INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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IBC Case Law Capsule

Number 248

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EPC Constructions India Ltd. vs. Matix Fertilizers and Chemicals Ltd.
Civil Appeal No. 11077 of 2025
Date of Supreme Court Judgement: 28 October 2025

Facts of the Case:-

The present appeal called in question the correctness of the judgment and order passed by the National Company Law Appellate Tribunal (NCLAT), which had confirmed the order passed by the Adjudicating Authority – National Company Law Tribunal, Kolkata (NCLT). The NCLAT had dismissed the application of EPC Constructions India Limited (Appellant) filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).

The appellant had entered into an engineering and construction contract with M/s Matix Fertilizers and Chemicals Limited (Respondent), for setting up a fertilizer complex for ammonia and urea production at Panagarh Industrial Park, West Bengal. Owing to delay in project completion and funding constraints, the respondent proposed to convert part of the appellant's outstanding amount of ₹400 crores into preference shares to meet lender requirements. Pursuant to this proposal, the appellant's board of directors approved the conversion of up to ₹400 crores of dues into Cumulative Redeemable Preference Shares (CRPS). Accordingly, the respondent allotted CRPS aggregating ₹250 crores, which they later unilaterally adjusted to ₹310 crores.

Later on, following the initiation of the Corporate Insolvency Resolution Process ("CIRP") against the appellant, its resolution professional demanded ₹632.71 crores from the respondent, including ₹310 crores towards redemption of CRPS. Matix denied the liability, leading to the appellant filing a Section 7 petition against the respondent before the NCLT. The appellant submitted that the financial statements of the respondents showed the liability towards CRPS as "unsecured loan" and "other financial liability". The petition was duly opposed by the respondent herein.

The NCLT dismissed the appeal citing that redemption could only occur out of profits or proceeds of fresh issue of shares under Section 55 of the Companies Act, 2013. Since the respondent had no such profits, the liability to redeem the CRPS had not arisen, and hence, no default existed under Section 7 of the IBC. Subsequently, on appeal before the NCLAT, the appellate tribunal also dismissed the appeal reiterating the NCLT's view that no debt became due to the appellant on account of the allotted preference shares since no dividends were declared.

Supreme Court's Observations:

After taking note of the above-mentioned factual background, the question that arose before the Supreme Court for consideration is whether the NCLT and NCLAT were justified in dismissing the application of the appellant under Section 7 of the IBC, after holding that the appellant was not a financial creditor.

The Supreme Court observed that preference shares form part of a company's share capital and the amounts paid upon them are not loans. Section 55 of the Companies Act stipulates that preference shares shall be redeemed only out of the profits of the company which would be otherwise available for dividends or out the proceeds of the fresh issue of shares made for the purpose of such redemption. Explaining the nuanced distinction between "debt" and "share" particularly in the context of a "preference shareholder", the Court noted that main difference between the two in such a case may then be that the dividend on a preference share is not payable unless profits are available for distribution, whereas the debt holder's interest entitlement is not subject to this constraint, and that the debt holder will rank before the preference holder in a winding-up.

The Court further clarified that entries in books of accounts or accounting standards (like AS-32) cannot override the legal character of preference shares as share capital. For a debt to qualify as 'financial debt' under Section 5(8) of the IBC, it must involve disbursal against consideration for time value of money, which is absent in this case. Accordingly, the Supreme Court held that the appellant, as a preference shareholder, was not a financial creditor and could not maintain a Section 7 application.

Order/Judgement: The Supreme Court dismissed the appeal, upholding the findings of the NCLT and NCLAT that the Appellant was not a financial creditor under the IBC. It concluded that redeemable preference shares do not create a financial debt, and non-redemption thereof does not amount to default under the IBC.

Case Review: *Appeal dismissed.*