



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Volume 07 | Number 07

(February 12, 2024)

Jushya Realty Pvt. Ltd. vs. Ninety Properties Pvt. Ltd.
Company Appeal (AT) (Ins.) No. 543 of 2023
Date of NCLAT Judgement: February 02, 2024

Facts of the Case:-

The Present appeal is filed by M/s Jushya Realty Pvt. Ltd. (hereinafter referred as 'Appellant') u/s 61 of IBC against the Ninety Properties Pvt. Ltd. (hereinafter referred as 'Respondent') after being aggrieved by the impugned order dated 03.03.23 passed by the Adjudicating authority.

In December 2014, Shri Shabir Nirban, director shareholder, and promoter of the Respondent offered to sell 100% of its shares along with all assets and liabilities to the Appellant. The Appellant agreed to acquire all assets and liabilities of the Respondent as per its audited balance sheet dated March 31, 2013, after carrying out valuation of the shares of the Respondent, for a lump sum consideration of ₹4.50 Crore. An advance payment of ₹1.25 Crore was made by the Appellant, subject to execution of a share purchase agreement after conducting due diligence. Despite receiving the payment, the Respondent failed to provide necessary documents for due diligence or execute the agreement, despite reminders from the Appellant. The Appellant asked the Respondent to refund the amount paid by him along with interest @ 18% p.a., but when this was not forthcoming, the Appellant filed a petition under section 7 of the IBC. The AA dismissed the petition without providing any reasoning, stating that the amount in default was not a financial debt.

The Appellant submitted that section 7 application well filled within limitation accordance with section 18 of limitation act, The Appellant further submitted that the rejection of the section 7 application under the IBC lacks valid grounds. The Appellant assert that section 5(8) of IBC covers payments related to Share Purchase Agreements and should be considered.

The Respondent contends that the transaction with the Appellant isn't a financial debt, and there's been no default in repayment. The respondent further submitted that the ₹1.25 Crore was an advance for acquiring tenancy rights under a redevelopment scheme, where tenants could gain additional area in the new building. However, the true value of the premises exceeds ₹4.50 Crore.

The main issue before the Appellate Tribunal is whether the ₹1.25 Crore paid by the Appellant to the Respondent company constitutes a financial debt under the IBC, and if the section 7 application regarding this debt should be admitted or not?



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NCLAT's Observations: -

The Appellate Tribunal said that the Appellant failed to provide any documentation regarding the promised Share Purchase Agreement, instead relying solely on the transaction of ₹1.25 crores recorded in balance sheets over several years as evidence of financial debt. The Appellant's only argument in favor of the Share Purchase Agreement is a reminder sent in January 2018, four years after the alleged promise in 2014, which does not conclusively prove any oral agreement made in 2013 or 2014.

Additionally, no section 7 petition or supporting documents were submitted to demonstrate the existence of a Share Purchase Agreement or any borrowing evidence. Consequently, it is challenging to accept the claim that the ₹1.25 crores transaction constituted repayment of a financial debt, especially considering the lack of a default date. The transaction of ₹1.25 crores was purportedly for the purchase of a property situated at Teen Batti, Walkeshwar Road in Mumbai with redevelopment potential, valued at over ₹15 crores, consequently the Appellant's claim of a total consideration of ₹4.5 crores appears untenable, as this amount would not be adequate for acquiring such a valuable property.

Moreover, if the transaction indeed occurred in December 2014 as stated, the Appellant should have asserted its rights within the stipulated three-year period for specific contract purchases, rather than pursuing recourse through the Insolvency and Bankruptcy Code (IBC) does not appear to be correct legal course of action.

Order/Judgement: The Appellate tribunal held that AA didn't committed any error in dismissing the section 7 application under IBC.

Case Review: Appeal is dismissed.