



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

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*Vishnu Oil Mill Private Limited Vs. Union of India & Ors.*

D.B. Civil Writ Petition No. 2507/2022

DATE OF HIGH COURT'S JUDGMENT: July 25, 2022

*A group of Financial Creditors can converge to reach the stipulated amount of ₹ 1 Crore under Section 7 of the IBC to initiate the CIRP.*

### Facts of the Case: -

Vishnu Oil Mill Pvt. Ltd. (Petitioner) had filed a writ petition in the High Court of Rajasthan seeking to assail the validity of Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) and also of the order dated December 22, 2021, passed by the National Company Law Tribunal, Jaipur Bench (NCLT) against the petitioner.

In the present case, the private respondents (Respondent No.4 to 7) did not have individual debt or default amounting to ₹1 crore against the petitioner. By way of a joint application by financial creditors under Section 7 of the IBC, 2016, CIRP was initiated against the petitioner which was an MSME. The Petitioner contended that the provision needs to be read in a purposive manner so as to lay down a principle that where financial creditors file a joint application under Section 7 of the IBC, the minimum default of ₹1 crore should be qua every individual creditor and the CIRP cannot be triggered on the basis of joint liability towards multiple financial creditors.

The main question here is whether under Section 7 of the IBC, the minimum default of ₹1 crore for every individual creditor is imperative or could a group of financial creditors join hands and come together to reach ₹1 crore.

### High Court's Observations:-

The court noticed that the validity of Section 7 was earlier challenged in the case of *Swiss Ribbons Private Ltd. & Anr. Vs. Union of India & Ors.* and the Section was found to be compliant to the Constitution of India. Despite that, here the petitioner has raised a completely different proposition i.e., permissibility of a group of financial creditors jointly triggering CIRP without adhering to the requirement of threshold default of ₹1 crore in individual capacity.



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The language of Section 7 of the IBC is unambiguous. The remedy to trigger CIRP has been provided to financial creditors in their individual capacity and also through a joint application with the total minimum threshold for initiation of CIRP being fixed at ₹1 crore. It can easily be envisaged that in cases of MSMEs, there may not exist financial creditors whose individual debt is ₹1 crore or above. If the threshold limit was to be fixed at ₹1 crore qua each individual Financial Creditor, then there was no reason whatsoever for allowing joint applications by financial creditors. The statute makes it clear that the same was formulated and amended in such a manner so as to provide a means of efficacious redressal to the smaller financial creditors and to give them an opportunity of availing the speedy remedy under the IBC rather than being relegated to other onerous proceedings for securing their money. “We are of the firm view that the statute i.e., Section 7 of the IBC as amended vide Gazette Notification dated June 05, 2020, admits no other interpretation except that a group of financial creditors can converge and join hands to touch the financial limit of ₹1 crore stipulated under Section 7 so as to initiate a CIRP under the IBC,” said the Court.

## **Order: -**

The court found no merit in the writ petition. Although, the petitioner was granted liberty to avail appropriate lawful remedy against the order passed by the NCLT.

## **Case Review: - *Petition dismissed.***