



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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M/S ORATOR MARKETING PVT. LTD VS. M/S SAMTEX DESINZ PVT. LTD.

CIVIL APPEAL NO. 2231 OF 2021

DATE OF SUPREME COURTS JUDGMENT: JULY 26TH 2021

“THE DEFINITION OF ‘FINANCIAL DEBT’ UNDER IBC, 2016 DOES NOT EXPRESSLY EXCLUDE AN INTEREST FREE LOAN. FINANCIAL DEBT WOULD HAVE TO BE CONSTRUED TO INCLUDE INTEREST FREE LOANS ADVANCED TO FINANCE THE BUSINESS OPERATIONS OF A CORPORATE BODY.”

Facts of the Case: -

This Appeal was filed by the Appellant (Orator Marketing Pvt. Ltd.) under Section 62 of the IBC, 2016 against the order of the Hon’ble NCLAT, New Delhi. The Appellate Tribunal had dismissed the appeal of the Appellant and confirmed the order of the Adjudicating Authority ‘AA’, NCLT, New Delhi, dismissing the petition filed by the Appellant under Section 7 of the IBC stating that the Appellant was not a Financial Creditor of the Respondent (Samtex Desinz Pvt. Ltd.)

The question stated in this Appeal was, whether a person who gives a term loan to a Corporate Person, free of interest, on account of its working capital requirements is not a Financial Creditor, and therefore, incompetent to initiate the Corporate Resolution Process under Section 7 of the IBC.

According to the Appellant, a term loan of Rs.1.60 crores was advanced to the Corporate Debtor ‘CD’ for a period of two years, to enable the CD to meet its working capital requirement. The loan was due to be repaid by the CD in full and the CD made some payments but Rs.1.56 crores were still outstanding. Subsequently the Appellant filed a Petition under Section 7 of the IBC in the NCLT for initiation of the Corporate Resolution Process. However, the same was rejected by AA. The AA stated that the claim does not constitute as financial debt and Appellant does not come within the meaning of FC.

Being aggrieved by the above the Appellant filed an appeal under Section 61 of the IBC, 2016 which was dismissed by the Hon,ble NCLAT. The NCLAT affirmed the judgement and order of AA.



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Supreme Court's Observations

The Apex Court stated that both the NCLAT and NCLT have misconstrued the definition of 'financial debt' in Section 5(8) of the IBC, 2016 by reading the same in isolation and out of context. It stated that definition of 'financial debt' cannot be read in isolation, without considering some other relevant definitions.

The Apex Court stated that both NCLT and NCLAT have overlooked the words "if any" in the definition which could not have been intended to be otiose. They failed to notice 16 clause (f) of Section 5(8), in terms whereof 'financial debt' includes any amount raised under any other transaction, having the commercial effect of borrowing. Furthermore, sub-clauses (a) to (i) of Sub-section 8 of Section 5 of the IBC are apparently illustrative and not exhaustive.

The Apex Court further stated that the trigger for initiation of the CIRP by a FC under Section 7 of the IBC is the occurrence of a default by the CD and default means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes financial debt. Further, the definition of 'Financial Debt' does not expressly exclude an interest free loan. Financial Debt would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.

Order: -

The Apex Court allowed the appeal, and the judgment and impugned order were set aside. The order of the AA, dismissing the petition of the Appellant under Section 7 of the IBC was also set aside. The petition under Section 7 was directed to be revived and to be decided afresh, in accordance with law and findings of the Supreme Court.

Case Review: - Appeal Allowed