



INSOLVENCY & BANKRUPTCY

Seven Day Cure Command: Supreme Court Halts NCLT Rejection for Skipping Section 7(5)(b) Notice

AUTHOR Shrishail Kittad, Rahul Sundaram

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In Civil Appeal No. 11766 of 2025 the Supreme Court, through Justices Sanjay Kumar and Alok Aradhe, has restated a cardinal principle of insolvency practice: before rejecting a financial creditor's initiation petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 the adjudicating authority must first hand the applicant itself a seven day healing notice under the second proviso to Section 7(5)(b). Anything short, the Bench held on 24 November 2025, is jurisdictional error. The judgment arose from a hard fought contest between Live-in Aqua Solutions Private Limited, the corporate debtor, and HDFC Bank Limited, the lender that had extended five and a half crore rupees only to watch the account slip into nonperforming territory on 4 August 2019.

The chronology is instructive. The bank filed Form 1 on 26 July 2023, verified that day but supported by an affidavit a week older. At the scrutiny stage the Registry bundled the petition with twenty five others, published a consolidated defect sheet on 10 October 2023 and warned every listed party to cure shortcomings within seven days. No separate intimation, couched in the language of the Code's proviso, ever reached the bank itself. When the defects lingered the Joint Registrar refused registration on 18 October 2023, relying on Rule 28(4) of the NCLT Rules, 2016.

HDFC Bank invoked Rule 63 and persuaded the President of the NCLT to recall the refusal on 8 February 2024, subject to costs. The corporate debtor carried the battle to the National Company Law Appellate Tribunal, saw its appeal dismissed as infructuous on 15 July 2024, but found fresh life when the appellate tribunal, in a second appeal, held on 27 August 2025 that the proviso to Section 7(5)(b) had been shortcircuited and immediately remanded the petition to the NCLT for a decision on merits. The debtor then scaled the appellate ladder once more, contending before the Supreme Court that an affidavit predating the verification date rendered the entire application non est and that restoration without a direction for a clean affidavit was impermissible.

Livein Aqua pressed the Court to treat the premature affidavit as a fatal, incurable flaw, invoking Rules 10 and 34 of the NCLT Rules and arguing that the NCLAT had transformed an irremediable nullity into a mere curable hiccup. The bank, fortified by the precedent in Dena Bank v. C. Shivakumar Reddy, insisted that the second proviso to Section 7(5)(b) is not a decorative clause; it casts a mandatory obligation on the Tribunal to serve the applicant itself with a specific seven day notice before any rejection. A consolidated posting on the website, it argued, could not satisfy this legislative command.

The Supreme Court agreed with the bank's reading of the statute. It held that the proviso is directory cum mandatory, and that a defective affidavit is an irregularity that can be healed, not a congenital defect that stillbirths the petition. The Bench recalled its own observations in Vidyawati Gupta and Uday Shankar Triyar that procedure is the handmaiden of justice and should not be fashioned into a guillotine for substantive rights.

Yet the Court also chided the NCLAT for stopping short of the logical next step. Having correctly identified the procedural lapse, the appellate tribunal ought to have given the bank a fresh, timebound mandate to file a compliant affidavit instead of simply pushing the file back to the NCLT. Equity, the Court observed, required both recognition of the lapse and direction for its cure.

The appeal was therefore disposed of with a crisp, seven day prescription. HDFC Bank must remove every defect, including the filing of a fresh affidavit, in C.P.(IB)/97(AHM)/2024 within one week from the date of the judgment. Once that is done the NCLT, Ahmedabad Bench, will take the petition on its merits and decide it according to law. Each side will bear its own costs.

Conclusion

The ruling reestablishes that summary procedure under the IBC,2016 is not an open invitation to cut procedural corners. A missing seven day notice may seem trivial, but the Supreme Court has now branded it a jurisdictional flaw capable of unravelling months of litigation. For financial creditors the lesson is simple: perfect your papers, but if you falter the statute still grants you a week of grace. For tribunals the message is equally stark: cure first, reject later because justice delayed by procedural lapses is justice denied to the entire credit ecosystem.

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