

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1671 of 2023

(Arising out of Order dated 10.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in IA-1990/2023 in IB-2688(ND)/2019)

IN THE MATTER OF:

Mudraksh Investfin Pvt. Ltd.
RBI Registered NBFC
Having Office at:
B-8/195, 1st Floor, Sector-3,
Rohini, New Delhi-110008.

... Appellant

Vs

Brijesh Singh Bhaduriya,
Resolution Professional of RCI Industries
and Technologies Ltd.
Having Office at:
C-II/08, Mangal Apartment,
Vasundhara Enclave,
New Delhi-110096.

... Respondent

Present:

For Appellant: Ms. Varsha Banerjee, Advocate.

For Respondent: Mr. Abhishek Anand, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed against the order dated 10.11.2023 passed by National Company Law Tribunal, New Delhi, Court-III, by which order IA No.1990 of 2023 filed by the Appellant was rejected.

2. Brief facts of the case are:

- (i) SBI Global Factors Ltd. and DBS Bank India Ltd. had entered into a Master Service Agreement/ Master Financer Agreement

- dated 28.04.2017 and 05.12.2018 respectively with one M/s Mynd Solutions Pvt. Ltd. for availing the facilities called M1 for discounting and re-discounting of the trade receivables/ invoices of the suppliers from the Buyer through the financiers.
- (ii) The Corporate Debtor – M/s RCI Industries and Technologies Limited purchased certain goods from one of its suppliers namely BC Power. The Corporate Debtor did not have sufficient liquidity. The Corporate Debtor availed the factoring services granted by the Financers, under the Factoring Regulation Act, 2011. The Corporate Debtor entered into a Master Buyer Agreement dated 21.12.2018 with one Mynd Solutions Pvt. Ltd.
 - (iii) On default being committed by the Corporate Debtor in making the payment as per the Master Buyer Agreement, SBI Global Factors Ltd. filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) being CP (IB) No.743/ND/2020 against the Corporate Debtor, which Application was dismissed for non-prosecution.
 - (iv) Financial debt owed by the Corporate Debtor to SBI Global Factors Ltd. and DBS Bank was assigned to the Appellant vide Assignment Agreements dated 23.06.2022 and 08.08.2022 respectively.

- (v) On an Application filed by M/s Standard Chartered Bank Singapore (Limited) against the Corporate Debtor, Corporate Insolvency Resolution Process (“**CIRP**”) commenced on 25.11.2022 against the Corporate Debtor. Shri Brijesh Singh Bhadauriya was appointed as Resolution Professional (“**RP**”).
- (vi) In response to the public announcement dated 30.11.2022, the Appellant submitted its claim in Form-C dated 13.12.2022. On receipt of the claim, the RP sought for further documents from the Appellant vide email dated 17.12.2022. The RP vide his email dated 21.12.2022 written to the Appellant, categorized the Appellant as Operational Creditor. The Appellant aggrieved by the categorization filed an IA No.1990 of 2023 before the Adjudicating Authority, praying for setting aside the email dated 21.12.2022 and to admit the claim of the Appellant as Financial Creditor. IA No.1990 of 2023 was opposed by the RP.
- (vii) The Adjudicating Authority after hearing both the parties, by the impugned order has rejected the Application, affirming the view of the RP that transactions between the Corporate Debtor and the supplier were for purchase of goods in normal course of business of the Corporate Debtor and therefore is an ‘operational debt’ within the meaning of Section 5 (21) of the Code. It was held that by assignment and re-assignment of the debt in favour of the Appellant did not change the nature

of the transactions. The Application was rejected by the impugned order. Aggrieved by the order of the Adjudicating Authority, this Appeal has been filed.

3. We have heard learned Counsel for the Appellant as well as learned Counsel for the RP.

4. Learned Counsel for the Appellant challenging the impugned order submits that transactions between the Corporate Debtor and the Financer had a commercial effect of borrowing and it was financial debt within the meaning of Section 5 (8) (f) of the Code. The Appellant was seeking rights and legal recognition as Financial Creditor on the basis of reverse factoring services as availed by the Corporate Debtor. The Financer shall always be a Financer vis-à-vis the party who had availed factoring services. In the present case, the Corporate Debtor has availed services of financiers, who had subsequently assigned their debts in favour of the Appellant. The Appellant is clearly a Financial Creditor of the Corporate Debtor. The Adjudicating Authority failed to consider that the Corporate Debtor had entered into reverse factoring transaction with the Financers, which transaction fall under Section 5(8) (f) of the Code. It is submitted that Section 5(8) (e) of the Code is not applicable in the facts of the present case, since the said clause specifically deals with discounting/ factoring of trade receivables, whereas, in the instant case, the trade payables have been discounted and hence, such a transaction would not fall within the ambit of Section 5(8)(e) of the Code. It is submitted that reverse factoring has a

commercial effect of borrowing. The Adjudicating Authority failed to appreciate the true nature of the transaction between the Appellant and the Corporate Debtor and has erroneously categorized the Appellant's debt as 'operational debt'.

5. The learned Counsel for the RP refuting the submission of the learned Counsel for the Appellant submits that in the present case the Corporate Debtor had purchased ferrous and non-ferrous products from B.C. Power Control Ltd. Therefore, the Corporate Debtor incurred an operational debt, i.e. "Trade Payables" of an amount of INR 7,05,91,531.39/- towards the Supplier/ Sellers and got its Sale Invoices discounted through – M1 Exchange Platform and the Supplier got the money through discounting process from Banks/ NBFCs. The Corporate Debtor had acknowledged its obligation towards the Financers pursuant to the above assignment of trade receivables through a Master Buyer Agreement dated December 21, 2018. The operational debt was assigned to the Financers by Sellers when they were paid through trade receivables on the M1 Platform. Therefore, under the arrangement between the parties, the Supplier has transferred its "Trade Receivables" to the Financers, and the Corporate Debtor has agreed to pay the amount to the Financers. By virtue of discounting the trade receivable of the Supplier, the Financers entered into the shoes of the Supplier and had become Operational Creditor. As the original liability arose in respect of operational debt, any further assignment of the said operational debt shall also be treated similarly. The debt owed to the Appellant by the Corporate Debtor

does not qualify the requirements of 'financial debt' within the meaning of Section 5(8) of the Code. It is submitted that the Corporate Debtor has not availed any services from the Financers in the nature of factoring or financing for financial debt. Section 5(8)(e) specifically excludes the receivables sold or discounted on a recourse basis within the ambit of 'financial debt'. Master Service Agreement dated 28.04.2017 clearly stated that the Financer does not have any recourse from the Supplier and therefore, the transaction is excluded from the definition of 'financial debt'.

6. Learned Counsel for both the parties have relied on judgments of Hon'ble Supreme Court as well as this Tribunal in support of their respective submissions, which shall be dealt hereinafter.

7. The only question to be answered in this Appeal is as to whether any financial debt was owned to the Appellant in the facts of the present case?

8. We need to first notice the nature of transactions entered between the parties. The Mynd Solutions Pvt. Ltd. hosts a trade receivables discount Platform with brand name called M1 for discounting and rediscounting of the trade receivables of the suppliers from the buyers through the Financers enrolled on M1. Master Financier Agreement was entered on 28.04.2017 with Mynd Solutions Pvt. Ltd. and SBI Global Factors Limited. Clause 1 of the Agreement of the definition clause, which defines various terms, defines 'Factoring Unit' in Clause 1.15 to the following effect:

“1.15. “Factoring Unit” refers to an invoice or a bill of exchange or any other products permitted by the RBI from time to time to be discounted on the M1 Website, each of which is uploaded by the Supplier and accepted by the Buyer. Provided, in the case of reverse factoring the factoring unit shall be created by the Buyer;”

9. ‘Transaction’ is defined in Clause 1.35, which is as follows:

“1.35. “Transaction” shall mean all actions carried out between the Supplier, the Buyer, the Buyer’s Bank and the Financers on the M1 Website in respect of a Factoring Unit, including but not limited to bidding for the Factoring Unit, discounting of the Factoring Unit, transfer of the Bid amount, assignment of the Trade Receivables of the Factoring Unit and payment of the amount underlying the Factoring Unit on the Due Date and shall also include all the processes for the rediscounting of an already discounted Factoring Unit;”

10. Clause 5.1.5.1 deals with ‘Settlement of Payment to the Suppliers’, is as follows:

“5.1.5.1 Settlement of Payment to the Suppliers: Once the Financier's Bid in respect of a Factoring Unit is accepted, payment equivalent to the Debit Amount in respect of such Factoring Unit would be debited from the Financier's Bank account and the Credit Amount would be credited to the Supplier's Bank account. NPCI will pull the Debit Amount from the Financier's Bank account and push the Credit Amount to be credited into the Supplier's Bank account and shall also push the Commission into

the Bank account of the Company. The settlement of payment shall be made on T + 1 day or any other time period which may be approved by the RBI from time to time, with the date of acceptance of the Bid by the Supplier being referred to as "T". Consequently, the Financier will then be entitled to receive the total amount underlying the Factoring Unit in accordance with this Agreement and the Procedural Guidelines from the Buyer on the Due Date unless the Factoring Units have been rediscounted by the Financier prior to the Due Date, in which case the ultimate Financier will be entitled to the amount underlying such Factoring Units on the Due Date. For the avoidance of doubt, it is hereby clarified that any discounting and/or rediscounting of any Factoring Units on the M1 Website shall be without any recourse to the Supplier except when there is any fraud, misconduct, breach of any representations and warranties by the Supplier, any order of the competent court, etc. Provided in the case where the Interest Amount and the Commission is paid by the Buyer, the Buyer shall, at the time of accepting the Bid placed by a Financier in respect of a Factoring Unit, make upfront payment of the applicable Interest Amount and the Commission payable to the Financier through the payment settlement process adopted by the Company. In such a scenario NPCI will pull the applicable Interest Amount as well as the applicable Commission payable by the Buyer from the Buyer's Bank and push the applicable Interest Amount into the respective Supplier's Bank account and push the amounts towards the Commission to the Bank account of the Company.”

11. The Corporate Debtor also entered into Master Buyer Agreement dated 21.12.2018 with Mynd Solutions Pvt. Ltd. Clause 4 of the Agreement deals with 'Financing/ Discounting Process'. Clause 4.3.7.1, which deals with 'Settlement of Payment to the Suppliers', is to the following effect:

"4.3.7.1. Settlement of Payment to the Suppliers:

Once the Financier's Bid in respect of a Factoring Unit is accepted, payment equivalent to the Debit Amount in respect of such Factoring Unit would be debited from the Financier's Bank account and the Credit Amount would be credited to the Supplier's Bank account. NPCI will pull the Debit Amount from the Financier's Bank account and push the Credit Amount to be credited into the Supplier's Bank account and shall also push the Commission into the Bank account of the Company. The settlement of payment-shall be made on T + 1 day or any other time period which may be approved by the RBI from time to time, with the date of acceptance of the Bid by the Supplier being referred to as "T". Consequently, the Financier will then be entitled to receive the total amount underlying the Factoring Unit in accordance with this Agreement and the Procedural Guidelines, from the Buyer on the Due Date unless the Factoring, Units have been rediscounted by the Financier prior to the Due Date, in which case the ultimate Financier will be entitled to the amount underlying such Factoring Units on the Due Date. For the avoidance of doubt, it is hereby clarified that any discounting and / or rediscounting of any Factoring Units on the M1 Website shall be without any recourse to the Supplier. Provided in the case where the Interest Amount and Commission is paid by the Buyer as per terms

agreed with the Company, the Buyer shall, at the time of accepting the Bid placed by a Financier in respect of a Factoring Unit, make upfront payment of the applicable Interest Amount payable to the Financier and the applicable Commission payable to the Company through the payment settlement process adopted by the Company. In such a scenario NPCI will pull the applicable Interest Amount as well as the applicable Commission payable by the Buyer from the Buyer's Bank and push the applicable interest Amount into the respective Financier's Bank account and push the amounts towards the Commission to the Bank account of the Company.”

12. After filing of the claim, RP on 21.12.2022 communicated to the Appellant following:

Dear Sir,

This is in pursuance to your claim submission of INR 7,05,91,531 in the CIRP matter of RCI Industries & Technology Limited, please note that the break-up or calculation of the amount is not provided.

Further, please also note that the RCI Industries & Technologies Limited incurred operational debt in respect of different suppliers which was initially assigned to Lakshmi Vilas Bank (LVB) & SBI Global Factors (SBIG) pursuant to its successful bidding on M1 exchange platform and further re-assigned from LVB & SBIG through assignment agreement in the favour of M/s Mudraksh Investfun Private Limited. Pursuant to such assignments initially through M1 exchange platform and later on through assignment agreement, the amount due

in respect of invoices payable by RCI Industries to different suppliers will stand payable to your i.e. M/s Mudraksh Investfin Private Limited. The said assignment does not change the nature of the transactions from which obligation of RCI Industries to pay operational debt arose.

As the original liability arose in respect of operational debt, any further assignment of the said operational debt shall also be treated similarly in view of provisions of Section 21(5) of Insolvency and Bankruptcy Code, 2016. The relevant provisions are reproduced once again for your ready reference:-

“Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer”.

You would note that even if operational debt is assigned to a financial creditor, the same would still be regarded as operational debt.

Accordingly, you are requested to file such a claim as operational debt through Claim “Form-B”.

Regards

*Brijesh Singh Bhadauriya
Interim Resolution Professional of
RCI Industries and Technologies Limited”*

13. After rejection of the claim by RP, IA No.1990 of 2023 was filed by the Appellant before the Adjudicating Authority. In the IA No.1990 of 2023, details of transactions entered between the parties has been captured in paragraphs 8 and 9, which are to the following effect:

“8. That the Corporate Debtor was one such buyer, who purchased various ferrous and non-ferrous products from one BC Power Controls Ltd. (“Seller”). However, since the Corporate Debtor did not have sufficient liquidity/ funds to make payment against the goods so purchased from the Seller, the Corporate Debtor entered into a Master Buyer Agreement dated 21.12.2018 with Mynd Solutions Pvt. Ltd. for availing the facilities of discounting and re-discounting of the trade receivables/ invoices of the suppliers (BC Power) from the Buyer (Corporate Debtor) through the above-named Financers. Therefore, it is evident that the Corporate Debtor had availed the financial services from the financers by way of discounting/ re-discounting of the invoices payable by the Corporate Debtor, under the Factoring Regulation Act, 2011. Copy of the Master Buyer Agreement dated 21.12.2018 are annexed herewith and marked as Annexure A-7.

9. That it is submitted that it was under the aforesaid agreements that the supplier sold goods between 13.06.2019 to 27.06.2019 to the Corporate Debtor, against which certain invoices were raised by the Supplier against the Buyer. It is further submitted that at the behest of the Corporate Debtor, the said invoices were discounted by the Financers from time to time and thus, the Corporate Debtor was liable to make payment to the Financers along with interest and penal interest in case of any delay in such payment. Therefore, in effect, the Financers had extended trade finance facilities to the Corporate Debtor by making direct payments to the suppliers of the Corporate Debtor. However, it is a matter of no dispute that soon after availing such facilities from

the financiers, which compelled SBI Global Factors ltd. to issue a notice dated 01.10.2019 to the Corporate Debtor for payment of the outstanding debt, against which the Corporate Debtor had requested for an additional time for clearing the debt vide its reply dated 15.11.2019. Copy of the legal notice dated 01.10.2019 and the reply from the Corporate Debtor dated 15.11.2019 are annexed herewith and marked as ANNEXURE A-8.”

14. It is clear from its own averment of the Appellant that Supplier has sold goods to the Corporate Debtor against which invoices were raised by the Supplier against the Buyer. The said invoices were discounted by the Financer from time to time and Corporate Debtor was liable to make payment to the Financer along with interest. The Financers have made payment to the Suppliers. The Corporate Debtor could not make the payment to the Financers. The Corporate Debtor has not availed any services from the Financers. It is the Supplier, who has entered into a Master Service Agreement with the Financer for availing the trade receivables discounting and rediscounting services. Hence, the Financers stepped into the shoes of Suppliers of the Appellant. No amount was disbursed to the Corporate Debtor by the Financers and Financers have discounted the invoices under the M1 Platform as per Agreement with Mynd Solutions Pvt. Ltd. The Corporate Debtor has also entered into Master Buyer Agreement with Mynd Solutions Pvt. Ltd. as noticed above. The transaction between the parties arose out of sale and purchase of goods and Financers have paid directly to the Suppliers as per the Agreement

with the M1 Platform. The failure of the Corporate Debtor in clearing the debt of the Financers, resulted in filing of claim by the Financers in the CIRP of the Corporate Debtor. The original transaction between the parties were for the sale and purchase of goods.

15. The ‘operational debt’ is defined in Section 5, sub-section (21), which is to the following effect:

“5(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

16. Learned Counsel for the Appellant has relied on Section 5, sub-section (8) in support of his submission that transaction is covered by financial debt. Section 5, sub-section (8) provides as follows:

“5(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 dematerialised 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 non-recourse 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-clause (a) to (h) of this clause;”

17. In the present case, trade receivables by the Suppliers were discounted by the Financers and liability arose to the Corporate Debtor to pay the Financers as per Agreement and as per transactions carried on M1 Platform. We already noticed the averments made by the Appellant in paragraph-9 of the Application - IA 1990 of 2023, which indicates that invoices were raised by the Suppliers at the behest of the Corporate Debtor were discounted by the Financers, hence, the Corporate Debtor was liable to make payment to the Financers along with interest. The transaction was that of discounting of the invoices by the Financers and the Financers have made payment to the Suppliers. The present is not a case that any disbursement is made to the Corporate Debtor by the Financers. Liability to make payment to Financers arose to the Corporate Debtor as per Master Buyer Agreement 21.12.2018. The Corporate Debtor having failed to honour the commitment, a claim was filed by Assignee of Financer. Nature of transaction between the parties arose out of sale of goods and services. We fail to see any financial transaction between the parties.

18. The learned Counsel for the RP has referred to Section 5, sub-section (8) (e). In the present case Master Financer Agreement between Mynd Solutions Pvt. Ltd. and SBI Global Factors Ltd., Assignor of the Appellant, indicates that discounting was without any recourse basis. Paragraph 5.1.5.1 as extracted above of the Agreement dated 28.04.2017 clearly

mentions that discounting shall be without any recourse basis. Thus, the discounting is clearly excluded from financial debt under Section 5, sub-section (8) (e). The learned Counsel for the Appellant has submitted that Section 5, sub-section (8) (e) is not applicable and the provision applicable is Section 5 (8) (f). When Section 5, sub-section (8) (e) specifically covers receivables sold or discounted, the discounting of invoices cannot be covered by any other clause. Hence, discounting of invoices cannot fall under Section 5, sub-section (8) (f). The learned Counsel for the RP has rightly relied on judgment of this Tribunal in ***Company Appeal (AT) (Insolvency) No.572 of 2022 – Minions Ventures Pvt. Ltd. and Ors. vs. TDT Copper Ltd.*** decided on 28.03.2023. The above was a case of discounting of invoices. The Appellant in the said case was also a financier, who discounted invoices and deposited the amount, which was transferred to the account of the Seller and Seller after receiving of the amount transferred its right to receive the amount under the invoice to the Financers. Section 7 Application filed by the Financer was rejected by the Adjudicating Authority, which order was confirmed by this Tribunal. In paragraph 13 and 14, following was held:

“13. The Agreement (COR) was entered into between the Seller, Financier and the Corporate Debtor (As customer). As per the agreement, the Seller had agreed for discounting of invoice of the customer (CD) for the creation of the right and interest in the invoice receivables in favour of the Financier (Appellant). Upon execution of agreement of COR, the Appellant as a Financier discounted the invoice and deposited the amounts into an escrow/nodal account maintained by

KredX with an escrow/nodal agent, namely, Yes Bank Limited who further transferred the said amount to the account of the Seller and on receiving, the Seller transferred its right to receive the money under the invoices in favour of the Financiers/Appellants. In this transaction, the money was never disbursed much less for the time value as a financial debt to the Corporate Debtor and by virtue of discounting the invoice of the Seller of an amount of Rs.3,42,03,903/- for amount of Rs.1,75,23,133/- the Financiers/Appellants entered into shoes of the Seller and had become Operational Creditors in terms of Section 5(20) as well as 21(5) and Section 5(7) and 5(8)(e) of the Code is not at all applicable.

***14.** Thus, in view thereof, there is no error in the order of the Adjudicating Authority who has though rejected the application filed under Section 7 of the Code but relegated the Appellants (Financiers) to avail their remedy under Section 9 of the Code in accordance with law. Hence, the appeal is hereby dismissed. However, with no order as to costs.”*

19. Learned Counsel for the Appellant has placed reliance on judgment of Hon’ble Supreme Court **(2023) 3 SCC 752 – Orator Marketing Private Limited vs. Samtex Desinz Private Limited**. In the Orator’s case Original Lender has advanced a Term Loan of 1.60 crores to the Corporate Debtor for a period of two years, which was assigned to Appellant. The loan credit was without any interest/ charge. The facts have been noted in paragraphs 2, 3 and 4 of the judgment, which are as follows:

***“2.** The short question involved in this appeal is, whether a person who gives a term loan to a corporate person, free of interest, on account of its working capital requirements is not*

a financial creditor, and therefore, incompetent to initiate the corporate insolvency resolution process under Section 7 IBC.

3. *M/s Sameer Sales Pvt. Ltd., hereinafter referred to as “the original lender”, advanced a term loan of Rs 1.60 crores to the corporate debtor for a period of two years, to enable the corporate debtor to meet its working capital requirement. The original lender has assigned the outstanding loan to the appellant.*

4. *According to the appellant the loan was due to be repaid by the corporate debtor in full within 1-2-2020. The appellant claims that the corporate debtor made some payments, but Rs 1.56 crores still remain outstanding.”*

20. Hon’ble Supreme Court in the above context held that Adjudicating Authority – NCLT overlooked the words “if any”. In paragraph 22, 29 and 31, following was laid down:

“22. *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.*

29. *In Jaypee Infratech Ltd. [Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401 : (2021) 2 SCC (Civ) 334], the debts in question were in the form of third-party security, given by the corporate debtor to secure loans and advances obtained by a third party from the respondent lender and,*

therefore, held not to be a financial debt within the meaning of Section 5(8) IBC. There was no occasion for this Court to consider the status of a term loan advanced to meet the working capital requirements of the corporate debtor, which did not carry interest. Having regard to the Aims, Objects and Scheme of the IBC, there is no discernible reason, why a term loan to meet the financial requirements of a corporate debtor for its operation, which obviously has the commercial effect of borrowing, should be excluded from the purview of a financial debt.

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 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) IBC does not expressly exclude an interest free loan. “Financial debt” would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.”*

21. It was held that Section 5 (8) does not expressly exclude an interest free loan. The above judgment of the Hon’ble Supreme Court was on entirely different facts, where Lender had advanced a loan without any interest. The present is not a case of financing any loan, rather present is a case of transaction of M1 Platform, on which Platform, both Seller, Buyer

and Financers are registered and transaction takes place for sale and purchase of goods and discounting of invoices, payments and recoveries of payment by Financers. The transaction emanates from sale and purchase of goods in the present case. No disbursement was made to the Corporate Debtor, hence, the transactions cannot be held to be a financial debt. We do not find any error in the order of the Adjudicating Authority agreeing with the view of the RP that claim of the Appellant is only an 'operational debt'.

22. In view of the above, we do not find any ground to interfere with the impugned order. There is no merit in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

5th January, 2024

Ashwani