



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. MURLIDHAR VINCOM PVT. LTD. Vs. M/s. SKODA (INDIA) PVT. LTD.
IB-554/ND/2023
NCLT Judgement dated March 22, 2024

Facts of the Case: -

The Present CIRP application is filled by M/s Murlidhar Vincom Pvt. Ltd. (hereinafter referred as Petitioner) in the capacity of Financial Creditor against M/s Skoda (India) Pvt. Ltd./CD (hereinafter referred as Respondent) to initiate CIRP u/s 7 of the IBC for an alleged default on the part of the Respondent in repayment of the debt of approximately ₹3.59 Crore.

On the request of the CD, the Respondent invested funds as 'Share Application Money' during FY 2009-10. The CD allotted 3,000 equity shares for an amount of ₹6.98 Lakh. Subsequently, in FY 2010-11 and 2011-12, the Respondent further infused ₹1.32 Cr. as 'Share Application Money' at CD's request, but no shares were allotted. The CD refunded ₹ 40 lakh from the aforementioned Share Application Money of ₹1.32 Cr. citing the rejection by CD's Board of Directors of a proposal to increase in share capital of the CD and acceptance of a loan proposal from another entity. However, CD failed to refund the balance amount of ₹92 lakh due to a liquidity crunch. When the Respondent demanded the balance, CD expressed its inability to refund but agreed to allot shares against the balance Share Application Money on the condition that the Respondent provide additional funds to meet immediate liquidity crunch, as the previously accepted loan proposal has been delayed.

To resolve the issue, the Respondent provided additional funds totaling ₹79 lakh as Share Application Money from 2012 to 2014 to meet CD's working capital needs. The CD claimed the total amount of ₹1.71 Cr. as Share Application Money against the Respondent name in the Audited Financial Statements of FY 2013-14, but no shares were allotted. With the implementation of the Companies Act, 2013, shares were required to be allotted within 60 days of receipt of Share Application Money, failing which repayment within 15 days with 12% interest was mandated. As CD didn't allot shares against the outstanding amount of ₹1.71 Cr., the Respondent sent a demand notice on 07.07.23 for repayment of the Share Application Money with statutory interest of 12% within 15 days. The demand notice was delivered to CD on 10.07.2023, but CD failed to repay the amount, leading to the filing of this Application.



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NCLT Observations: -

The AA observed that the CD is not obligated to service the debt due to the Respondent's involvement in its pivotal business decisions during FY2013-14 & 2014-15, and further placed its reliance on the settlement agreement dated 16.04.19 in which the parties agreed to settle the matter for an amount of ₹3.23 Cr. Out of which the CD already repaid the amount of ₹2.66 Cr. to the Respondent and a cheque of ₹57.01 lakh was also given to the Respondent but the same was not encashed by the Respondent therefore there is no default by the CD arises.

The AA further observed while placing its reliance on the judgement pronounced by the NCLAT in *Promod Sharma Vs. M/s Karanaya Heartcare Pvt. Ltd. 2022* and observed that the Share Application Money does not come under the ambit of a financial debt in accordance with Section 7 of the IBC, on the basis of that the Respondent claim is barred.

Order/Judgement: The AA declined to address the additional contentions raised by both the Respondent and CD, given that the Respondent's claim is deemed invalid based on the precedent, as the requirements of Section 7 of the IBC are not met.

Case Review: Petition is dismissed.