



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-554/ND/2023

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. MURLIDHAR VINCOM PVT. LTD.
18, Acharya Prafulla Chandra Road,
Ground Floor, Calcutta, West Bengal- 700009
Email: murlidhar.vincom@gmail.com
Mobile No.:9748320139

...FINANCIAL CREDITOR/PETITIONER

Versus

M/s. SKODA (INDIA) PVT. LTD.
6th Floor, Akashdeep,
Barakhamba Road,
New Delhi-110001
Email: dr.pravin111@gmail.com
Mobile: 8447661939

...CORPORATE DEBTOR/RESPONDENT

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)



Counsel for Petitioner: Adv S S Shekhawat, Adv. Abhinav Shekhawat, Adv. Parul Shekhawat

Counsel for Respondent: Adv. Bal Kishan Sharma, Adv. Rajiv Rathi

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 22.03.2024

1. The present Petition has been filed by M/s Murlidhar Vincom Private Limited, to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s. Skoda (India) Private Limited in accordance with Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of debt of INR 3,58,34,979/- (principal amount INR 1,71,60,000 and interest of INR 1,86,74,979). The applicant avers the following particulars pertaining to the transactions and the consequent default which led to the filing of the present application -



- i. That on the request of Corporate Debtor (hereinafter referred to as the CD), the Financial Creditor (hereinafter referred to as the FC) invested funds as **Share Application Money** to the Corporate Debtor during FY 2009- 2010. The Corporate Debtor allotted 3000 equity shares in the Share Capital of Corporate Debtor for an amount of INR 6,97,680/-(Rupees Six Lakh Ninety Seven Thousand Six Hundred Eighty).
- ii. That during FY 2010-11 and 2011-12, the Financial Creditor further infused INR 1,32,00,000 (Rupees One Crore Thirty Two Lakh) as Share Application Money on the request of Corporate Debtor for allotment of equity shares, however no shares were allotted by Corporate Debtor against the aforesaid amount.
- iii. Owing to the fact that no corresponding shares were allotted, the Corporate Debtor refunded INR 40,00,000/- (Rupees Forty Lakh) on 21st and 22nd May, 2012 to Financial Creditor from the aforesaid Share Application Money of INR



1,32,00,000/- . As intimated to the Financial Creditor the Corporate Debtor refunded the amount because Board of Directors of Corporate Debtor rejected the proposal of increase in share capital of the Corporate Debtor and accepted a loan proposal from some other entity at that time. However, the Corporate Debtor failed to refund balance amount of INR 92, 00,000/- (Rs. Ninety Two Lakh) due to liquidity crunch.

iv. Subsequently, when Financial Creditor demanded balance amount of the Share Application Money, the Corporate Debtor expressed its inability to refund the balance Share Application Money. However, the Corporate Debtor agreed to allot the shares for the balance Share Application Money on the condition that the Financial Creditor provide additional funds to the corporate Debtor to meet immediate liquidity requirements of the Corporate Debtor as loan proposal which was earlier accepted by the Board has delayed beyond expected time.



- v. That to resolve the issue of balance Share Application Money stuck with the Corporate Debtor, the Financial Creditor provided additional funds amounting to INR 79,60,000/- (Rupees Seventy Nine Lakh Sixty Thousand) as Share Application Money in multiple trenches from the year 2012 to 2014 to meet working capital needs of Corporate Debtor.
- vi. That the Corporate Debtor has made a claim for the total amount of INR 1,71,60,000/- as Share Application Money against the name of Financial Creditor in the Audited Financial Statements of FY 2013-14. However, till date no shares were allotted by the Corporate Debtor.
- vii. That with effect from 01.01.2014, The Companies Act, 1956 was replaced with Companies Act, 2013. Section 42 (6) of the Companies Act, 2013 provides that the shares are to be allotted within 60 days of receipt of Share Application Money, and if shares are not allotted within 60 days, share application money is to be repaid within



next 15 days. In case company fails to repay the share application money within next 15 days, an interest at the rate of 12% is to be paid on the outstanding share application money and the same shall be deemed as deposit under rule 2 (vii) (a) of Companies (Acceptance of Deposits) Rules, 2014 framed under Section 73 of the Companies Act, 2013.

viii. That since shares was not allotted by the Corporate Debtor against the outstanding amount of Rs. 1,71,60,000/-, the Financial Creditor sent a demand notice on 07.07.2023 for repayment of the share application money with statutory interest of 12% as provided under Section 42 (6) of the Companies Act, 2013 on the outstanding share application money within 15 days.

ix. That the above said Demand Notice dated 07.07.2023 issued by financial Creditor was delivered to Corporate Debtor on 10.07.2023 but



Corporate Debtor failed to repay the amount till date hence this Application.

2. The Corporate Debtor has made the following submissions against the present application in its reply dated 25.11.2023 –

- i. That the corporate debtor is a private Limited Company formed and incorporated under the provisions of the Indian Companies Act, 1956 vide CIN no.: U74899DL1930PTC004767 having its registered office at 6th Floor Akash Deep Building, Barakhamba Road, New Delhi - 110001.
- ii. That the CD was in need of the fund for working capital therefore the corporate debtor requested the financial creditor to provide long / short term debt to defray the aforesaid costs. However, the FC refused to provide debt funds but agreed to provide funds against the allotment of equity shares. The corporate debtor allotted 3,000 equity shares to the FC for an amount of INR 6,97,680/- (Rupees six



lakh ninety seven thousand six hundred eighty only) in the year 2009-2010. The CD further asked for the funds, therefore the financial creditor deposited INR 1,71,60,000/- (Rupees one crore seventy one lakh sixty thousand) upon various dates during the period 2011-2014 towards the share application money for the allotment of equity shares but shares were not allotted as there was a dispute pertaining to the valuation of shares between the CD and FC. The management of FC was also participating in the business decisions of the CD and it was decided that the shares will be allotted at the valuation determined on the basis of audited financial statements of FY 2014-15.

iii. That due to certain business decisions, the CD could not sustain the turnover and profit margins in 2014-15 and the FC demanded refund of its share application money however the share application money could not be refunded due to liquidity crunch.



- iv. That in the subsequent financial years the CD could not do much business therefore the business operation were shut down in the year 2017-18. The management of corporate debtor could not revive the operations thereafter due to covid 19.
- v. That due to the non-filing of the balance sheets, annual returns and other statutory returns/ documents of the company, the Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi & Haryana removed the name of the Company from its Register of Companies in accordance with Section 248 of the Companies Act, 2013. Therefore, the present status of the corporate debtor in the records of Registrar of Companies NCT Delhi and Haryana is stricken off.
- vi. That the CD had invested a huge sum of more than INR 14 crore in the current assets and there is current liabilities of more than INR 12 crore [inclusive of INR 6,62,57,000/- as share application money]. The CD in its bona fide had made its sincere efforts to encash the current assets to pay off /



discharge its liabilities, but due to the change in market scenario coupled with the removal of name from the register of companies, the CD is unable to discharge its liabilities.

vii. That it is submitted that since CD has already been struck off by Registrar of Companies, NCT Delhi and Haryana, the application of FC for initiation of corporate insolvency resolution process is not maintainable.

viii. The present case of the FC is based on a purported non-existing understanding between the parties however, the FC miserably failed to attach any document/evidence of any such understanding between the parties as no such understanding ever existed between the parties.

ix. That it is further submitted that since the management of the FC was involved in the business decisions of CD during FY 2013-14 & 2014-15, the CD cannot be held liable for refund of share application money of FC.



3. We have heard the Ld. Counsel appearing for the Petitioner and the Respondent and perused the averments made in the application and reply filed on behalf of the parties.

4. The objections made by the CD against the application filled by the FC and the averments therein have been abridged as under -
 - i. The CD has alleged that the purported understanding between the CD and FC pertaining to the Share Application Money has not been substantiated with the requisite evidence.
 - ii. Further, the CD has alleged that, the CD is not liable to service the debt i.e. the Share Application Money owing to the fact that the FC was involved in pivotal business decisions of CD during FY 2013-14 & 2014-15.
 - iii. Petitioner did not place reliance on the settlement agreement dated 16.04.2019 in which the parties agreed to settle the matter for an amount of Rs. 3.23



Crores out of which CD already repaid the amount of Rs. 2.66 Crores to the FC and a cheque of Rs. 57.01 Lakhs was also given to FC but the same was not encashed by the FC. Therefore, there is no default by the Corporate Debtor.

5. At this juncture it is pertinent to note that in **PROMOD SHARMA VS M/S KARANAYA HEARTCARE PRIVATE LIMITED (Comp. App. (AT) (Ins.) No. 426 of 2022)**, the Hon'ble NCLAT held that –

“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.”

It was observed in the aforesaid precedent that Share Application Money does not come under the ambit of a Financial Debt in accordance with Section 7 of the IBC, 2016.



6. The present application has been filed by the FC seeking refund of the Share Application Money issued to the CD. However, in light of the aforementioned precedent, the FC's claim is barred, as the Share Application money cannot be deemed to be a Financial Debt.

7. This Adjudicating Authority is of the opinion that it is not prudent to delve into the other contentions raised by the FC and CD at this stage, as the claim made by the FC itself is infructuous in light of the findings of the Hon'ble NCLAT.

8. It can be concluded that the requirements of section 7 of the Code are not fulfilled. Therefore, this Adjudicating Authority **dismisses** the Petition filed by the Petitioner.



9. However, the petitioner is at liberty to seek relief before the apposite authority in respect of the refund of the share application money claimed by him.

Let copy of the order be served to the parties.

Order

-SD/-
Rahul Bhatnagar
Member (Technical)

-SD/-
Mahendra Khandelwal
Member (Judicial)