

Corporate Debtor cannot avoid its obligation to repay the debt under IBC on the ground that Section 186 of the Companies Act, 2013 was not followed while disbursing the loan

The NCLAT, New Delhi, in the case of **Pancham Studios Pvt Ltd. vs Konark Aquatics & Exports Pvt Ltd. [Company Appeal (AT) (Ins.) No. 406 of 2024]** dated July 15, 2025, has held that the Corporate Debtor cannot avoid its obligation to repay the debt on the ground that Section 186 of the Companies Act, 2013 was not followed while disbursing the loan, since the aim of Section 186 is to protect the shareholders, not to shield the corporate debtor from its repayment obligations.

The case set up by the Appellant is that the business of seafood processing and exports of the Corporate Debtor (CD) had suffered because of the death of one of its promoters, which resulted in the classification of the accounts of CD with secured creditors as NPA. On the request of the CD, the Appellant agreed to disburse an inter-corporate loan of Rs. 4,43,50,000/- to discharge the liabilities of the other secured financial creditors, which was to be repaid after the settlement of the secured financial loans under a one-time settlement scheme. However, the CD failed to repay the loan even after the settlement of the secured loans.

On the other hand, the case set up by the Respondent is that the loan, if any, advanced without interest is not a financial debt. Since there was no agreement between the parties for disbursement, and no due date was fixed for repayment, the Respondent alleged that the amount was released to the MD of the CD against the sale consideration of a joint family property transferred in favour of the Appellant by way of a sale deed, for the development of a commercial complex. It was also stated that the amount was paid as per a mutual cooperation, and pleaded that Section 186 of the Companies Act, 2013, has not been complied with. Refuting such allegations, the Appellant has alleged that the amount of Rs. 4.43 crores was admitted by the CD in its own balance sheets as an unsecured loan, and was agreed to be repaid within two years from the last date of disbursement or after completion of debt settlement.

After considering the submissions, the NCLAT noted that Section 186(2) of the Companies Act provides that no company can provide loans exceeding 60% of its paid-up share capital, free reserves, and securities premium account. At the same time, Section 186(13) provides for the imposition of fines and imprisonment for the company and its officers in case of violation of Section 186(2). The Tribunal therefore observed that nowhere does Section 186 render such transactions void and unrecoverable, and any violation of Section 186 cannot absolve the corporate debtor from its liability to repay. The provision aims to protect the shareholders, not to shield the debtor, and the CD cannot be permitted to invoke Section 186 to avoid repayment of a legally due debt.

The NCLAT further held that the Appellant has duly established that the disbursed amount was consistently reflected in the balance sheet of the corporate debtor as an unsecured loan which was never repaid despite multiple demand notices, which is a clear case of default under the IBC. Hence, concluding that the Adjudicating Authority had committed an error in dismissing the Application under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), the NCLAT dismissed the appeal.