

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



M/s Bezel Stockbrokers Private Limited Vs. SEBI & IBBI

Brief Facts

In the present case, the current submission has been made by M/s Bezel Stockbrokers Pvt. Ltd., acting in its capacity as the Corporate Debtor (referred to henceforth as the 'Applicant' or the 'Company'), seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against itself under Section 10 of the Insolvency and Bankruptcy Code (IBC), before the Adjudication Authority (AA). The Applicant, a stockbroker company established under the purview of the Companies Act, 1956, holds registration with the Registrar of Companies (ROC) in Delhi and is also duly registered with the Securities and Exchange Board of India (SEBI) under the (Stockbrokers and Sub-Brokers) Regulations of 1992 since the date of June 14, 2019.

The Applicant has been primarily involved in the sphere of stock brokering, proprietary trading, as well as clearing member services, encompassing activities such as buying, selling, and dealing in securities. These operations have been conducted in accordance with the permissions granted by the relevant stock exchange(s) and clearing corporations, subject to the stipulated conditions outlined by SEBI.

Subsequent to facing a financial crisis, the Applicant was unable to fulfill the mandatory 20% margin requirement for stocks procured on behalf of its clients, in line with the SEBI regulations. This non-compliance led to the forfeiture of shares by SEBI, resulting in a significant liability amounting to ₹3,35,84,815/- towards the shareholders and clients of the Applicant. Furthermore, the Company failed to return the advance funds (both Cash & Collateral) provided by clients for future orders, thereby incurring an additional liability of ₹91,78,621/-. Collectively, the total obligation towards clients reached ₹4,27,63,436/-.

As a consequence of consistent losses over consecutive years, the Applicant's ability to sustain its operations became untenable. Consequently, the Company was declared as a defaulter and was subsequently expelled from the membership of the National Stock Exchange (NSE). In light of these pressing circumstances, the Applicant took the decision to file the present Application under Section 10 of the IBC 2016.

The Standpoint of SEBI (referred to hereinafter as 'Respondent No.1') was that the Applicant qualifies as a Financial Service Provider as defined in Section 3(7) of the IBC and does not fall within the scope of the term 'Corporate Debtor'.

Central Issue: The pivotal question emerging from the contentions presented by the involved parties before the Adjudication Authority (AA) is whether a Stock Broker Company is legally categorized as a Financial Service Provider.

Decision

The Adjudication Authority (AA) meticulously examined the provisions of Section 3(15) of the IBC, wherein 'Securities' and various forms of 'Contracts' are classified as Financial Products. Given the absence of explicit definitions for these terms within the IBC, the AA sought guidance from Section 2 of the Securities Contracts (Regulation) Act, 1956. This section comprehensively encompasses Shares, Scrips, Stocks, Bonds, Debentures, and Debenture Stocks within the definition of Securities.

In a decisive determination, the AA reached the conclusion that the Applicant, functioning as a stockbroker involved in the trading of securities (which were categorized as Financial Products according to Section 3(15) of the IBC), was effectively rendering 'Financial Services' in accordance with Section 3(16). Consequently, the Applicant rightfully qualified as a 'Financial Service Provider'. Notably, the Applicant held registration with SEBI, an acknowledged 'Financial Sector Regulator' in compliance with Section 3(18) of the IBC. This positioning subjected the Applicant to the regulatory oversight of SEBI, underscoring its status as a Financial Service Provider.

Based on this comprehensive analysis, the AA definitively determined that a stockbroker company indeed met the criteria to be classified as a Financial Service Provider. Therefore, the Applicant, being appropriately characterized as a "Financial Service Provider," clearly fell beyond the scope of the definition attributed to a "Corporate Person" in Section 3(7) of the IBC 2016. Consequently, the Applicant could not be construed as a "Corporate Debtor" in accordance with Section 3(8) of the IBC 2016.

In light of these findings, the Application dismissed by AA.

[Link of the Order](#)

<https://ibbi.gov.in/uploads/order/0e95147d33180d31395a2df5092206ba.pdf>



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