

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 719 of 2021
&
I.A. No. 5680 of 2023

(Arising out of the Impugned Order dated 10th August, 2021
passed by the 'Adjudicating Authority' (National Company
Law Tribunal, Mumbai Bench-III in CP No.
3073/IBC/MB/2019]

IN THE MATTER OF:

H.E. Captain Ammeet K Agarwal
Suspended Director of Sangeeta Aviation
Services Private Limited
Residing at 703, Sankalp Building,
Mistry Complex, J.B. Nagar,
Andheri East, Mumbai 400059

...Appellant

Versus

- 1. Gannon Dunkerley And Company Limited**
Through its Authorized Representative/
Interim Resolution Professional of
Gannon Dunkerley And Company Limited
Having Corporate Identity Number
U51109MH1924PLC001107

Registered Office

New Excelsior Building, 3rd Floor,
A.K. Nayak Marg, Fort, Mumbai 400001

...Respondent No.1

- 2. Mr. Bijendra Kumar Jha**
Resolution Professional of Sangeeta
Aviation Service Private Limited
2B/1804, Dream Complex City Mumbai
Bhandpul West
Maharashtra – 400078
E-mail: bijendra@stresscredit.com

...Respondent No.2

Present:

For Appellant : Mr. Dwashish Chauhan, Mr. Paras Mithal,
Advocates

For Respondent : Mr. Santosh Kumar, Advocate for R-1
Mr. Vaibhav Tyagi, Advocate for R-3

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code") challenging the order dated 10th August, 2021 ("Impugned Order") passed by the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT/Adjudicating Authority") in C.P. No. 3073/IBC/MB/2019 ("said Application") filed by the Respondent No.1 under Section 7 of the Code seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Sangeeta Aviation Services Private Limited ("Corporate Debtor"). The Adjudicating Authority allowed the said Application vide order dated 10th August, 2021, thereby, allowing initiation of CIRP of the Corporate Debtor.

Appellant's Case:

1. The Impugned Order is challenged on the grounds that it is contrary to law and adversely affects the rights of the Corporate Debtor, as Respondent No.1 has wrongfully claimed to be a Financial Creditor under Section 7 of the Code and has misled the Adjudicating Authority.
2. As a background of the Case:
 - a) Respondent No.1 filed C.P. No. 3073/2019 (Gannon Dunkerley & Co. Ltd. vs. Sangeeta Aviation Services Private Limited) under Section 7 of the Code in July 2019 ("Section 7 Application").
 - b) Respondent No.1's claim is based solely on a decree dated January 9, 2019, by the Hon'ble Bombay High Court in Commercial Summary Suit

No. 714 of 2018, awarding interest at the rate of 12% per annum as compensation, which is standard in such Recovery Civil Suits.

3. Main grounds for Resisting the Application are as follows:

3.1. Debt Amount Calculation: The total debt amount claimed includes an interest of Rs. 27,05,753/- based on the order from the Bombay High Court. However, a money suit decree does not necessarily qualify as a financial debt under Sections 5(7) and 5(8) of the Code. Respondent No.1 does not qualify as a Financial Creditor under Section 5(7), and the claimed amount does not constitute a financial debt as defined under Section 5(8) of the Code.

3.2. Lack of Agreement for the Claimed Amount: The Applicant did not produce any agreement for the claimed amount, which is essential to qualify as a financial debt under Section 5(8) of the Code.

3.3. Improper Application of Section 55(2): The Application incorrectly referenced Section 55(2) of the Code, which applies only to the Fast Track Insolvency Resolution Process, not to regular CIRP.

3.4. Defective Written Communication: The proposed Interim Resolution Professional (IRP) failed to provide necessary disclosures in accordance with the IBBI (Insolvency Professionals) Regulations, 2016, and incorrectly used Form 5 applicable to Operational Creditors instead of Form 1.

4. Deficiencies in the Transaction:

4.1. Lack of Board Resolution: No board resolution of the Corporate Debtor backed the transaction.

4.2. Absence of Loan Agreement: There was no agreement stipulating loan terms and interest.

4.3. No Stipulation of Repayment Period: No document outlined the repayment period, missing essential elements of a financial debt.

5. Impugned Order's Legal Unsustainability:

5.1. The order is unsustainable as Respondent No.1 does not meet the criteria of a Financial Creditor and the alleged debt does not qualify as a financial debt under Section 5(8) of the Code.

5.2. Respondent No.1 relied on bills of exchange and post-dated cheques, which do not establish a financial debt under the Code.

6. Case Laws Cited:

6.1 ***Earth Gracia Buildcon Pvt. Ltd vs Earth Infrastructure Ltd. (Company Appeal (AT) (Ins.) No. 351 of 2020 decided on 08.06.2021):***

Highlighted the necessity of disbursement against consideration for the time value of money for a debt to be classified as a financial debt.

6.2 ***Phoenix ARC Pvt. Ltd. vs. Spade Financial Services Ltd. & Ors. (Civil Appeal No. 2842 of 2020 paras 44, 45, 48):***

“44. In this context, it would be relevant to discuss the meaning of the terms “disburse” and “time value of money” used in the principal clause of Section 5(8) of the IBC. This Court has interpreted the term “disbursal” in Pioneer Urban Land and Infrastructure Ltd vs. Union of India¹¹ in the following terms:

“70. The definition of "financial debt" in Section 5(8) then goes on to state that a "debt" must be "disbursed" against the consideration for time value of money. "Disbursement" is defined in Black's Law Dictionary (10th Edn.) to mean:

“1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable.

2. The money so paid; an amount of money given for a particular purpose.”

71. In the present context, it is clear that the expression "disburse" would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression "disbursed" refers to money which has been paid against consideration for the "time value of money". In short, the "disbursal" must be money and must be against consideration for the "time value of money", meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money....”

45. The report of the Insolvency Law Committee dated 26 March 2018 has discussed the interpretation of the term “time value of money” and stated:

“The current definition of 'financial debt' Under Section 5(8) of the Code uses the words "includes", thus the kinds of financial debts illustrated are not exhaustive. The phrase "disbursed against the consideration for the time value of money" has been the subject of interpretation only in a handful of cases under the Code. The words "time value" have been interpreted to mean compensation or the price paid for the length of time for which the money has been disbursed. This may be in the form of interest paid on the money, or factoring of a discount in the payment.”

48. The IBC has made provisions for identifying, annulling or disregarding “avoidable transactions” which distressed companies may have undertaken to hamper recovery of creditors in the event of the initiation of CIRP. Such avoidable transactions include: (i) preferential transactions under Section 43 of the IBC; (ii) undervalued transactions under

Section 45(2) of the IBC; (iii) transactions defrauding creditors under Section 49 of the IBC; and (iv) extortionate transactions under Section 50 of the IBC. The IBC recognizes that for the success of an insolvency regime, the real nature of the transactions has to be unearthed in order to prevent any person from taking undue benefit of its provisions to the detriment of the rights of legitimate creditors.”

(emphasis supplied)

Appellant emphasized the requirement of disbursal against consideration for time value of money as an essential element of a financial debt.

6.3. *Anuj Jain IRP for Jaypee Infratech Ltd. vs. Axis Bank Ltd. (Civil Appeal No. 8512 of 2019) wherein at para 43, 46 following it was held:*

“43. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become ‘financial debt’ for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. It may include any of the methods for raising money or incurring liability by the modes prescribed in sub-clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per sub-clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in sub-clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of ‘disbursement’ against ‘the consideration for the time value of money’ could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said subclauses (a) to (i) of Section 5(8) would be falling within the ambit of ‘financial debt’ only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs

to be found in the genesis of any debt before it may be treated as ‘financial debt’ within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money.”

46. Expounding yet further, in our view, the peculiar elements of these expressions “financial creditor” and “financial debt”, as occurring in Sections 5(7) and 5(8), when visualised and compared with the generic expressions “creditor” and “debt” respectively, as occurring in Sections 3(10) and 3(11) of the Code, the scheme of things envisaged by the Code becomes clearer. The generic term “creditor” is defined to mean any person to whom the debt is owed and then, it has also been made clear that it includes a ‘financial creditor’, a ‘secured creditor’, an ‘unsecured creditor’, an ‘operational creditor’, and a ‘decree-holder’. Similarly, a “debt” means a liability or obligation in respect of a claim which is due from any person and this expression has also been given an extended meaning to include a ‘financial debt’ and an ‘operational debt’.”

46.1. The use of the expression “means and includes” in these clauses, on the very same principles of interpretation as indicated above, makes it clear that for a person to become a creditor, there has to be a debt i.e., a liability or obligation in respect of a claim which may be due from any person. A “secured creditor” in terms of Section 3(30) means a creditor in whose favour a security interest is created; and “security interest”, in terms of Section 3(31), means a right, title or interest or claim of property created in favour of or provided for a secured creditor by a transaction which secures payment for the purpose of an obligation and it includes, amongst others, a mortgage. Thus, any mortgage created in favour of a creditor leads to a security interest being created and thereby, the creditor becomes a secured creditor. However, when all the defining clauses are read together and harmoniously, it is clear that the legislature has maintained a distinction amongst the expressions ‘financial creditor’, ‘operational creditor’, ‘secured creditor’ and ‘unsecured creditor’. Every secured creditor would be a creditor; and every financial creditor would also be a creditor but every secured creditor may not be a financial creditor. As noticed, the expressions “financial debt” and “financial creditor”, having their specific and distinct connotations and roles in insolvency and liquidation process of corporate persons, have only been

defined in Part II whereas the expressions “secured creditor” and “security interest” are defined in Part I.”

(emphasis supplied)

Reinforced the essential requirement of disbursement against the time value of money for any transaction to be considered a financial debt.

7. The Corporate Debtor's arguments were rejected on grounds that the decree's validity could not be challenged by the NCLT, and only an appeal against the decree could address those concerns. The Adjudicating Authority found the Application to meet the legal requirements of debt, default, and limitation.

8. The Appellant submits that the Impugned Order passed by the Adjudicating Authority on August 10, 2021, is legally unsustainable. The Application under Section 7 of the Code should not have been admitted as the Respondent No.1 is not a Financial Creditor, and the amount claimed is not a financial debt under the Code. Therefore, the Appellant seeks to set aside the Impugned Order by this appeal under Section 61 of the Code.

Respondent's Case

9. Respondent No. 1 is the original petitioner who filed a Petition before the Hon'ble National Company Law Tribunal (NCLT) seeking its admission. On August 10, 2021, the Hon'ble NCLT admitted the Petition and appointed Mr. Modilal Pamecha as the Interim Resolution Professional.

10. At the request of the Corporate Debtor, the Financial Creditor extended short-term finance, providing two payments of ₹50,00,000 each, totalling ₹1,00,00,000, as detailed below:

Sl. No.	Date	Bank	Cheque No.	Amount
1.	22.03.2017	Federal Bank	51023039	50,00,000/-
2.	31.05.2017	Corporation Bank	0623326	50,00,000/-
		Total		1,00,00,000/-



SANGEETA AVIATION SERVICES PVT LTD

Sr. no 3

BILL OF EXCHANGE

Date : 22 March 2017

Rs. 50,00,000/-

On Demand pay to M/S GANNON DUNKERLEY & CO. LTD. Address: New Excelsior Building 3rd Floor A K Nayak Marg Fort Mumbai 400002 or Order the sum of Rupees Fifty Lacs Only for RTGS received this day.

Cheque No - 026411

Cheque Dt - 22/06/2017

Bank Name - Oriental Bank of Commerce

To

Address

SANGEETA AVIATION SERVICES PVT LTD

5 B 34 Akshay Mittal Industrial Estate

M V Road Andheri East

Mumbai 400 059

Tel + 91 22 42383940 41 42 43.



Notice of Dishonored waived
For SANGEETA AVIATION SERVICES PVT LTD

Signature of the Drawer

True Copy

31/8/2

8601 PARK LANE #313 DALLAS TX 75231 USA +1 214 696 4437 TX Corp# 800869467
5B 32 Mittal Industrial Estate MV Road Andheri (E) Mumbai 400059 INDIA CIN# U62200MH2012PTC233881
PO BOX 323080 RAS AL KHAIMAH UAE RAKFTA-FZE-4015942 License #5012453
www.supremeaviation.com ammeet@supremeaviation.com +91 9870811224



SANGEETA AVIATION SERVICES PVT LTD

S.No. 17

BILL OF EXCHANGE

Date : 31 May 2017

Rs. 50,00,000/-

On Demand pay to M/S GANNON DUNKERLEY & CO. LTD. Address: New Excelsior Building 3rd Floor A K Nayak Marg Fort Mumbai 400002 or Order the sum of Rupees Fifty Lacs Only for RTGS received this day.
Cheque No - 026428
Cheque Dt -
Bank Name - Oriental Bank of Commerce

To

Address

SANGEETA AVIATION SERVICES PVT LTD
5 B 34 Akshay Mittal Industrial Estate
M V Road Andheri East
Mumbai 400 059
Tel + 91 22 42383940 41 42 43



Notice of Dishonored waived
For Sangeeta Aviation Services Pvt Ltd

Authorized Signatory
Signature of the Drawer

8601 PARK LANE #313 DALLAS TX 75231 USA +1 214 696 4437 TX Corp# 800889167
5B 32 Mittal Industrial Estate MV Road Andheri (E) Mumbai 400059 INDIA CIN# U62200MH2012PTC233881
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www.supremeaviation.com ammeet@supremeaviation.com +91 9870811224

True Copy
31/8/21

11. To secure timely repayment, the Corporate Debtor issued two bills of exchange along with corresponding cheques in favour of the Financial Creditor (Gannon Dunkerley & Co. Ltd.). The details are as follows:

- i. First Bill of Exchange
 - a. Date: 22.03.2017
 - b. Cheque No.: 026411
 - c. Cheque Date: 22.06.2017
 - d. Bank: Oriental Bank of Commerce
 - e. Drawer: Sangeeta Aviation Services Pvt. Ltd.
 - f. Drawee: Gannon Dunkerley & Co. Ltd.
 - g. Amount: ₹50,00,000
- ii. Second Bill of Exchange:
 - a. Date: 31.05.2017
 - b. Cheque No.: 026428
 - c. Cheque Date: 14.05.2018
 - d. Bank: Oriental Bank of Commerce
 - e. Drawer: Sangeeta Aviation Services Pvt. Ltd.
 - f. Drawee: Gannon Dunkerley & Co. Ltd.
 - g. Amount: ₹50,00,000

12. The Financial Creditor deposited both cheques (026411 and 026428) at Federal Bank Limited on May 15, 2018. However, the cheques were dishonoured on May 16, 2018, due to "Exceeds arrangement."

13. After repeated follow-ups were ignored by the Appellant, the Financial Creditor filed a recovery suit with the Hon'ble Hon'ble High Court of Bombay.

14. On January 9, 2019, the Hon'ble Bombay High Court decreed in favour of the Financial Creditor, ordering:

- A decree against the defendant (Appellant herein) for ₹1,21,71,243 with 12% annual interest on the principal amount of ₹1 crore from the date of the suit until payment or realization.
- As a commercial suit, the plaintiff is entitled to a decree for costs under Section 35 of the Code of Civil Procedure, 1908 (CPC).

15. Following the Hon'ble Bombay High Court's order, the Financial Creditor is entitled to 12% annual interest, establishing Respondent No. 1 as the Financial Creditor.

Legal Precedents:

16. A decree holder is entitled to file a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. This position is supported by the decision in **"M/s Urgo Capital Limited Vs. M/s Bangalore Dehydration and Drying Equipment Co. Pvt. Ltd." (2020 SCC OnLine NCLAT 149)** by the Hon'ble NCLAT, New Delhi.

17. The Hon'ble Supreme Court in **"Dena Bank Vs. C. Shivakumar Reddy and Anr." (2021 (10) SCC 330) (Civil Appeal No. 1650 of 2020)** held that a judgment or decree in favour of the Financial Creditor creates a fresh cause of action to initiate proceedings under Section 7 of the IBC within three years from the date of the judgment or decree.

18. The Adjudicating Authority, Mumbai, has also relied on the Supreme Court's judgment in **"M/s Orator Marketing Pvt. Ltd. Vs. M/s Samtex Desinz Pvt. Ltd.," (Civil Appeal No. 2231 of 2021)** which held that the stipulation of interest is not a precondition to qualify as a financial debt. The definition of 'financial debt' under Section 5(8) of the IBC includes both principal and, if applicable, interest.

19. In light of the above citations and legal precedents, it is clear that the Financial Creditor is a valid financial creditor, and the Corporate Debtor (Appellant) has defaulted on its obligations. Therefore, the Financial

Creditor's petition under Section 7 of the IBC is justified and should be admitted.

Appraisal:

20. Heard the Learned Counsel for the Appellant and the Respondent, perused the documents, pleadings and reliance placed in support of their case.

21. The crux of the appeal lies in whether the decree from the Hon'ble Bombay High Court qualifies as a financial debt under Sections 5(7) and 5(8) of the IBC in the facts of the instant case.

Nature of the Debt:

22. For better appreciation of the issue in the instant case, the definition of debt as per Section 5(7) and 5(8) is reproduced as below:

“(7) “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes–

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) ...
- (h) ...
- (i) ...”

From above highlighted portion, it is clear that the IBC defines financial debt as a debt along with interest, if any, with disbursement against consideration for the time value of money.

23. Further, the Hon'ble Supreme Court's decision in ***M/s Orator Marketing Pvt. Ltd. Vs. M/s Samtex Desinz Pvt. Ltd.(supra)*** has also clarified that interest is not a necessary component for a debt to be considered financial, broadening the interpretation of financial debt. It was held that stipulation of the payment of interest is not a condition precedent to qualify as a financial debt. Relevant extract is given below:

“21. The definition of 'financial debt' in Section 5(8) of the IBC has been quoted above. Section 5(8) defines 'financial debt' to mean "a debt along with interest if any which is disbursed against the consideration of the time value of money and includes money borrowed against the payment of interest, as per Section 5(8) (a) of the IBC. The definition of 'financial debt' in Section 5(8) includes the components of sub-clauses (a) to (i) of the said Section

22. **The NCLT and NCLAT have overlooked the words "if any" which could not have been intended to be otiose. 'Financial debt' means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt.** Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof 'financial debt' includes any amount raised under any other transaction, having the commercial effect of borrowing.

xxx

31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person

and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loan advanced to finance the business operations of a corporate body."

(emphasis supplied)

24. Furthermore, a petition under Section 7 of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor can be initiated by a decree holder and for the same reliance has been made on the citation "***M/s Uργο Capital Limited Vs. M/s Bangalore Dehydration and Drying Equipment Co. Pvt. Ltd.***", ***which was passed by the NCLAT, New Delhi [citation: CA (AT) (Ins.) 984 of 2019 / (2020 SCC OnLine NCLAT 149)]***. The relevant extract of the order is given hereinbelow:

"18. The Adjudicating Authority has raised the questions on not taking any steps for filing execution application, even though Review Application is pending. Adjudicating Authority has erroneously rejected the application based on pending review application and for not taking any steps for execution of the decree. Adjudicating Authority was not required to question the reasons for not taking steps for executing the decree in Civil Court. ***Since the amount is payable to the Financial Creditor and based on the decree passed by the Court, the Financial Creditor was legally entitled to file a petition under Section 7 of the I & B Code.***

19. It is important to point out that the definition of creditor provided in Sec 5(10) of the I&B Code provides that "Creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder.

23. On perusal of the record, it is clear that after the order of the Hon'ble High Court dated 22nd May 2015, and after that by order Dt. 06th August 2015, the Hon'ble High Court

of Delhi decreed the entire suit in favour of the Plaintiff/Appellant. Consequently, a decree sheet dated 22nd May 2015 and 06th August 2015 were drawn wherein a decree of payment of Rs.8,04,43,637 (Rupees eight crore four lakh forty-three thousand six hundred thirty-seven only) along with past, present and future pendente-lite interest at 21% per annum was passed in favour of the Appellant.

24. The Corporate Debtor"/Respondent has neither challenged the decree as mentioned earlier nor filed any review till the date of the filing of the Company Appeal (AT) (Insolvency) No. 984 of 2019 Page 10 of 12 petition under Section 7 of the I & B Code. It is also clear that the Defendant No.1 to 5 in the said suit were jointly and severally liable to discharge their obligations of the decree above leaving it to the sole discretion of the Plaintiff/Appellant to recover the said amount from any of the said Defendants.

27. We further direct the Adjudicating Authority to pass an order for admitting the petition under Section 7 of the I & B Code 2016. Parties are directed to be present before the Adjudicating Authority on dated 27th January 2020."

(emphasis supplied)

25. Reliance can also be placed on order of ***Hon'ble Apex Court in the matter of Dena Bank Vs. C. Shivakumar Reddy and Anr. (Civil Appeal No. 1650 of 2020)*** wherein at para 143, following it was held:

"143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

26. The NCLAT's ruling in ***M/s Ugro Capital Limited*** and the ***Hon'ble Supreme Court's judgment in "Dena Bank vs. C. Shivakumar Reddy (supra)"*** support the position that a decree holder can be treated as a Financial Creditor if the underlying transaction involves disbursement against consideration for time value of money.

27. Appellant has unduly highlighted the necessity of disbursement against consideration for the time value of money for a debt to be classified as a financial debt and has cited several judgements in its support, viz. ***Earth Gracia Buildcon Pvt. Ltd (supra)***, ***Phoenix ARC Pvt. Ltd. vs. Spade Financial Services Ltd. (supra)*** and ***Anuj Jain IRP for Jaypee Infratech Ltd. vs. Axis Bank Ltd (supra)***. They are not supporting the case of the Appellant as in the instant case, the Hon'ble Bombay High Court decree awarded the amount based on a previous transaction involving bills of exchange and dishonoured cheques. This implies an underlying transaction where money was advanced with an expectation of repayment with interest. And as noted above in the NCLAT's ruling in ***M/s Ugro Capital Limited (supra)*** and the ***Hon'ble Supreme Court's judgment in "Dena Bank vs. C. Shivakumar Reddy (supra)"*** a decree holder can be treated as a Financial Creditor. Thus, without any doubt it can be concluded that a decree holder can be treated as a Financial Creditor.

28. Be that as it may the threshold for initiating Section 7 proceedings exists even if interest is not considered as noted in Hon'ble Supreme Court's decision in ***M/s Orator Marketing Pvt. Ltd. Vs. M/s Samtex Desinz Pvt.***

Ltd. (supra) wherein it was held that interest is not a necessary component for a debt, and therefore the Appellant doesn't have grounds on this count. In the instant case the Respondent is a decree holder and as per the definition of financial debt and legal precedents we cannot ignore it to be interest.

29. Therefore, the arguments of the Appellant that the Respondent has not produced any agreement for the amount claimed by it, which is a sine qua non for falling under Section 5(8) of the IBC, 2016 as the amount paid by the Applicant was not borrowed against the payment of interest nor the claim of the Applicant comes within the meaning of Section 5(8)(d) of the said IBC, 2016, cannot stand the scrutiny of the definition of debt and also the legal precedents.

Procedural and Formal Defects:

30. The Appellant has also raised concerns about procedural defects, including incorrect forms and disclosures by the IRP. However, such procedural issues do not fundamentally alter the nature of the debt or the status of the creditor.

Conclusion and Orders:

31. Considering the detailed arguments, legal precedents, and the nature of the transaction:

- The decree from the Bombay High Court, supported by the underlying transaction involving bills of exchange and dishonoured cheques, constitutes a financial debt under the IBC.

- Respondent No. 1 qualifies as a Financial Creditor.
- The procedural defects cited by the Appellant do not significantly undermine the validity of the claim under Section 7.
- The appeal under Section 61 of the IBC is dismissed, upholding the NCLT's Impugned Order dated August 10, 2021, initiating CIRP against the Corporate Debtor, Sangeeta Aviation Services Private Limited. Respondent No. 1 is entitled to proceed as a Financial Creditor under Section 7 of the IBC. Accordingly, I.A. No. 5680 of 2023 stands disposed of.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
3rd July, 2024
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