

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 769 of 2024

[Arising out of order dated 20.03.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Kolkata Bench, Kolkata, Court – I), in C.P.
(IB) No.1711/KB/2019]

IN THE MATTER OF:

Chintan Jhunhunwala

(One of the members of the Suspended Board of
Directors of Energy Properties Private Limited
DIN: 00754125

Address: Station Road,
Ramrajatala, Howrah – 711104

Email address:

cjhunhunwala@victoryironworks.com

...Appellant

Versus

1. Avani Towers Private Limited (in CIRP)

Represented by Jitendra Lohia, Resolution
Professional

CIN: U70101WB1994PTC063557

Having its Registered Office at:

Avani Heights, 59 A, Chowringhee Road, Kolkata –
700020, West Bengal

Address of Mr. Jitendra Lohia,
Resolution Professional of Avani Towers Private
Limited:

2/7, Sarat Bose Raod, Vasundhara Building,
Kolkata – 700020

Phone – 9874044000

Email Address: jitulohia@knjainco.com

...Respondent No. 1

2. Energy Properties Private Limited

Currently under CIRP

(Represented by Mr. Mahesh Chand Gupta,
Interim Resolution Professional)

CIN: U45400WB2007PTC115959

Address: Ramrajatala Station Road

LP-482/7/5, Howrah,
West Bengal, India, 711104.

Email Address: energyprop07@gmail.com

mcgupta90@gmail.com

...Respondent No. 2

Present:

For Appellant : Mr. Ratanko Banerji, Mr. Krishnendu Datta, Mr. Gaurav Mitra, Sr. Advocates with Mr. Kumarjit Banerjee, Mr. Shashank Agarwal, Ms. Sanchari Chakroborty, Mr. Sahil Sharma, Mr Bhavya Khatreja, Mr. Aasil Naushad, Mr. Gaurav Gupta, Advocates.

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Paler Moktan, Ms. Swati Dalmia, Mr. Saikat Sarkar, Ms. Neha Sinha, Ms. Safura Ahmed, Mr. Shaunak Mitra, Ms. Mrinal Chaudhary, Advocates.

Mr. R.R. Modi, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a suspended Director of the Corporate Debtor (Energy Properties Pvt. Ltd.) has been filed against an order dated 20.03.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court – I), by which order, Section 7 application filed by the Respondent – Avani Towers Pvt. Ltd. has been admitted. Aggrieved by the admission of the Section 7 application, this appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The Corporate Debtor is an owner of land measuring 10.19 acres, situated at Ramrajtala, district Howrah. In the year 2008 the Corporate Debtor purchased the assets from sale conducted by UCO Bank under SARFAESI Act 2002.
- ii. On 16.06.2008, the Corporate Debtor entered into a Development Agreement with Avani Towers Pvt. Ltd.
- iii. According to the Clause 8.1 of the Development Agreement, Avani Towers Pvt. Ltd. was required to provide the refundable Security

Deposit of Rs.12 Crores with option to add an extra Rs.3 Crores. The initial deposit of Rs.12 Crores would not accrue interest while any additional deposit up to maximum Rs. 3 Crores (increase to Rs.3.5 Crores mutually by the conduct between the parties) bear the interest at the rate of 18% compounded and payable quarterly.

- iv. The repayment of refundable Security Deposit was also provided for in Part II of Third Schedule of Development Agreement. Subsequent to the Development Agreement, Corporate Debtor executed two separate Memorandum of Agreement dated 02.03.2010 and 24.06.2010 handing over the possession of subject to the Avani Towers Pvt. Ltd.
- v. As per the Development Agreement, development could not be carried. Avani Towers Pvt. Ltd. filed a Section 7 application in September 2019 being C.P. (IB) 1711/2019, alleging a Financial Debt of 10,90,72,565/- .
- vi. The date of default was mentioned in the application as 01.10.2010.
- vii. In the application under Section 7, it was claimed that Corporate Debtor was obliged to pay quarterly interest on amount of Rs. 3.5 Crores in which payment the Corporate Debtor defaulted.
- viii. The Corporate Debtor has acknowledged the receipt of additional amount of Rs.3.5 Crores and admitted the same as unsecured loan in which the interest would be paid quarterly.
- ix. The Corporate Debtor also confirmed the accounts.
- x. Letter was written by the Corporate Debtor on 31.03.2014 to the effect that Project has not taken off for more than five and half years of signing Development Agreement, the Corporate Debtor is not in position to

make provision for interest for the time being an amount of Rs. 3.5 Crores.

- xi. Corporate Debtor deducted TDS @ of 18% compounded interest from 2010-11 to 2013-14.
- xii. Application filed under Section 7 was resisted by the Corporate Debtor. Corporate Debtor pleaded that there is no Financial Debt on the basis of which Section 7 application would be filed. Additional amount advance of Rs. 3.5 Crores was to form part of Security Deposit. Development has not taken place. The refund of Security Deposit cannot take place.
- xiii. Financial Creditor is the Related Party of the Corporate Debtor. It is Shareholder holding 40% of the Equity Share Capital of the Corporate Debtor.
- xiv. Adjudicating Authority heard both the parties and by impugned order dated 20.03.2024 admitted Section 7 application.
- xv. Adjudicating Authority held the `debt' as a Financial Debt. It was also held that the application was not `barred by Limitation'.

3. Aggrieved by the order impugned, this appeal has been filed.

4. We have heard Sh. Ratanko Banerji and Sh. Krishnendu Datta Sr. Advocates for the Appellant. Sh. Abhijeet Sinha, Sr. Advocate and Mr. Shaunak Mitra has appeared for the Respondent.

5. Learned Counsel for the Appellant challenging the order submits that subject matter of the application filed under Section 7 is not a Financial Debt within meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as `The Code'). No default was committed with regard

to payment of Security Deposit under the terms Development Agreement. The Respondent having asserted subsistence of Development rights under the Development Agreement in the Corporate Insolvency Resolution Process (CIRP) of the Respondent, which Development Rights have been confirmed by the Supreme Court vide its Judgment dated 14.03.2023, Respondent is estopped from asserting the claim for refund of Security Deposit without completing the development work under the Development Agreement. Respondent having been provided for interest only till 2014–15 on its book, it cannot claim default after more than three years from last date of provision of interest on his book. Respondent has classified the refundable Security Deposit together with the interest as the inventory in his books, cannot now claim the amount to be Financial Debt.

6. It is submitted that in the CIRP of the Corporate Debtor, in the Committee of Creditors (CoC), Avani Towers Pvt. Ltd. has now 99.97% vote shares. The CoC being consisted of only three Operational Creditors, the Financial Creditors being related party.

7. Sh. Abhijeet Sinha appearing for the Respondents refuting the submission of the Appellant submits that as per the Development Agreement dated 16.06.2008, although refundable Security Deposit of Rs.12 Crores was to be paid as per Part II of the Third Schedule of the Development Agreement, however, any further amount i.e., amount Rs. 3.5 Crores advanced by the developers to owners carry the interest and agreed rate of 18% p.a. compounded and payable quarterly. The amount of Rs. 3.5 Crores was thus Financial Debt which carry the interest 18% and was payable quarterly.

Application under Section 7 was filed by the Financial Creditor only for the interest component.

8. The question as to whether Security Deposit of Rs. 12 Crores is refundable is not the question involved in the present proceedings. There was acknowledgement by the Corporate Debtor of liability to pay interest and interest was booked in the Accounts till 2013–14 in the Financial Statements of the Corporate Debtor, the amount has been shown as long-term borrowings. The Corporate Debtor having itself acknowledged in its Financial Statements, the amount of Rs. 3.5 Crores and the interest accrued thereon as a long-term borrowing, it is not open for the Corporate Debtor to now contend that there was no Financial Debt. The transaction with regard to Rs. 3.5 Crores and interest payable on the said amount was clearly a Financial Debt which has time value of money and fulfil all ingredients of Section 5(8) of the Code.

9. Learned counsel for Respondent has relied on the recent Judgement of the Hon'ble Supreme Court in **2024 SCC Online SC 649** in the matter of '**Global Credit Capital Limited & Anr.**' Vs. '**Sach Marketing Pvt. Ltd. & Anr.**' decided on 25.04.2024 to support his submission that true nature of transaction has to be found out and true nature of transaction in the present case is a Financial Debt.

10. It is submitted that Adjudicating Authority has rightly held the application within time there being acknowledgement by the Corporate Debtor.

11. We have considered the submissions of the Counsel for the parties and perused the record.

12. Before we proceed to consider the respective submissions of the Counsel for the parties, it is useful to notice certain clauses of Development Agreement dated 16.06.2008, which is the basis of application filed under Section 7. Development Agreement dated 16.06.2008 was entered between Energy Properties Pvt. Ltd., the owner of land and Avani Towers Pvt. Ltd who is referred as developer. Clause 8 of the Development Agreement deal with Security Deposit and refund. Clauses 8, 8.1, 8.2 and 8.3 are as follows:

“8 Security Deposit and Refund:

8.1 Refundable Deposit: The Developer will keep in deposit with Owner a sum of Rs. 12,00,00,000/- (Rupees twelve crore) (hereinafter referred to as the Security Deposit) which will not carry interest and will be payable & refundable in the manner as would appear from the Part-I of the Third Schedule hereunder written. The Developer as on date has already paid Rs. 7,86,83,108/- (Rupees seven crores eighty six lac eighty three thousand one hundred eight). The said sum of Rs. 12,00,00,000/- (Rupees twelve crore) agreed to be paid by the Developer will be treated as the Security Deposit. However any further sum, subject to a maximum of Rs. 3,00,00,000/- (Rupees three crore), if advanced by Developer to Owner, shall form part of Security Deposit and shall carry interest at agreed rate of 18% per annum compounded and payable quarterly.

8.2 Refund of Refundable Deposit: The Security Deposit shall be refunded by the Owner to the Developer in the manner provided in the Part-II of the Third Schedule. The Owner agrees to ensure timely repayment of the said Refundable Deposit in the manner as hereinbefore stated and in the event of failure to refund an interest @ 18% p.a. compounded quarterly shall become payable calculated from the due date of refund.

8.3 Recovery of Security Deposit: In event the Owner fails to refund the said Security Deposit within 7 (seven) days of the same becoming due then and in that event Developer shall be entitled to acquire and/or buy back such portion of the Owner's Allocation for repayment of the said Security Deposit at a agreed rate of Rs.1,400/- (Rupees fourteen hundred) per sq. ft. The

Owner's Allocation shall stand reduced by such square feet as may be derived by dividing the outstanding refund amount with the rate of Rs.1,400/- (Rupees fourteen hundred) per square feet."

13. We may also notice the Third Schedule Part II, which has been referred to in Clause 8.2 with regard to refund of the Security Deposit of Rs. 12 Crores. Third Schedule Part II is as follows:

"PART-II

(Manner of Refund of Deposit)

1. The said Refundable Deposit shall become refundable in the following manner:

a) Rs. 3,00,00,000/- (Rupees three crore) simultaneously upon completion of foundation of the blocks and certified so by the Architect.

b) Rs. 3,00,00,000/- (Rupees three crore) simultaneously upon completion of 50% of the super structure and certified so by the Architect.

c) Rs. 3,00,00,000/- (Rupees three crore) simultaneously upon completion of the total super structure and brickwork as certified by the Architect.

d) Balance sum of Rs. 3,00,00,000/- (Rupees three crore) upon completion of the project and certified so by the Architect."

14. The Development Agreement in Clause 8.1 as extracted above Rs. 12 Crore amount has been referred as refundable deposit, which does not carry any interest which was treated as Security Deposit. The Clause further states that any further sum subject to maximum of Rs. 3 Crores if advanced by developer to owner shall form part of Security Deposit and shall carry interest at agreed rate of 18% p.a. compounded and payable quarterly. Thus, the further sum in addition to Rs. 12 Crores of Security Deposit was given a different treatment and it was treated as advance by developers which was part of Security Deposit but was to carry interest at agreed rate of 18%. Clause 8.1 uses the expression *"carry interest at agreed rate of 18% p.a., compounded*

and payable quarterly". Thus the Interest of 18% was payable quarterly which was unrelated to the Security Deposit of Rs. 12 Crores. Clause 8.2 deal with refund of refundable deposit and clause 8.3 recovery of Security Deposit in event the owner fails to refund said Security Deposit. In the present proceeding, we are not concerned with Clauses 8.2 or 8.3, since the application which was filed by Financial Creditor was not for the refund of the Security Deposit. In Part IV in the Column 2 with regard to amount claim to be in default and the date on which default has been occurred, following has been stated:

"PART-IV

PARTICULARS OF FINANCIAL DEBT		
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>Total amount of claim to be in default is Rs. 10,90,72,565.00 (Rupees Ten Crores Ninety Lakhs seventy two thousand five hundred and sixty five only)</p> <p>The above amount of claim is interest portion @ 18% p.a. Compounded and payable quarterly till 31st August, 2019 (excluding the principle amount of Rs. 3,50,00,000) The first date of default was 01.10.2010 when the interest amount for the quarter ending 30.09.2010 was not paid and defaulted. Thereafter the corporate debtor was in continuous default, every first day of the subsequent first quarter in respect of the compounded interest of the previous quarter. The said default continues till date of the filing of this application.</p>

		<p><i>The Interest payable by the corporate debtor has been elaborately shown through a separate calculation sheet.</i></p> <p><i>Copy of the same is annexed here and marked as “Annexure C”.</i></p>
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15. In Part IV, other details pertaining to debt, including the pleading that Corporate Debtor had deducted the TDS under the provisions of Income Tax Act for a period of 2010–2011 till 2013–14 have been pleaded.

16. The first issue which needs to be answered in this appeal is as to whether the debt for which the application under Section 7 was filed can be treated to be a Financial Debt. Financial Debt is defined in Section 5(8) of the Code, which is as follows:

“5. Definitions. – In this Part, unless the context otherwise requires,—

(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) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. – For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) 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) of this clause;”

17. For a transaction to be covered under Section 5(8) first requirement is disbursal against the consideration of the time value of money. Sub section (f) of Clause 8 is a residuary Clause which provides for “any amount raised under any other transaction having the commercial effect of the borrowing”. The Development Agreement is a transaction between the parties and looking to the Clauses of Development Agreement, it is clear that transaction has commercial effect of the borrowings. Payment of 18% interest compoundable and payable quarterly clearly indicate time value of money.

18. Treatment of Security Deposit of Rs. 12 Crores and advance of Rs. 3 Crores were separately treated under the Clause 8.1. The Agreement was a commercial transaction between the parties.

19. Letter dated 31.03.2014 written by the Corporate Debtor to the Avani Towers Pvt. Ltd. is part of appeal filed at Page 150. Letter 31.03.2014 is as follows:

Comp. App. (AT) (Ins.) No. 769 of 2024

“Ref No.

Date

To, Avani Towers Private Limited,

59A Chowringhee Road,

Kolkata-700020

Dear Sir,

Kindly refer clause 8 of the Development Agreement dated 16th June 2008. The advance made by you over and above non bearing security deposit Rs. 12.00 crores, carry interest at agreed rate of 18% P.A. compounded and payable quarterly.

Since the project has not taken off for various reason even after more than 5 ½ years of signing development agreement, we are not in a position to make provision for interest for the time being on the additional part of security deposit received from you.

May we therefore request you not to provide interest income on the above mentioned sum for Financial Year 2013-14.

Thanking You

For Energy Properties Pvt. Ltd.”

20. The above letter clearly indicates that Corporate Debtor has clear understanding that advance made over and above of Security Deposit Rs. 12 Crores carry interest @ 18% interest p.a. compounded and payable quarterly. Letter further said that since even after more than five and half years of signing of Development Agreement, Project has not taken off, hence they are not in a position to make provision for interest for the time being on the additional part of Security Deposit received from you. The above letter contains clear understanding of the Corporate Debtor of the nature of transaction. Corporate Debtor requested the Avani Towers Pvt. Ltd. not to provide interest income on the abovementioned sum for Financial Year 2013–14. Avani Towers Pvt. Ltd has sent a letter dated 05.04.2014 in reference to letter dated 31.03.2014,

where it was reiterated that Avani Towers Pvt. Ltd. is well within its rights to claim interest on the additional Security Deposit as per Clause 8.1.

21. Learned Counsel for the Respondent has also referred to notes of Financial Statements of the Corporate Debtor as on 31.03.2015, Note 4 of the notes which deals with long-term borrowings is as follows:

NOTE 4-Long Term Borrowings		
<i>Particulars</i>	<i>31.03.2015</i>	<i>31.03.2014</i>
	₹	₹
<i>Secured Loan-</i>		
<i>HDFC Car Loan</i>	-	54,536
<i>Less: Current Maturities of Long Term Debt [Refer Note No. 5]</i>	-	54,536
	-	-
<i>Unsecured Loan-</i>		
<i>From Associate</i>	55,424,439	55,424,439
	55,424,439	55,424,439
<i>Total</i>	55,424,439	55,424,439

22. In the above Financial Statements under Note 19, which deal with additional disclosures, there is clear acknowledgement that Company has taken loan. IV in Note 19 is as follows:

“(iv) The company has taken a loan from Avani Towers Private Limited amounting Rs. 5,54,24,439/- (including interest payable amounting Rs. 2,04,24,439/-) as on 31.03.2014. Since the project has been delayed for over 7 years the company is unable to pay interest on such unsecured loan hence the management has taken the decision that interest shall not be provided for the year under review and the company has intimated in writing to the lender in this regard.”

23. Judgment of the Hon’ble Supreme Court in **‘Global Credit Capital Ltd. & Anr.’ (Supra)** needs to be noted. In the above case Agreements were entered between the Corporate Debtor and first Respondent where Respondent No. 1 was referred as sale promoter who was to deposit minimum security with Corporate Debtor out of which security, on certain part of

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security interest was payable. Against the Corporate Debtor, CIRP commenced in which Respondent filed his claim. An application was filed before the Adjudicating Authority by first Respondent seeking a direction to IRP to admit the claim as Financial Creditor. Adjudicating Authority held that first Respondent was a Financial Creditor and not an Operational Creditor. Appeal was filed by challenging the order of the Adjudicating Authority. In the above context, Hon'ble Supreme Court has occasion to consider the ingredients of a Financial Debt. Hon'ble Supreme Court has held that the real nature of transaction has to be found out to find the nature of debt. In Paragraph 14 of the Judgment following was held:

“14. Where one party owes a debt to another and when the creditor is claiming under a written agreement/arrangement providing for rendering ‘service’, the debt is an operational debt only if the claim subject matter of the debt has some connection or co-relation with the ‘service’ subject matter of the transaction. The written document cannot be taken for its face value. Therefore, it is necessary to determine the real nature of the transaction on a plain reading of the agreements. What is surprising is that for acting as a Sales Promoter of the beer manufactured by a corporate debtor, only a sum of Rs. 4,000/- per month was made payable to the first respondent. Apart from the sum of Rs. 4,000/- per month, there is no commission payable to the first respondent on the quantity of sales. Clause (6) provides for termination of the appointment by giving thirty days' notice. Though clause (10) provides for the payment of the security deposit by the first respondent, it is pertinent to note that there is no clause for the forfeiture of the security deposit. The amount specified in clause (10) has no correlation whatsoever with the performance of the other conditions of the contract by the first respondent. As there is no clause regarding forfeiture of the security deposit or part thereof, the corporate debtor was liable to refund the security deposit after the period specified therein was over with interest @21% per annum. Since the security deposit payment had no correlation with any other clause under the agreements, as held by the NCLAT, the security deposit amounts represent debts

covered by subsection (11) of Section 3 of the IBC. The reason is that the right of the first respondent to seek a refund of the security deposit with interest is a claim within the meaning of subsection (6) of Section 3 of the IBC as the first respondent is seeking a right to payment of the deposit amount with interest. Therefore, there is no manner of doubt that there is a debt in the form of a security deposit mentioned in the said two agreements.”

24. In Paragraphs 16 and 17 Hon’ble Supreme Court has laid down as follows:

“16. Now, coming back to the definition of a financial debt under sub-section (8) of Section 5 of the IBC, in the facts of the case, there is no doubt that there is a debt with interest @21% per annum. The provision made for interest payment shows that it represents consideration for the time value of money. Now, we come to clause (f) of sub-section (8) of Section 5 of the IBC. The first condition of applicability of clause (f) is that the amount must be raised under any other transaction. Any other transaction means a transaction which is not covered by clauses (a) to (e). Clause (f) covers all those transactions not covered by any of these sub-clauses of sub-section (8) that satisfy the test in the first part of Section 8. The condition for the applicability of clause (f) is that the transaction must have the commercial effect of borrowing. “Transaction” has been defined in sub-section (33) of Section 3 of the IBC, which includes an agreement or arrangement in writing for the transfer of assets, funds, goods, etc., from or to the corporate debtor. In this case, there is an arrangement in writing for the transfer of funds to the corporate debtor. Therefore, the first condition incorporated in clause (f) is fulfilled.

17. To decide whether the second condition had been fulfilled, it is necessary to refer to the factual findings recorded in the impugned judgment. The NCLAT has referred to the letter dated 26th October 2017 addressed by the corporate debtor to the first respondent. We have perused a copy of the said letter annexed to the counter. By the said letter, the corporate debtor informed the first respondent that for the year 2016-2017, the corporate debtor had provided the interest amounting to Rs. 18,06,000/- in the books of the corporate debtor and that the sum will be credited to the account of the first respondent on the date of payment of TDS. In paragraph 21 of the impugned

judgment, it is held that the financial statement of the first respondent for the Financial Year 2017-2018 shows revenue from the interest on the security deposit. It is also held that the amounts were treated as long-term loans and advances in the financial statement of the corporate debtor for the Financial Year 2015-2016. Moreover, in the financial statement of the corporate debtor for the Financial Year 2016-2017, the amounts paid by the first respondent were shown as "other long-term liabilities". Therefore, if the letter mentioned above and the financial statements of the corporate debtor are considered, it is evident that the amount raised under the said two agreements has the commercial effect of borrowing as the corporate debtor treated the said amount as borrowed from the first respondent."

25. Conclusion has been recorded by the Hon'ble Supreme Court in Paragraph 18, Hon'ble Supreme Court held that amount covered by the Security Deposit under the Agreement constitutes Financial Debt. In the said case also Corporate Debtor has provided interest in the Books of Accounts of the Corporate Debtor. Hon'ble Supreme Court has also noticed the Clause 10 of the Agreement dated 01.04.2014 between the parties in which Clause provides as follows:

"10. You have to deposit minimum security of Rs. 53,15,000/- with the Company which will carry interest @21% p.a. We will provide you interest on Rs. 7,85,850/- @21% per annum."

26. Hon'ble Supreme Court has held that right of the first Respondent to seek refund of the Security Deposit with interest was a claim within a meaning under sub-Section (6) sub-Section (3) of the Code. The Judgment of the Hon'ble Supreme Court in '**Global Credit Capital Ltd. & Anr.**' (**Supra**), fully support the submission advanced by the learned Counsel for the Respondent.

27. Insofar as the submission that default took place on 01.10.2010 and application filed in the year 2019 is 'barred by time'. Adjudicating Authority

has dealt the said submission in Paragraph 64 of the order, which is as follows:

“64. Hence, the debt and default has been established, let us now consider if the said Petition is barred by limitation. The first date of the default is stated to be 01 October 2010, hence the period of limitation ends on 01 October 2013. The Corporate Debtor has acknowledged the accounts on 01 April 2013³¹. Thereafter, the Corporate Debtor has further acknowledged that the interest is due in the Financial Statements for the financial years 2013-2014, 2014-2015, 2017-2018. The Company Petition was filed on 30 September 2019.”

28. The acknowledgement made on 01.04.2013 and thereafter acknowledgement in the Financial Statements of 2013–14, 2014–15, 2017–18 have been noticed which makes the application filed on 30.09.2019, clearly within time. The fact that the Financial Creditor has 99% vote shares in the CIRP of the Corporate Debtor, it being Operational Creditor has no consequence with regard to admission of Section 7 application.

29. One more submission advance by the Counsel for the Appellant that Respondent has categorised the entire refundable Security Deposit under Clause 8.1 of the Development Agreement together with accrued interest there upon up to the Financial Year 2014–15 by classifying the same as inventory on its books and accordingly now cannot claim such sum as a Financial Debt. Development Agreement clearly contains the details of transaction entered between the parties which makes it clear that advance of Rs. 3.5 Crores carried interest of 18% which transaction falls within Financial Debt under Section 5(8) as discussed above. The Financial Statements of the Corporate Debtor also reflected the amount of interest as a long-term borrowing and has referred to as loan from Financial Creditor, which is clear from notes of the

Financial Statement as noted above. Classification of the same as inventory in the Books of Financial Creditor will not change the nature of transaction and the Financial Creditor has been relying on the acknowledgement of the Corporate Debtor in the Balance Sheet for purposes of limitation under Section 18, which has rightly been noted and accepted by the Adjudicating Authority.

30. We, thus are of the view that Adjudicating Authority did not commit any error in considering the relevant issues which arose between the parties and after detailed discussion came to the conclusion that Financial Creditor has been able to prove debt and default. No error has been committed by the Adjudicating Authority in admitting Section 7 application. We do not find any error in the order of the Adjudicating Authority, warranting our interference in the exercise of the appellate jurisdiction.

There is no merit in the appeal. The appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

30th May, 2024

himanshu