

NCLT (Mumbai)

Before: Justice P. N. Deshmukh (Retd.), Mr. Shyam Babu Gautam

IDBI Trusteeship Services Limited v. Radius and Deserve Builders LLP

CP (IB) 239/MB/C-I/2022

23.09.2022

Insolvency and Bankruptcy Code, 2016, S. 7 , 9 - Unlike Section 9, there is no scope of raising a ‘dispute’ as far as Section 7 petition is concerned - As soon as a ‘debt’ and ‘default’ is proved, the adjudicating authority is bound to admit the petition. [Para 55]

Insolvency and Bankruptcy Code, 2016, S. 7 - For dues payable by a separate corporate entity, its sister concern/group company cannot be driven into CIRP. *Anil Syal v. Sanjeev Kapoor (Proprietor Kapoor Logistics) (Company Appeal (AT) (Ins.) No. 961 of 2019, relied. [Para 54]*

Held, Financial Creditor’s right to sue emanates from the DTD pursuant to the default committed by RDLDP under the said Debenture Trust Deed, to which the Corporate Debtor is not a party. Moreover, it is the Petitioner’s analogy that under the Options Agreement default was committed by the Corporate Debtor in repayment to RDLDP. Therefore, Petitioner’s contention that it can step into the shoes of RDLDP for recovering the amounts due from the Corporate Debtor. The above stated analogy of the Petitioner is flawed for the reason that the document i.e. DTD on which the Petitioner has based its claim is executed with RDLDP which is a separate company having different CIN number than the Corporate Debtor. Therefore, the Corporate Debtor herein cannot be imputed for breach committed by RDLDP.

Insolvency and Bankruptcy Code, 2016, S. 7 - Petitioner’s own case that the alleged date of default arose after 25th March 2020. Therefore, the captioned Petition is defective since no petition under Sections 7, 9 or 10 of the IBC can be filed for a default falling after 25th March 2020 up to September 2020.

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