



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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Mr. B. A. Chandrasherikara Setty and Ors. Vs. M/s. Intec India Limited Ltd

ITEM NO.701 IB-2432/PB/2019

Date of NCLT Judgement: May 26, 2023

Facts of the Case: -

The petition under Section 7 was filed by the Mr. B. A. Chandrasherikara Setty and Ors. (hereinafter referred as 'Petitioner/Financial Creditor') against M/s Intec India Ltd. (hereinafter referred as 'Respondent/CD').

The petitioners are the Promoter and Directors of M/s VC Appliances Pvt. Ltd, who furnished the loan of ₹2 crore to the Respondent on 01.07.2018 with an interest rate at 27%. Despite of many extensions from the Petitioner, the Respondent defaulted in payment of loan with interest.

To oblige his dues, the Respondent offered to provide a stock to the Petitioner. The said proposal was accepted but the Respondent failed to provide any such promised stocks. The Respondent has acknowledged the factum of receipt of loan from the petitioner in his multiple correspondences including the email dated 24.01.2018.

Consequent to the notice issued by the AA, the Respondent made his submissions and said that alleged claim with interest thereon is based on an email which is entered by one of the Petitioner that too in the capacity of VC group but amount is disbursed by the Petitioners in their individual capacity and therefore the matter does not attract any of the clause of financial debt as defined sub-section 8 of Section 5 of the IBC. The Respondent further said that the communication of loan was not made by Mr. Amarjit Singh, who was authorized by the Board of Directors of the answering Respondent to take loan nor any specific resolution was passed for Mr. Amarjit Singh to take loan. Therefore, it was in the violation of MOA/AOA and in contravention to provisions of the Companies Act, 2013.

The Petitioner submitted that Mr. Amarjit Singh claiming himself as CEO of the Respondent has routinely dealt with the Petitioners for availing the loan on behalf of the Respondent and further stated that the Respondent by letter dated 24.01.2018 confirmed the transaction and directed M/s VC appliances Pvt. Ltd. to pay the interest to the Petitioners on its behalf against its Sale Invoice raised on M/s VC Appliances Pvt Ltd and adjust the same on the outstanding of the supply of material. The aforesaid interest Payment clearly demonstrates that amount advanced by the Petitioner is a financial creditors and Mr. Amarjit Singh is the person authorized by the Respondent.



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NCLT Observations:

After observing the submission of both the parties the AA held that the bank statement provided by the Petitioners clearly shows the disbursal of the loan amount to the Respondent's bank account and the email dated 27.06.2017 which was sent by the official email id of the Respondent's company clearly shows that the Respondent requested the loan of Rs. 2 crore, and agreed to repay the same with an interest of 27% within 3 months.

While addressing the other doubts, the AA further stated that the Petitioners being an outsider are not privy to the MOA of AOA of the company hence they are not expected to know whether the CEO of the Respondent/CD was authorize to take loan on behalf of the company or not. Further, the loan was disbursed in the Respondent's bank account and not to the CEO personally. The material on record clearly shows that the Respondent has committed the default and the Petitioners are entitled to claim their outstanding financial debt as financial creditors under IBC.

Order/Judgement: The present application is complete in all respect. There has been default in the payment of the financial debt and the Petitioners are entitled to claim its outstanding financial debt from the Respondent.

Case Review: The Tribunal admits the petition and initiates CIRP on the CD/Respondent with immediate effect.