

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.1706 of 2023**

**IN THE MATTER OF:**

**Prakash Kumar Raj (Suspended) Director.  
Mountain Edge Tours**

**...Appellant**

**Versus**

**Shriram City Union Finance Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant:        Mr. Siddhesh Shirish Kotwal, Ms. Ana Upadhyay,  
                                 Ms. Manya Hasija and Mr. Tejasvi Gupta,  
                                 Advocates.**

**For Respondents:**

**ORDER  
(Hybrid Mode)**

**06.02.2024:**        Heard learned counsel for the Appellant. This Appeal has been filed against order dated 10.11.2023 by which the Adjudicating Authority has admitted Section 7 application filed by the Respondent.

2.        Learned counsel for the Appellant submits that although initially the Corporate Debtor started paying EMI, later it realized that some fraud has been played in inducing the Corporate Debtor to take loan and police complaints were filed against the Financial Creditor and the Developer. The Adjudicating Authority has given finding the debt and default is proved, in this regard the submission of the Appellant is that the debt and default could not be held to be proved since it is disputed by the Appellant.

3.        We have heard the learned counsel for the Appellant and perused the record.

*Cont'd.../*

4. It was proceedings under Section 7 and the fact that Appellant started paying EMI itself proves that there was financial debt. The reason for not continuing to pay EMI and reason for filing police complaint cannot negate the financial debt or default. With regard to claim of the Appellant against the Financial Creditor and the Developer, it is always open for the Appellant to pursue such claim but it shall not have any impact on the Section 7 application which has been admitted by the Adjudicating Authority there being debt and default. We are of the view that no error has been committed by the Adjudicating Authority in admitting Section 7 application.

5. Learned counsel for the Appellant placing reliance on the judgment of Hon'ble Supreme Court in "*Vidarbha Industries Power Ltd. vs. Axis Bank Ltd., Civil Appeal No.4633 of 2021*" submits that the Adjudicating Authority has discretionary power, which should have been used in rejecting the application. We are of the view that the judgment of Hon'ble Supreme Court in *Vidarbha* was on its own facts and the said judgment does not apply in the present case.

6. We do not find any merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Arun Baroka]**  
**Member (Technical)**

*Archana/nn*