



IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH AT ALLAHABAD

CA No. 370 of 2019  
IN  
CP(IB) No.75/ALD/2019

**IN THE MATTER OF:**

**Jasubhai International FZCO**

..... Applicant

Vs

**Ashok Kumar Gulla**

..... Respondent

**AND IN THE MATTER OF:**

**Fedders Electric & Engineering Ltd.**

..... Corporate Debtor

**ORDER DELIVERED ON: 16.10.2020**

**CORAM:**

**Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial**

**For the Applicant: Sh. Anurag Khanna (Sr. Advocate)**

**Along with Utkarsh Srivastava (Advocate)**

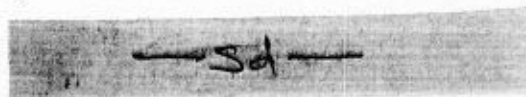
**For the Respondent: Sh. Abhiroop Das, Advocate**

**Along with Yash Tandon**

**ORDER**

**Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)**

1. The present application has been filed under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 by the Resolution Professional being aggrieved by the refusal of Respondent to admit the claim made by the Applicant as a 'financial debt' under Section 5(8) of the Code.

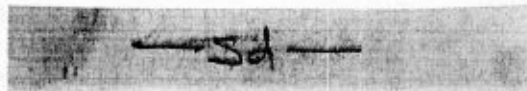


2. As per the averments made in the application, the Respondent has, by his email dated October 18, 2019, erroneously refused to admit the claim made by the Applicant (in Form C dated August 29, 2019) as a 'financial debt' as defined under Section 5(8) of the Code and has, in turn, classified the claim of the Applicant as that of 'other creditors' under the Insolvency and Bankruptcy Board of India Regulations, 2016. Consequently, the Applicant has not been included as a part of Committee of Creditors of the Corporate Debtor and has been denied the right to participate and vote at the meetings of Committee of Creditors.
3. Further stated that, the Applicant and the Corporate Debtor entered into an Agreement dated 25 February, 2017, in furtherance of which, the modalities of the transaction between the parties were set out in a Letter of Intent(LOI) dated 9 April, 2017 issued by the Corporate Debtor and acknowledged by the Applicant for the 'Design Engineering Supply, Installation and Commissioning, Maintenance of operation and 25 MW roof top Solar PV Grid Interactive Power Packs at various locations at Dubai'. The LOI provided that the Applicant would also make payments to the tune of Rs. 3,00,00,000/- (Three Crore Only) as an Earnest Money Deposit (EMD) to the Corporate Debtor.
4. Further, in April 2018, the Applicant was made aware that the Corporate Debtor had withdrawn from the said Project. No formal intimation thereof was given to the Applicant by the Corporate Debtor. Thereafter, the Applicant sent various emails calling upon the Corporate Debtor to refund the amount of Rs. 3,00,00,000/- paid towards the EMD. Despite several assurances given by the Corporate Debtor telephonically, no payments were made.
5. On August 14, 2019, this Tribunal admitted the Insolvency Application Company Petition No. 75/2019 filed by the State Bank of India against the Corporate Debtor under Section 7 of the Code. Pursuant thereto, upon a Public

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Announcement made by the Respondent inviting claims from all the creditors, on August 30, 2019, the Applicant filed its claim as an Applicant in Form C for an amount of Rs. 3,00,00,000/- with an interest at the rate of 12% pa. Subsequently, the Respondent refused to admit the claim made by the Applicant as a Financial Debt.

6. The Respondent submits that, on the basis of the documents available with the Respondent, the transaction between the Applicant and the Corporate Debtor arose out of the alleged Agreement dated 25.02.2017 involving submission of an interest free EMD of Rs. 2,00,00,000/- with the Corporate Debtor. After which, the Corporate Debtor was to issue a purchase/ work order in favour of the Applicant and was to get the Applicant listed in the Client's approved vendor list of the development of 25 MW Rooftop Solar PV Project Power Ltd. in Dubai. Thereafter, the Corporate Debtor issued an LOI dated 09.04.2017 which required the Applicant to pay an additional sum of Rs. 1,00,00,000/-.
7. Respondent further submitted that, it is incorrect to say that the deposit of Rs 3,00,00,000/- had a commercial effect of borrowing and there was time value of money. It is submitted that under the alleged Agreement dated 25.02.2017 as well as the letter of intent dated 09.04.2017, there was no assured returns or any assured profit and none of the above documents contained an interest clause. Further, the EMD (Earnest Money Deposit) was interest free.
8. It is further stated by the Respondent that, the Applicant is neither a Financial Creditor since there is no Time Value of Money, nor an Operational Creditor, since no goods or services have been provided by the Applicant. Therefore, the Respondent was of the view that **Jasubhai International FZCO** may be admitted in the list of 'Other Creditors', to the extent of Rs. 3,00,00,000/-. Subject to the verification of the quantum of claim.



9. Relevant part of Section 5 of the Insolvency and Bankruptcy Code; 2016 reads as under:

**Section 5(8):**

*Financial debt means a debt along with 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 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;*
- (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;*

The above mentioned provision demonstrates that, "the financial debt means a debt along with interest which is disbursed against the consideration for time value of money" which is the first essential requirement of Financial Debt. As stated by the Respondent, that, under the alleged Agreement dated 25.02.2017 as well as the letter of intent dated 09.04.2017, there was no assured returns or any

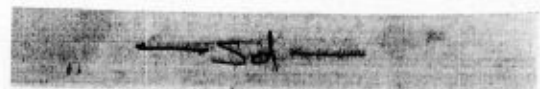
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assured profit and none of the above documents contained an interest clause. Also, the EMD (Earnest Money Deposit) was interest free.

10. The significance of Section 5(8) is that, the financial transaction should be in the nature of debt, and further, the Financial Creditor is a person who has a right to financial debt. In the present application, the Applicant has failed to show that the amount of Rs. 3,00,00,000/- was disbursed in favour of Corporate Debtor against the consideration for time value of money and was borrowed by the Corporate Debtor against the payment of interest.

11. Therefore, this Adjudicating Authority is of the view that, the amount claimed by the Applicant does not come under the ambit of definition of 'Financial Debt', consequently, the Applicant could not be treated as a Financial Creditor. Thus, the present application is dismissed with liberty to the Applicant to proceed in accordance with the law.

Accordingly, CA No.370/2019 is **disposed off**.



**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (JUDICIAL)**

**Date: 16.10.2020**

Shefali Vats  
(LRA)