

National Company Law Appellate Tribunal, New Delhi
Principal Bench

Company Appeal (AT) (Ins) No. 706 of 2021

IN THE MATTER OF:

M Sai Eswara Swamy

... Appellant

Vs.

Siti Vision Digital Media Pvt. Ltd.

...Respondent

Present:

For Appellant:-

**Mr. P Nagesh, Sr. Adv. with Mr. Harshal Kumar,
Mr. Shivam Wadhwa, Advocates**

For Respondent :-

**Mr. Arvind Nayar, Sr. Adv. with Mr. Shivam Singh,
Mr. Abhinav Singh, Advocates**

O R D E R
(Virtual Mode)

09.09.2021: Heard Ld. Sr. Counsel for the Appellant. He submits that the Appellant is a Director and 50% Shareholder of both the Financial Creditor Companies i.e. Vision Infotel India Pvt. Ltd. and Vision Infracon India Pvt. Ltd. There is a deadlock in the Financial Creditor Company Mr. K Siva Rama Krishna Kancharla who holds remaining 50% share of the Financial Creditors Companies is a Managing Director and his wife holds 4% shareholding in the Respondent Company (Corporate Debtor). The Appellant has requested several times to Mr. K Siva Rama Krishna Kancharla to sign the board resolution to initiate legal proceedings against the Respondent Company but he refused to sign the Board Resolution. Ld. Adjudicating Authority has dismissed the Application under Section 7 of the IBC on the ground that no board resolution authorizing the Petitioner (Appellant herein)

to file the Petition is filed alongwith the Petition. In this regard, it is submitted that Shareholder/Director of the Company can initiate action on behalf of the Company if the same is in the interest of the Company and the Board is not pursuing the same. As per doctrine of derivative action the Appellant being 50% shareholder and director of the Petitioner Company can maintain the Petition under Section 7 of the IBC. For this purpose, he placed reliance on the Judgment of Hon'ble Bombay High Court in the case of Onyx Musicabsolute Com Pvt. Ltd. Vs. Yash Raj Films Pvt. Ltd. 2008 SCC Online Bom 636, Judgment of Hon'ble Calcutta High Court in the case of Star Light Real e-State (Ascot) Morisus Pvt. Ltd. Vs. Jagriti Trade Services Pvt. Ltd. AIR 2018 Cal 173 and Federal Court Reports Dr. Satya Churn Law and Others Vs. Rameshwar Prasad Bajoria and Others, Civil Appeal No. LXV of 1949

2. Ld. Sr. Counsel for the Appellant submits that Ld. Adjudicating Authority has dismissed the Petition under Section 7 of the IBC on the other ground that no Board Resolution was passed to advance loan under Section 186 of the Companies Act, 2013. It is submitted that such board resolution is not required when the Corporate Debtor in his balance sheet acknowledging the debt. Thus, Ld. Adjudicating Authority has erroneously dismissed the Petition as not maintainable.

3. Ld. Sr. Counsel for the Respondent on advance notice vehemently opposes the admission and supports the impugned order. He submits that the Central Government (Ministry of Corporate Affairs) vide notification dated

27.02.2019 S. O. 1091 (E). Exercising power under sub-Section 1 of Section 7 of the IBC notified the persons who may file an application for initiating CIRP against a Corporate Debtor. In the notification at serial No. (iv) a person duly authorized by the Board of Directors of a Company is competent to file Petition under Section 7 of the IBC on behalf of the Financial Creditor. Ld. Sr. Counsel for the Respondent cited the Judgment of this Appellate Tribunal in the case of Palogix Infrastructure Pvt. Ltd. Vs. ICICI Bank Ltd. CA (AT) (Ins) No. 30 of 2017 in which this Tribunal has categorically held that a person duly authorized by the Company can file the Petition under Section 7 of the IBC.

4. Ld. Sr. Counsel for the Respondent also submits that the Appeal is not maintainable as the Appeal is filed by the Shareholder of the Financial Creditor Company. Such person does not come within the definition of aggrieved person under Section 61 of the IBC. Therefore, the Appeal is not maintainable.

5. After hearing Ld. Sr. Counsels for the parties, we have considered the submissions, undisputedly there is no board resolution authorizing the appellant to file the petition under Section 7 of the IBC and filed this Appeal as there is deadlock in the Financial Creditors Company.

6. Now, we have considered whether Director and Shareholder of the Company can file the Petition under Section 7 of the IBC on the doctrine of derivative action. We have gone through aforesaid citations relied upon by the

Appellant. The facts of the cited cases are quite different and in these citations it is held that a shareholder has no locus standi to maintain the suit, affirmed one of the exceptions to the aforesaid rule that where a shareholder can show that the wrong doers are in control of the defendant company and hence the company would be unable to maintain the action. So far as the Petition under Section 7 of the IBC is concerned, there is a specific notification by the Central Government under sub-section (1) of Section 7 of the IBC that on behalf of the Financial Creditor a guardian, an executor or administrator of an estate of a financial creditor, a trustee and a person duly authorized by the board of directors of a company may file Application for initiation of CIRP against the Corporate Debtor. In such situation, doctrine of derivative action cannot be applied in Petition under Section 7 of the IBC. Thus, we are affirmed the findings of Ld. Adjudicating Authority that there is no Board Resolution authorizing the petitioner to file the Petition. Therefore, the Petition is not maintainable.

7. Ld. Adjudicating Authority has also held that no Board Resolution was filed in regard to advance loan to Corporate Debtor Company as required under Section 186 of the Companies Act, 2013. In this regard, Ld. Sr. Counsel for the Appellant submitted that the Corporate Debtor Company in his balance sheet acknowledged the debt. Therefore, such resolution is not required to maintain the petition under Section 7 of the IBC. We are not convinced with this argument. We found no flaw in the findings of Ld. Adjudicating Authority.

8. With the aforesaid, we are of the view that Ld. Adjudicating Authority has rightly held that the Petition is not maintainable. Therefore, no interference is called for in the impugned order.

Thus, the Appeal is dismissed summarily without notice to the Respondent. No order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)

SC/md.