

Learning Curve-1037

April 30, 2024

The amount given as share application money cannot be treated to be a financial debt so as to enable the Appellant to trigger CIRP u/s 7 of IBC.

CASE TITLE	Mittson Fille Enterprise Vs. Sammaan Ventures Limited
CASE CITATION	C.P. (IB) No. 147/KB/2023
DATE OF ORDER	April 23, 2024
COURT/ TRIBUNAL	NCLT, Kolkata

BRIEF FACTS:

Mittson Fille Enterprise/FC filed an application u/s 7 of IBC against Sammaan Ventures Limited/CD on the ground that CD has defaulted to make a payment of a sum of Rs.7,12,38,356.16. The CD approached the FC for an investment in CD representing the pending issuance of the license of Khadi Online System. The CD agreed to allot equity shares of the CD to the FC. The CD failed to complete the procedure of allotment of shares.

DECISION:

The Hon'ble NCLT, Kolkata, held that,

“the Learned Counsel for Corporate Debtor has placed reliance on order dated 21 April 2022 passed by Hon'ble NCLAT comprising of a Bench with three Hon'ble Members headed by the Hon'ble Chairperson in Comp. App. (AT) (Ins.) No. 426 of 2022 in the matter of Pramod Sharma v. Karanaya HeartCare Pvt. Ltd. at Paragraph 5 which is reproduced herein below:

“5. Admittedly, the amount was given, as per the case of the Appellant, as a Share Application Money on which no share was allotted. Under some settlement, the principal amount was refunded and thereafter, the Application under Section 7 was filed by the Appellant. We are of the view that the Adjudicating Authority rightly took the view that the amount which was given by the Appellant as Share Application Money cannot be treated to be a financial debt so as to enable the Appellant to trigger the Insolvency Process under Section 7 of the Code.”

Following the law laid down by the larger Bench of the Hon'ble NCLAT, we are of the view the amount of default is not a Financial Debt and therefore petition under Section 7 is not maintainable. CP (IB) No. 147/KB/2023 is hereby rejected.”