indira Banerjee and V. Ramasubramanian, JJ.).
[10] Vidarbha Industries, supra note 5.

to serious question. As several commentators have since observed, *Innoventive Industries*[11] had already construed the very same provision, containing the very same word, and had concluded that once the Adjudicating Authority is satisfied of debt and default, admission follows as a matter of course, subject only to the application being complete. The word "may" in that earlier reading was understood as vesting the Adjudicating Authority with the power to admit as opposed to conferring that power on some other authority rather than as licensing a case-by-case discretion whether or not to exercise it. *Vidarbha Industries* did not purport to overrule *Innoventive Industries*; indeed, it did not meaningfully engage with the earlier decision's reasoning on this precise point at all, creating an internal tension between two lines of authority interpreting an identical statutory phrase.

B. Erosion of the Creditor-in-Control Model

The Code's creditor-in-control philosophy rests on a deliberate allocation of institutional competence: the question of *whether* a debtor should be subjected to resolution proceedings is treated as a threshold, largely factual question for the Adjudicating Authority, while the question of *how* the debtor's affairs should thereafter be resolved restructuring, sale, or liquidation is left to the commercial wisdom of the Committee of Creditors. By importing an assessment of the debtor's "financial health and viability" into the admission stage itself, *Vidarbha Industries* effectively asked the NCLT to pre-empt, at a threshold and adversarial hearing, precisely the commercial judgment that the Code otherwise reserves for creditors acting collectively after admission. This is not a minor recalibration; it reintroduces, at the point of entry into CIRP, exactly the kind of debtor-protective inquiry that the Bankruptcy Law Reforms Committee had consciously sought to exclude.[12]

C. The Section 7 / Section 9 Anomaly

A further difficulty, noted by practitioners soon after the judgment, arises from the differential treatment this reasoning creates between financial and operational creditors. Section 9 applications by operational creditors continue to be governed by the twin test of debt and default without any comparable discretion having been read into their admission.[13] Where, as not infrequently happens, both a Section 7 and a Section 9 application are pending against the

[11]Innoventive Industries, supra note 2, at 425-26.
[12]Bankruptcy Law Reforms Committee, supra note 3, at 14-15.
[13]The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, § 9 (India).

same corporate debtor, *Vidarbha Industries* would require the NCLT to hold the financial creditor's application in abeyance pending an inquiry into viability, while no equivalent discretion would be available in respect of the operational creditor's application on identical facts an asymmetry that sits uneasily with the rationale *Swiss Ribbons* itself offered for treating the two classes of creditors differently, namely, that financial creditors are better placed to assess and monitor a debtor's commercial position, not worse.

D. Precedential Instability

Finally, and perhaps most consequentially, the judgment's failure to engage squarely with *Innoventive Industries* left NCLT and NCLAT Benches without a clear signal as to whether *Vidarbha Industries* was to be treated as a general restatement of the law under Section 7, or as a fact-specific ruling confined to the unusual circumstance of a regulated utility whose default was substantially attributable to a pending, and arguably meritorious, regulatory dispute. The judgment's own language invoking the debtor's overall "financial health and viability" is general enough to support the former reading, even though the facts before the Court arguably supported only the latter, narrower proposition.

VIII. THE AFTERMATH: DOCTRINAL CHAOS IN NCLT AND NCLAT

In the months following July 2022, Benches of the NCLT and NCLAT across the country adopted markedly divergent approaches to Section 7 applications. Some Benches read *Vidarbha Industries* broadly, entertaining detailed inquiries into a debtor's solvency, ongoing restructuring negotiations, or prospects of revival before admitting otherwise undisputed applications; others confined it narrowly to its facts and continued to apply the *Innoventive* twin test.[14] Corporate debtors, for their part, gained an additional and previously unavailable line of defence: rather than contesting the existence of debt or default a difficult proposition where financial-creditor claims are typically documented and undisputed debtors began routinely resisting admission by pointing to ongoing settlement talks, pending litigation of tangential relevance, or generalised assertions of continuing commercial viability, precisely the kind of contestation *Innoventive Industries* had sought to foreclose at the admission stage. The resulting delay in CIRP admissions measured, on some accounts, in additional months or even

[14]See, e.g., orders of various Benches of the National Company Law Tribunal and the National Company Law Appellate Tribunal between July 2022 and May 2023 declining or delaying admission of Section 7 applications on the strength of Vidarbha Industries.

years per case cut directly against the Code's central design objective of time-bound resolution.

IX. THE REVIEW PETITION

Axis Bank sought review of the judgment, contending that it had unsettled the creditor-in-control model without adequate justification and invited precisely the kind of protracted, merits-based contestation the Code was designed to avoid. The Supreme Court dismissed the review petition on 9 September 2022.[15] While the dismissal order clarified that the observations in *Vidarbha Industries* were substantially rooted in the peculiar facts of that case, it did not formally recall or modify the broader propositions of law the judgment had articulated, leaving the underlying interpretive uncertainty essentially undisturbed and setting the stage for a fuller reconsideration by a later Bench.

X. COURSE CORRECTION: M. SURESH KUMAR REDDY V. CANARA BANK

The opportunity for that fuller reconsideration arose in *M. Suresh Kumar Reddy v. Canara Bank*, decided on 11 May 2023. There, the corporate debtor, a suspended director of the company against which Canara Bank had obtained admission of a Section 7 application, resisted the admission on the ground of ongoing one-time-settlement negotiations and relied on *Vidarbha Industries* to argue that the NCLT retained discretion to decline admission notwithstanding an established default.

The Supreme Court rejected this argument in unambiguous terms, holding that the decision in *Vidarbha Industries* could not be read as taking a view contrary to *Innoventive Industries* and *E.S. Krishnamurthy*, and that the latter decisions continued to represent good law.[16] The Court went further, observing that once the Adjudicating Authority is satisfied of the existence of a financial debt and a default in its payment, "there is hardly any discretion left with the adjudicating authority... to refuse admission of the application,"[17] and that mere ongoing settlement negotiations, without an actual settlement having cured the default, cannot operate to defeat an otherwise valid Section 7 application. The judgment expressly characterised *Vidarbha Industries* as confined to its own unusual facts the pendency of a regulatory tariff dispute directly bearing on the debtor's capacity to pay and not as a general dilution of the

---

[15] Axis Bank Ltd. v. Vidarbha Industries Power Ltd., 2022 SCC OnLine SC 1339 (India) (order dismissing the review petition).
[16] M. Suresh Kumar Reddy, supra note 11.
[17] M. Suresh Kumar Reddy, supra note 11 ("There is hardly any discretion left with the adjudicating authority... to refuse admission of the application").

twin-test standard.

XI. AN ASSESSMENT OF THE COURSE CORRECTION DOES IT SETTLE THE LAW?

Suresh Kumar Reddy has done much to restore the pre-2022 orthodoxy, and NCLT and NCLAT Benches have, in the period since, generally reverted to treating debt and default as effectively dispositive of admission under Section 7. Yet a residual difficulty remains, rooted in the ordinary discipline of precedent that binds coordinate Benches of the Supreme Court. *Suresh Kumar Reddy* was decided by a Bench of the same strength as *Vidarbha Industries* two judges and a decision of a two-judge Bench cannot, as a matter of the ordinary rule of precedent, formally overrule a co-equal Bench's decision; at most it can distinguish it, as *Suresh Kumar Reddy* purported to do, or refer the conflict to a larger Bench, which did not occur here.

The consequence is that *Vidarbha Industries* remains, formally, undisturbed law, available in principle to be revived by a future Bench presented with facts even loosely analogous to a regulated debtor whose default is traceable to a disputed statutory determination. The uncertainty this case study has traced has therefore been substantially, but not conclusively, resolved a state of affairs that itself illustrates the limits of intra-court correction and the case for either a definitive Constitution Bench pronouncement or a legislative amendment placing the question beyond doubt.

XII. LARGER LESSONS FOR THE IBC ECOSYSTEM

Beyond the specific question of Section 7(5)(a), the *Vidarbha* episode illustrates three broader lessons about the operation of the Code as a judicially interpreted statute. First, it demonstrates the outsized systemic consequences that can follow from a fact-specific equitable impulse here, evident sympathy for a regulated utility caught between an adverse tariff order and an insolvency application being expressed in language broad enough to be read as a general rule. Second, it underscores the practical cost, in terms of litigation volume and CIRP delay, that even a temporary doctrinal detour imposes on a time-sensitive statutory process; the roughly ten-month interval between *Vidarbha Industries* and *Suresh Kumar Reddy* generated a substantial body of divergent tribunal-level jurisprudence that itself required subsequent unwinding. Third, and most enduringly, it reveals the limits of relying on subsequent coordinate-Bench decisions to achieve doctrinal closure, given the constraints the rule of precedent places on a Bench of equal strength.

XIII. RECOMMENDATIONS

This case study suggests three modest but concrete responses. First, Parliament could amend Section 7(5)(a) to replace "may" with express language confirming that admission follows automatically upon the Adjudicating Authority's satisfaction as to debt, default, and completeness of the application, thereby foreclosing the interpretive route *Vidarbha Industries* took. Second, in the absence of legislative amendment, a reference of the question to a three-judge Bench would allow the Supreme Court to resolve, with binding finality, the tension between *Vidarbha Industries* and the *Innoventive–Suresh Kumar Reddy* line of authority, rather than leaving the matter to informal distinguishing by successive coordinate Benches. Third, to the extent genuine hard cases such as a regulated debtor whose default is directly attributable to a pending statutory determination warrant some equitable accommodation, that accommodation would be more coherently located within the Code's existing moratorium and settlement provisions, or through time-bound directions to the regulator concerned, rather than through an open-ended inquiry into "viability" grafted onto the admission stage itself.

XIV. CONCLUSION

Vidarbha Industries Power Ltd. v. Axis Bank Ltd. stands as a cautionary illustration of how a single, sympathetically motivated departure from settled statutory interpretation can ripple through an entire regulatory ecosystem before being substantially, if not formally, contained. The decision's core move reading discretion into the admission of Section 7 applications sat uneasily with the Code's creditor-in-control design, generated a documented period of inconsistent tribunal practice, and was ultimately narrowed, though not overruled, by *M. Suresh Kumar Reddy v. Canara Bank*. For students and practitioners of insolvency law, the episode offers a compact case study in statutory interpretation, the doctrine of precedent, and the practical stakes of doctrinal stability in a regime whose entire premise is speed and certainty. Until Parliament or a larger Bench closes the residual gap this article has identified, *Vidarbha Industries* will remain what it has been since September 2022: a precedent narrowed almost to the point of irrelevance, yet never quite laid to rest.