



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Volume 06 | Number 32

(August 07, 2023)

M/s Bezel Stockbrokers Private Limited Vs Security Exchange Board of India (SEBI) & Insolvency and Bankruptcy Board of India (IBBI)
Company Petition No. (IB) -251 (ND)/2021
Date of NCLT Judgement: August 02, 2023

Facts of the Case: -

The present application is filed by M/s Bezel Stockbrokers Pvt. Ltd. in the capacity of Corporate Debtor (hereinafter referred as 'Applicant' or 'Company') for initiating CIRP against itself u/s 10 of IBC before Adjudication Authority (AA).

The Applicant being a stockbroker company incorporated under the Companies Act, 1956, registered with ROC Delhi, and also registered with SEBI under (Stockbrokers and Sub-Brokers) Regulations, 1992 since 14.06.2019. The Applicant has been engaged in the business of stock brokering, proprietary trading, and clearing member services for buying, selling, and dealing in securities etc., as permitted by the stock exchange(s)/clearing corporation and subject to conditions specified by the SEBI.

Due to the financial crisis, the Applicant couldn't deposit the required 20% margin for the stocks purchased on behalf of its clients as per SEBI rules. Consequently, the SEBI forfeited the shares, resulting in a significant liability of ₹3,35,84,815/- towards the shareholders/clients of the Applicant. Additionally, the advance funds (Cash & Collateral) provided by clients for future orders were not returned by the Company, adding a further liability of ₹ 91,78,621/-. Therefore, the total liability towards its clients amounts to ₹4,27,63,436/-. The Applicant has been facing increasing losses year after year, making it impossible to continue its operations. Consequently, the Applicant has been declared a defaulter and expelled from the NSE membership. In light of these circumstances, the Applicant has decided to file this Application under Section 10 of the IBC 2016.

The SEBI (hereinafter referred as 'Respondent No.1') submitted that the Applicant is a Financial Service provider as defined u/s 3(7) of the code and does not cover within the definition of the 'CD'.

The main issue that emerges from the submission of the parties before the AA is:

- (i) Whether a Stock Broker Company is a Financial Service Provider?



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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



NCLT's Observations: -

The AA observed that u/s 3(15) of IBC, 'Securities' and various types of 'Contracts' are considered as Financial Products. Since these terms are not explicitly defined in IBC, the AA referred to Section 2 of the Securities Contracts (Regulation) Act, 1956, which includes Shares, Scrips, Stocks, Bonds, Debentures, and Debenture Stocks under the term Securities, thereby treating them as Financial Products under Section 3(15) of IBC.

The AA concluded that the Applicant, being a stockbroker dealing in securities (considered Financial Products under section 3(15) of IBC), was providing 'Financial Services' as per Section 3(16) and, therefore, qualified as a 'Financial Service Provider'. Additionally, the Applicant was registered with SEBI, which is a 'Financial Sector Regulator' in terms of Section 3(18) of IBC, thus the Applicant falls under the control and supervision of SEBI as a Financial Service Provider.

Order/Judgement: The AA observed that a stockbroker company will be considered as a Financial Service Provider, thus the Applicant being a “Financial Service Provider” is outside the purview of the definition of a “Corporate Person” as defined under Section 3(7) of IBC 2016 and therefore, could not be considered as a “Corporate Debtor” u/s 3(8) of IBC, 2016.

Case Review: The Application is dismissed.