



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-812(ND)/2022

IN THE MATTER OF:

Akzo Nobel India Limited

Geetanjali Apartment,
1st Floor 8-B,
Middleton Street Kolkata,
West Bengal-700071

**...Petitioner/
Financial Creditor**

VERSUS

Stan Cars Private Limited

58, PKT-E, Sector-1, Bawana DSIDC
New Delhi

...Respondent

Section: 7 of IBC, 2016

Order Delivered on: 04.07.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Adv. Vinod Chaurasia

For the Respondent : Sr. Adv. Virender Ganda, Adv. Vishal Ganda, Adv.
Akansha Mathur, Adv. Tanya Hasija



ORDER

PER: SHRI. ASHOK KUMAR BHARDWAJ, MEMBER (J)

The Petitioner herein is a non-government company limited by shares. It is a Public Limited Company (CIN L24292WB1954PLC021516) registered with RoC-Kolkata, vide Registration No. 021516 and is engaged in the business of selling and distributing automotive paints and other automotive refinished products under the brand name “Sikkens”. According to the Petitioner, the Respondent had approached it with a business proposal which led to the execution of an agreement dated 21.11.2017 (effective from 01.12.2017) between them. In terms of the agreement, the Petitioner extended a trade advance of Rs. 2,40,00,000/- to the Respondent. Out of the agreed amount, the Petitioner transferred Rs. 1,62,00,000/- and Rs. 78,00,000/- to the Respondent on 21.12.2017 and 31.01.2018 respectively. The amount was to be utilized by the Respondent for purchasing and installing Paint Booth, Baking Oven and other equipment required at its workshop/place of business to carry the business with new and improved means. The term of the agreement was five years or till the material produced by Petitioner for a value of Rs. 6,50,00,000/- could be purchased except otherwise terminated.

2. In terms of the Clause no. 7 of the Agreement, the amount of trade advanced which could remain unadjusted was to be treated as loan extended by the Petitioner to the Respondent for which the Respondent could be liable to pay interest @ 1% per month (12% per annum). In the event of non-payment of the trade advance by the Respondent to Petitioner, the unpaid amount was to be treated as a charge on the assets of the Respondent. The Respondent



had executed a Promissory Note dated 21.11.2017 in favour of the Petitioner, in terms of which he promised to pay the Petitioner a sum of Rs. 2,53,50,000/- with interest @ 12% per annum. The Respondent sent a mail dated 17.10.2017 to the Petitioner giving it an assurance that Respondent was committed to fulfil the business target mutually agreed upon between them and there would be no shortcomings qua the commitment.

3. In terms of the e-mail dated 06.11.2017, the Respondent confirmed and acknowledged the contents of the e-mail sent by the Petitioner regarding the inclusion of existing Chandigarh Body Shop in their business dealing along with upcoming non-Nexa outlets i.e. Begowal & Ludhiana in near future besides continuing Nexa business. Vide e-mail dated 23.07.2018, the Petitioner asked the Corporate Debtor not to purchase material from Asian PPG for Chandigarh location and to cater to the need of paint for Chandigarh location only with the Petitioner. The Petitioner sent further e-mails dated 09.08.2018, 19.09.2018, 21.11.2018, 08.09.2018 and 22.07.2019 summarising thereby the Target value and Achieved value qua the Respondent. By sending the mails, the Petitioner specified the shortfall in the Target value and asked the Respondent to make the same good, in terms of the agreement between them.

4. By e-mail dated 04.12.2019, the Petitioner informed the Respondent regarding its meeting with the management team of Navdesh Autos LLP in which the new management team had asked for a new proposal from the Petitioner for Chandigarh location with new commercials. The Petitioner informed them that the Chandigarh location forms an integral part of the



existing Agreement but the new management did not agree with the same. In terms of the e-mail dated 16.12.2019, the Petitioner espoused that it had invested Rs. 2,53,50,000/- against the Business value of Rs. 6,50,00,000/- for the paint purchase contract for both the existing and new location of the Respondent.

5. After further discussion and missives between the parties, the Petitioner sent an e-mail dated 19.10.2021 to Respondent through its financial consultant, Ashish Pasricha (CA) calling upon it to pay back to Petitioner Rs. 3,72,51,304/- (Trade Advance of Rs. 2,53,50,000/- plus interest amounting to Rs. 1,19,01,304/-). It is the case of the Petitioner that as per its books of accounts, a total sum of Rs. 3,88,18,142/- including interest @ 12% per annum till 25.04.2022 is payable by the Respondent to Petitioner. Stating succinctly, the plea espoused by the Petitioner in the captioned petition is, “On failure of the Respondent to abide by its commitment of purchasing/procuring the products and repayment of loan, the Petitioner is liable to pay Rs. 3,88,18,142/- to Respondent”. Ergo, the Petitioner sent a legal notice dated 04.05.2022 to the Respondent, calling upon it to pay the Petitioner Rs. 3,88,18,142/- including interest @ 12% per annum upto 25.04.2022. As per the stand taken by the Respondent, in Part-IV of the application, filed under Section 7 of IBC, 2016, the amount of default is Rs. 3,69,46,071/- and the date of default is 20.05.2022.

6. *Per contra*, in the reply filed by it, the Respondent has raised a plea that there is no financial debt due to be repaid by the Respondent to the Petitioner, thus there is no question of any default in repayment of the same and the



captioned petition is misconceived. The salient plea espoused by the Respondent is that the element of the time value of money is absent from the transaction alleged by the Petitioner. Relying upon the judgment of the Hon'ble Supreme Court in M/s Consolidated Construction Consortium Limited vs. M/s Hitro Energy Solutions Private Limited Civil Appeal No. 2839 of 2020, Mr. GS Ganda, Ld. Senior Advocate for the Respondent argued that the amount paid as a trade advance cannot be treated as financial debt but can be treated only as operational debt. In terms of the submissions put forth on behalf of the Respondent, the amount of trade advance was to be adjusted as a discount on achievement of the target purchase of goods in terms of the agreement, thus the amount transferred by the Petitioner to Respondent can neither be treated as financial debt nor the Petitioner can be treated as a financial creditor. Ld. Senior Counsel for the Respondent also raised the pleas inter alia regarding the financial health of the Respondent, the object of IBC, 2016, the role of the Tribunal being not that of a Debt Recovery Tribunal, the Agreement being not signed by M/s P.R. Hardware & Paint Store or any witnesses. It is also the plea espoused on behalf of the Respondent that the present petition is time-barred.

7. We heard the counsels for the parties and perused the record. As can be seen from the Agreement dated 21.11.2017, enclosed with the petition as Annexure-A3, certain purchase target was to be achieved by the Respondent during the period of the Agreement i.e., 5 years. On achievement of such target, the amount of trade advance was to be adjusted as a discount in terms



of Clause 7 of the Agreement dated 21.11.2017 (ibid). The relevant excerpt of the Agreement reads thus: -

“The Parties agree that STAN CARS continuing to fulfil its obligations under this Agreement, would be entitled to the adjustment of the trade advance as “trade discount”, per the following:

Purchase targets as mentioned in Schedule I hereof	% Adjustment of trade advance as trade discount
Upon accomplishing purchase targets for the first year and having released the payment in respect thereof as per clause 5 of this Agreement.	11%
Upon accomplishing purchase targets for the second year and having released the payment in respect thereof as per clause 5 of this Agreement.	27%
Upon accomplishing purchase targets for the third year and having released the payment in respect thereof as per clause 5 of this Agreement.	47%
Upon accomplishing purchase targets for the fourth year and having released the payment in respect thereof as per clause 5 of this Agreement	71%
Upon accomplishing purchase targets for the fifth year and having released the payment in respect thereof as per clause 5 of this Agreement.	100%



8. It is not in dispute that the Respondent had not achieved the purchase target. Thus, the amount of paid advance which was to be adjusted as a discount remained unadjusted and in terms of the provisions of Clause 7 of the Agreement was to be deemed as a loan extended by Petitioner to Respondent in respect of which an interest @ 1% per month (12% per annum) was liable to be paid by Respondent to Petitioner, which was to be calculated from the date of release of date advance, as per Clause 1 of the Agreement.

9. The Respondent also executed a Promissory Note dated 21.11.2017, in terms of which it agreed to pay on demand to Petitioner, a sum of Rs. 2,53,50,000/- in consideration of value received.

10. To appreciate the involvement of the time value of money in the transaction entered into between the parties, we need to appreciate the definition of financial debt. The definition as given in Section 5(8) of IBC, 2016 reads thus: -

“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;*
[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 commercial effect of a borrowing; and*
 - (ii) *the expressions, “allottee” and “real estate project” shall have the same 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 of 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 a financial institution;*
- (i) *the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred in sub-clause (a) to (h) of this clause.”*

11. As can be seen from the aforementioned definition of the financial debt, it includes money borrowed against the payment of interest; any amount raised by acceptance under any acceptance credit facility or its dematerialized equivalent; the amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan, stock or any similar instruments; the



amount of any liability in respect of any lease or hire purchase contract which is deemed as a financial lease or a capital lease; receivables sold or discounted other than any receivable sold on non-recourse basis; any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing; any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price; the amount of any liability in respect of guarantee or indemnity for any of the items referred to in sub-clause a-h of sub-section 8 of Section 5 of IBC, 2016. As far as the question of the amount being raised by acceptance under any acceptance credit facility or its dematerialized equivalent is concerned, the acceptance credit is a type of letter of credit i.e. paid by a time draft authorising payment on or after a specific date, if the terms of the letter of credit have been complied with. The bank accepts Bills of Exchange drawn on the bank by the debtor discounts them and agrees to pay them when they mature. There are two types of acceptance of credit, confirmed and unconfirmed. Unconfirmed credit means that the buyer takes the risk that payment will not be made due to any number of contingencies such as shipment, non-delivery, confiscation by Custom Authorities or any other problems. Confirmed acceptance credit means the bank upon which the credit has been issued essentially guarantees payment as long as the terms of LOC are complied with. Certainly, in the present case there being no letter of credit, no such proposition arises. Apparently, the present case does not involve any issue regarding the amount raised pursuant to any note purchase facility or issue of bonds, notes, debentures, loan stock, or any similar instrument. There can be no doubt that the transaction



between the Petitioner and Respondent in terms of the Agreement dated 21.11.2017 is covered by sub-clause (f) of Clause 8 of Section 5 of IBC, 2016. Indubitably, the transaction referred to in the said agreement has its commercial effect. Now, the issue left to be analysed is whether the amount transferred by the Petitioner to the Respondent involved the time value of money. The time value of money is a concept that a sum of money would worth more on a future date due to its earning potential in the interim. It is a core principle of finance. A sum of money in hand at a given point of time the value of which may be more in the future is also described as discounted value. The money in hand today would have greater value in the future. The increase in value of money on the passage of time is attributed to time and is called time value of money. The investor prefers to receive money today rather than the same amount of money in the future. A sum of money once invested grows over time. If it is not invested the value of money erodes over time. A particular amount of money in hand today will have less buying power when you retrieve it because the inflation reduced its value. The time value of money has a negative relationship with inflation. Inflation is an increase in prices of goods and services. The value of Rupee goes down with an increase of price. The formula for the time value of money takes into account the future value (F.V.) of money, the present value (P.V.) of money, the interest rate, the number of compounding per year and number of years. Nevertheless, the expected interest or return may not be only aspect of time value of money. The utility of a particular amount of money for a given point of time, which may help him/it in escaping inevitable loss or fetch profit which he could have not avoided or fetched but for receiving the amount of debt is also time value



of money. In other words, the money which is important for a borrower at given/crucial point of time, in commercial term may have value to the extent it helps the borrower to escape loss or gain profit. Such gain or escape of loss is time value of money.

12. A reference can be made to the judgment of Hon'ble NCLAT in Earth Gracia Buildcon Pvt. Ltd. vs. Earth Infrastructure Ltd. (2021 SCC Online NCLAT 502), in which relying upon the judgment of Hon'ble Supreme Court in Phoenix Arc Pvt. Ltd. vs. Spade Financial Services Ltd. (Civil Appeal No. 2842 of 2020), the Appellate Tribunal viewed that the essential ingredient of financial debt is disbursal against consideration for the time value of money. In Anuj Jain IRP for Jaypee Infratech Ltd. vs. Axis Bank Ltd. 2020 SCC Online Supreme Court page 237, relied upon by the Hon'ble NCLAT in Earth Gracia Buildcon Pvt. Ltd. (ibid), Hon'ble Supreme Court ruled that the requirement of the existence of a debt which is disbursed against the consideration for the time value of money remains an essential part even in respect of any of the transactions/dealing mentioned in Clauses (a)-(i) of Section 5(8) of the Code, even if it is not necessarily stated therein. In the said judgment, Hon'ble Supreme Court categorically viewed that any of the transactions stated in sub-clauses (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 terms of the view taken by the Hon'ble Supreme Court in the said judgment (Anuj Jain IRP for Jaypee Infratech Ltd.) (Supra) the essential element of disbursal and that too against the consideration for the



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. The 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 disbursement against consideration for the time value of money. The time value of money need not necessarily be the 'interest'. Enhancement of assets, increase in production and the growth in profits, share value or equity ensures the benefit of such stakeholders are time value of money constituting the consideration for disbursement of such amount raised as debt with the obligation on the part of the company to discharge the same. Relying upon its earlier judgment in Shailesh Sangani, in Earth Gracia Buildcon Pvt. Ltd. (ibid), Hon'ble NCLAT viewed thus: -

“18. This Appellate Tribunal in the case of Shailesh Sangani (Supra) held as under:

“6. A plain look at the definition of 'financial debt' brings it to fore that the debt along with interest, if any, should have been disbursed against the consideration for the time value of money. Use of expression 'if any' as suffix to 'interest' leaves no room for doubt that the component of interest is not a sine qua non for bringing the debt within the fold of 'financial debt'. The amount disbursed as debt against the consideration for time value of money may or may not be interest bearing. What is material is that the disbursement of debt should be against consideration for the time value of money. Clauses (a) to (i) of Section 5(8) embody the nature of transactions which are included in the definition of 'financial debt'. It includes money borrowed against the payment of interest. Clause (f) of Section 5(8) specifically deals with amount raised under any other



transaction having the commercial effect of a borrowing which also includes a forward sale or purchase agreement. It is manifestly clear that money advanced by a Promoter, Director or a Shareholder of the Corporate Debtor as a stakeholder to improve financial health of the Company and boost its economic prospects, would have the commercial effect of borrowing on the Company Appeal (AT) (Insolvency) No. 616 of 2018 part of Corporate Debtor notwithstanding the fact that no provision is made for interest thereon. Due to fluctuations in market and the risks to which it is exposed, a Company may at times feel the heat of resource crunch and the stakeholders like Promoter, Director or a Shareholder may, in order to protect their legitimate interests be called upon to respond to the crisis and in order to save the company they may infuse funds without claiming interest. In such situation such funds may be treated as long term borrowings. Once it is so, it cannot be said that the debt has not been disbursed against the consideration for the time value of the money. The interests of such stakeholders cannot be said to be in conflict with the interests of the Company. Enhancement of assets, increase in production and the growth in profits, share value or equity enures to the benefit of such stakeholders and that is the time value of the money constituting the consideration for disbursement of such amount raised as debt with obligation on the part of Company to discharge the same.....”

19. *In the aforesaid Judgments, this Tribunal held that the disbursement of debt should be against the consideration for time value of money. However, to pay interest is not only consideration. There may be other considerations also. When the company is in dire need of funds, the promoter/director or*



shareholder may in order to protect the company infuse funds without claiming interest.

20. 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.”

(emphasis supplied)

21. In the present case, Financial Creditor has been unable to point out any consideration for the alleged debt. Thus, they have failed to prove that the transaction in question comes within the definition of Financial Debt.

Sham transactions.

22. *Ld. Adjudicating Authority held that transactions in question are a sham. Hon’ble Supreme Court in the case of Phoenix Arc Pvt. Ltd. (Supra) held that when the transactions can be held collusive and sham.*

G.3.3 Collusive Transactions

46 The above discussion shows that money advanced as debt should be in the receipt of the borrower. The borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is the compensation or price payable for the period of time for which the money is lent. A transaction which is sham or



collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt. A useful elaboration of “sham transactions” can be found in the opinion of Diplock LJ in Snook v. London and West Riding Investments Ltd.:

“As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a “sham,” it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the “sham” which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create.”

(emphasis supplied)

Diplock LJ also stated:

“But one thing, I think, is clear in legal principle, morality and the authorities (see Yorkshire Railway Wagon Co. v. Maclure and Stoneleigh Finance Ltd. v. Phillips), that for acts or documents to be a “sham,” with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of “shammer” affect the rights of a party whom he deceived...”

(emphasis supplied)



23. *In the light of the proposition laid down by the Hon'ble Supreme Court, we have examined the impugned order. Ld. Adjudicating Authority in para 13 to 16 discussed the reasons for holding that the transactions in question are sham. We can summarize these reasons as under: -*

- (i) The transactions in question have no backing of the board resolution.*
- (ii) There is no record to show that the Corporate Debtor was in need of use money (as Loan) involved in the transactions.*
- (iii) There is no agreement of loan and interest.*
- (iv) No document to stipulate the period of repayment.*
- (v) The Financial Creditor Company and Corporate Debtor Company are group companies and the directors and promoters are common in both the companies.*
- (vi) The balance sheet of the Financial Creditor Company for the year ending 31.03.2015 shows loan and advance of INR 18,75,76,212/- to others but the name of the Corporate Debtor Company is not mentioned.*
- (vii) The essential ingredients for financial debt disbursement and consideration for the time value of money is missing.*
- (viii) The Financial Creditor filed claim before the resolution professional for an amount of INR 16,82,17,052/- plus interest @ 12% which has not been substantiated with any documentary evidence.*

24. *On the aforesaid grounds, Ld. Adjudicating Authority held that all these transactions are sham and involved round tripping of the huge amount.*

25. *We are in agreement with the reasoning of Ld. Adjudicating Authority. Hence, we uphold the findings.*



26. We are of the considered view that the transactions in question between Financial Creditor and Corporate Debtor are sham in nature and do not qualify as Financial Debt, for the purposes of IBC.”

13. The view taken by Hon’ble Supreme Court in Japyee Infratech Ltd. (Supra) was reiterated in Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd. (Civil Appeal No. 2231 of 2021). In the said case, Hon’ble Supreme Court also analysed the connotation of Corporate Debtor and Creditor. Referring to Section 3(8) of IBC, 2016, Hon’ble Supreme Court viewed that a ‘Corporate Debtor’ means a corporate person who owes a debt to any person as per the definition of the expression in Section 3(8) of IBC, 2016. In terms of the view taken by the Hon’ble Supreme Court in the said judgment, a financial creditor is a person who has direct engagement in the functioning of a Corporate Debtor; who is involved right from the beginning while assessing the viability of the Corporate Debtor; who would engage in the restructuring of the loan as well as in reorganisation of the Corporate Debtor’s business when there is financial stress. In other words, the financial creditor, by its own direct involvement in a functional existence of corporate debtor, acquires a unique position, who could be entrusted with the task of ensuring the sustenance and growth of the corporate debtor, akin to that of a guardian. In the context of the insolvency resolution process, this class of stakeholders, namely, financial creditors, is entrusted by the legislature with such a role that it would look forward to ensure that the corporate debtor is rejuvenated and gets back to its wheels with a reasonable capacity of repaying its debts and to attend on its other obligations. Protection of the rights of all other stakeholders, including



other creditors, would obviously be concomitant of such resurgence of the corporate debtor.

14. As far as the present case is concerned, apparently the money was disbursed by the Petitioner to Respondent for a business value of Rs. 6,50,00,000/-. The consideration for the amount given by the Petitioner in advance to Respondent was an increase in supply/production/business. The Respondent was required to place average monthly purchase order worth Rs. 10,83,333/-(excluding Sales Tax/VAT/GST) after discount with Petitioner for the “Sikkens” brand of product manufactured and traded by the Petitioner during the tenure of the Agreement. When the Respondent could not fulfil the yearly target purchase and could not add to the increase in business of the Petitioner, in terms of the Agreement dated 21.11.2017, the Petitioner found it committing the default. With such default, in terms of the Promissory Note dated 21.11.2017, the Respondent became liable to pay Rs. 2,53,50,000/- to the Petitioner. When an amount is not paid, apparently a default is committed.

15. Now, the question arises regarding the date of default. As can be seen from the Agreement, regarding the issue of debt, disbursement and default the present case is in all four of the order dated 20.10.2022 passed by this Adjudicating Authority in the matter of Akzo Nobel India Limited vs. Jivanjyot Motors Private Ltd. As far as the judgment given by Hon’ble Supreme Court in M/s Consolidated Construction Consortium Limited vs. M/s Hitro Energy Solutions Private Limited in Civil Appeal No. 2839/2020 is concerned, in the said case Chennai Metro Rail Limited placed an order for the supply of light fitting upon the Appellant before Hon’ble Supreme Court. In turn, the



Appellant placed the orders with the propriety concerned which was the supplier of Thorn Lighting India Pvt. Ltd. The propriety concerned requested the Appellant for an advance payment of Rs. 50,00,000/-. The Chennai Metro Rail Limited issued a cheque in favour of the Respondent with the condition that the delivery of the light fitting should be in compliance with the schedule provided with the Appellant. Nevertheless, on 02.01.2014 the CMRL informed the Appellant that the project it had been working on stood terminated. The information was communicated to the propriety concern on the same day. Nevertheless, the propriety concern could withdraw the amount of Rs. 50,00,000/-. The Appellant before Hon'ble Supreme could pay the amount to CMRL and demanded the same from the propriety concern. In the meantime, the Respondent before Hon'ble Supreme Court had taken over the propriety concern. Thus, the factual position in the said case was that the CD had not supplied the goods for which money was paid in advance. It was a case where an advance amount of money was paid for the supply of goods. Thus, indubitably it was a case of operational transaction. The plea raised by propriety concern was that the amount was paid directly to CMRL and not to the Appellant before Hon'ble Supreme Court. The NCLT had admitted the application. In terms of the order dated 12.12.2019, Hon'ble NCLAT reversed the order passed by NCLT. Hon'ble NCLAT viewed that the Appellant being a purchaser could not fall in the category of Operational Creditor. Hon'ble Supreme Court found that the Appellant was Operational Creditor. In the present case, the factual position is totally different. Here, the trade advance was given to improve the supply/business. The money was paid not to buy the goods. It was paid to increase the business of the Petitioner. Even



otherwise also, in the present case, the Petitioner was not a purchaser but it had given the money as an incentive to increase its supply and improve its business. Thus, the order passed by Hon'ble Supreme Court relied upon by the Petitioner is distinct in facts. In *Collector of Central Excise, Calcutta vs. Alnoori Tobacco Products and Ors.*, judgment of Hon'ble Supreme Courts ruled thus: -

“11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd, v. Horton 1951 AC 737 Lord Mac Dermot observed:

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.”

12. In Home Office v. Dorset Yacht Co. 1970 (2) AER 294 Lord Reid said, “Lord Atkin’s speech.....is not to be treated as if it was a statute definition. It will require qualification in new



circumstances.” Megarry, J in (1971) 1 WLR 1062 observed: “One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament.” And, in Herrington v. British Railways Board 1972 (2) WLR 537 Lord Morris said:

“There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”

16. The one important aspect which crops up in the present petition is whether the petition is within limitation. The date of default alleged by the Petitioner is 22.05.2022. The basis for espousing said date as the date of default by the Petitioner is the legal notice of demand dated 04.05.2022. Maybe in such cases where the facts do not disclose any other date of default, the default in return of the amount, the debtor is liable to return/repay may be the date on/by which he failed to repay the amount on being demanded. But, in the present case, as can be seen from the Agreement dated 21.11.2017, the default occurred on 01.12.2018, when during the first year of the effective date of Agreement i.e., 01.12.2017, the Respondent was found not entitled to any benefit of adjustment/discount. Thus, the present Petition filed on 28.10.2022 is not within the prescribed period of limitation i.e., the same was not filed within three years from 01.12.2018 i.e., expiry of one year from the date on which the Agreement dated 21.11.2017 came into effect. Clause 9(d)(2) of the Agreement reads thus: -

“(ii) Termination of Agreement by AKZO on account of the events of default shall be communicated to STAN CARS in writing and



STAN CARS shall thereupon immediately repay the trade advance as under:

Occurrence of the event of default	Corresponding trade advance amount to be returned to AKZO together with interest calculated 12% per annum.
Where the event of default has occurred at any time during the first year of the execution of the Agreement.	The whole of the trade advance together with interest. No benefit of adjustment as trade discount in terms of Clause 7 shall be admissible.
Where the event of default has occurred at any time during the second year of the execution of the Agreement.	The balance amount arrived at after giving the benefit of adjustment as applicable for the completion of minimum purchase targets for the first year in terms of Clause 7 together with interest payable on the balance amount.
Where the event of default has occurred at any time during the third year of the execution of the Agreement.	The balance amount arrived at after giving the benefit of adjustment as applicable for the completion of minimum purchase targets for the second year in terms of Clause 7 together with interest payable on the balance amount.
Where the event of default has occurred at any time during the fourth year of	The balance amount arrived at after giving the benefit of adjustment as applicable for the completion of minimum



the execution of the Agreement.	purchase targets for the third year in terms of Clause 7 together with interest payable on the balance amount.
Where the event of default has occurred at any time during the fifth year of the execution of the Agreement.	The balance amount arrived at after giving the benefit of adjustment as applicable for the completion of minimum purchase targets for the fourth year in terms of Clause 7 together with interest payable on the balance amount.

17. In the wake, the captioned petition is rejected being not filed within the prescribed period of limitation from the date of default. It is made clear that nothing viewed herein above will have any bearing on the Civil Suit No. 8944/2021 pending before Civil Judge Senior Division, Ludhiana between the parties to the present proceedings.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)