

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 250 of 2020

In the matter of:

Varsha Jain **....Appellant**

Vs.

ISEO Chemdis Pvt. Ltd. **....Respondent**

Present:

Appellant: Mr. Sanjeev Kataria and Mr. Deepak Garg, Advocates.

Respondent:

ORDER

05.03.2020: This appeal has been preferred against rejection of Appellant's application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code') on the ground that the Appellant has failed to demonstrate that the amount claimed to have been invested by her falls within the ambit of 'Financial Debt'.

2. Learned counsel for the Appellant submits that a Draft Agreement dated 18th June, 2018 was signed inter-se the parties in terms whereof Appellant invested Rs.100 Lakhs in ICPL with Rs.50 Lakhs infused as equity and balance Rs.50 Lakhs to be treated as loan from a shareholder carrying interest @ 33.33% per annum. He banks upon this Draft Agreement to demonstrate that the money was disbursed against consideration of time value of money.

3. However, we find that the Draft Agreement, as taken note of by the learned Adjudicating Authority, was not followed by executing an enforceable instrument

in form of an Agreement/ Contract. Therefore, no exception can be taken to the finding recorded by the learned Adjudicating Authority that the Appellant has failed to demonstrate that the amount claimed to have been invested falls within the ambit of a 'financial debt'.

4. That apart, we find that even on the basis of stipulation in the Draft Agreement it was provided that there will be a locking period of 60 months on such investment. Admittedly, the locking period subsisted on the date of filing of application under Section 7 of the I&B Code and the position continues to be so even on date. Viewed from that perspective, even if, the Appellant's claim of such investment being a 'financial' debt is accepted, there is no "default" as the Appellant would not be entitled to claim the Principal Amount claimed to have been infused as loan.

5. There is no merit in this appeal. It is accordingly dismissed. No Costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

[V. P. Singh]
Member (Technical)

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