

**Section 7 application is liable to be dismissed if the Financial Creditor played a contributory role in the alleged default.**

<b>CASE TITLE</b>	<i>IDBI Bank Ltd v Abhijeet Integrated Steel Ltd<sup>1</sup></i>
<b>CASE CITATION</b>	CP (IB) No.1676/KB/2018
<b>DATE OF ORDER</b>	28.06.2022
<b>COURT/ TRIBUNAL</b>	NCLT, Kolkata Bench
<b>PROVISIONS REFERRED</b>	Section 7 IBC
<b>CASE LAWS REFERRED</b>	<ul style="list-style-type: none"><li>• State Bank of India v N. S. Engineering Projects Private Limited</li><li>• Innoventive Industries Ltd v ICICI Bank</li></ul>

**Brief of the case:**

The Corporate Debtor has failed to pay the interest on the principal amount for three consecutive months, due to which the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 30.12.2014. As per the Loan Agreement, the CD was not entitled to seek any disbursement after the account has been classified as NPA. On and from September 2012 the Financial Creditor stopped disbursal of part of the loan amount on the pretext of filing of the FIR by CBI against the group company though it has no connection with the Corporate Debtor.

The issue that merits consideration in the present case is whether the Financial Creditor, after having allegedly playing a contributory role in the default, can maintain a section 7 application against the Corporate Debtor.

**Decision:**

Hon'ble NCLT rejected the application and held that,

*"...Therefore, we have no hesitation in holding that in the present case also, the present section 7 application deserves to be dismissed on the ground of contributory role played by the Financial Creditor, forcing the default on the part of the Corporate Debtor. The latin maxim, **nullus commodum capere potest de injuria sua propria**, will apply to the present case also. The Financial Creditor cannot be allowed to take advantage of its own wrong.*

*5.3. There cannot be a mechanical admission of the application under section 7 of the Code just because a debt and a default is established. Primacy has to be given to the ultimate objective of the Code, which is to achieve a resolution of the Corporate Debtor. In order to be satisfied in terms of the provisions of section 7(5), of the Code, the role of the petitioning creditor in the alleged default must also be examined."*

**QR CODE FOR FULL ORDER/JUDGEMENT:**



<sup>1</sup> [https://nclt.gov.in/gen\\_pdf.php?filepath=/Efile\\_Document/ncltdoc/casedoc/1908134001782018/04/Order-Challenge/04\\_order-Challenge\\_004\\_165656660711711637262bd334f95715.pdf](https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/1908134001782018/04/Order-Challenge/04_order-Challenge_004_165656660711711637262bd334f95715.pdf)