

Doctrine of derivative action cannot be applied in Petition under Section 7 of the IBC.

CASE TITLE	M Sai Eswara Swamy Vs. Siti Vision Digital Media Pvt. Ltd. ¹
CASE CITATION	Company Appeal (AT) (Ins) No. 706 of 2021
DATE OF ORDER	09.09.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Onyx Musicabsolute Com Pvt. Ltd. Vs. Yash Raj Films Pvt. Ltd Star Light Real e-State (Ascot) Morisus Pvt. Ltd. Vs. Jagriti Trade Services Pvt. Ltd
SECTION/REGULATION REFERRED	Section 7 of Insolvency & Bankruptcy Code 2016

Brief of the case:

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. The Appellant requested several times to Mr. K Siva Rama Krishna Kancharla to sign the board resolution to initiate legal proceedings against the Corporate Debtor but he refused to sign the Board Resolution. Adjudicating Authority dismissed the Application under Section 7 of the IBC on the ground that no board resolution authorizing the Appellant to file the Petition. In this regard, it was 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.

Decision:

Hon'ble NCLAT dismissed the application with following observations:

"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"

QR CODE FOR FULL ORDER/JUDGEMENT:



¹<https://ibbi.gov.in/uploads/order/2021-09-14-120246-mfx8g-c81e728d9d4c2f636f067f89cc14862c.pdf>