

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Comp. App. (AT) (Ins.) No. 426 of 2022

In the matter of:

Pramod Sharma

....Appellant

Vs.

Karanaya HeartCare Pvt. Ltd.

...Respondent

For Appellant: Mr. Sunil Singh Parihar, Advocate.

For Respondent:

ORDER

(Through Virtual Mode)

21.04.2022: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 02.03.2020 by which Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) filed by the Appellant has been dismissed.

3. The Appellant’s case is that he has given an amount of Rs.1,03,00,000/- in the share capital of Respondent and same was shown as Share Application Money but no share was allotted in lieu of such money. It is submitted that subsequently principal amount was paid of Rs. 1,03,00,000/- but no amount was paid towards interest. It is submitted that neither any share was allotted nor amount was returned, it became deposit. Hence, Application under Section 7 was maintainable.

4. We have considered the submissions of the Counsel for the Appellant and perused the record. The Adjudicating Authority in para 7 of the impugned order has made following observations:

“7. The matter between both the parties was amicably settled as recorded in order dated 11th October, 2017 of the Hon’ble National Company Law Tribunal passed in C.P. No. 205(ND)/2017, between the parties along with that the Respondent failed to show any agreement to substantiate the fact that money was paid as a financial debt or that the money was paid against the payment of interest. Therefore, we find that the share application money does not fall under any of the clauses of Section 5(8) of the Code and it cannot be said to fall under the definition “a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money” since no debt was disbursed by the Applicant to the Respondent and no time value has been attached with the share application money. Thus, since the claim is not a financial debt the present application under Section 7 of the Code is not maintainable and is dismissed with no costs.”

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.

6. Learned Counsel for the Appellant submitted that a cheque was also issued which was dishonored. It is for the Appellant to take appropriate proceeding, if any, in accordance with the law.

7. We, however, are of the view that the Adjudicating Authority did not commit any error in rejecting the Application under Section 7. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Shreesha Merla]
Member (Technical)**

Anjali/nn