

Learning Curve-1023

February 07, 2024

Amount of advance paid for purchase of shares of the CD does not fall under the definition of Financial Debt as it was not disbursed against the consideration for the time value of money.

CASE TITLE	Jushya Realty Pvt. Ltd. Vs. Ninety Properties Pvt. Ltd.
CASE CITATION	Company Appeal (AT) (Ins.) No. 543 of 2023
DATE OF ORDER	February 02, 2024
COURT/ TRIBUNAL	NCLAT, New Delhi

BRIEF FACTS:

The Appellant made an advance payment of Rs.1.25 cr to acquire all the assets and liabilities of the Respondent subject to execution of the share purchase agreement by the Respondent. However, no steps were taken by the Respondent despite repeated reminders and hence, the Appellant asked the Respondent to refund the amounts paid. When the said amount was not refunded, the Appellant filed a petition u/s 7 of the IBC. The AA has dismissed the petition observing that the amount in default is not financial debt and Appellant is not a financial creditor under the provisions of IBC.

DECISION:

The Hon'ble NCLAT, New Delhi held that,

"In the present case, neither section 7 petition nor any pleadings or documents submitted by the Appellant, have any document to show that there was a Share Purchase Agreement to be signed nor any covered fact of the borrowing have been evidenced. In such a situation, it is difficult to accept the contention of the Appellant that the transaction of Rs.1.25 cores was in fact repayment of a 'financial debt'...

In the present situation again, no date of default is made out and so we find that neither the said transaction is in the shape of a financial debt or in commercial effect of borrowing is evidenced and no default is also made out....

We do not consider it necessary to go any further into the nature of the contract, whether written or otherwise between the two parties suffice to say that if transaction was made in December, 2014 against the purchase of a specific property, the Appellant should have asserted its right within the stipulated period of three years being the specific purchase of the contract to try to enforce such contract through IBC does not appear to be correct legal course of action...

we do not think that the Adjudicating Authority has committed any error in dismissing the section 7 application. We conclude that the appeal is devoid of merit and consequently it is dismissed"