NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 950 of 2022

[Arising out of Order dated 12.07.2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-IV) in CP No. (IB)60/(PB)/2021]

IN THE MATTER OF:

Mr. Pradeep Tayal,
Director of Suspended Board
M/s. Pytex Jewellers Private Ltd.
A-9, GD-ITL Northex Tower,
Netaji Subhash Place,
Pitampura, Delhi - 110034 **...Appellant**

Versus

1. **M/s. Essbert Fashion Pvt. Ltd.**
B-19/5 3rd Floor, Gali No. 3,
Joshi Colony Patpar Ganj,
Opp. Karishma Apartments Delhi,
North East Delhi – 110092
Email: sameer93gupta@gmail.com **...Respondent**
cirp.ibc@gmail.com **No. 1**

2. **M/s. Sobhagya Enterprises Pvt. Ltd.,**
B-19/5 3rd Floor, Gali No. 3,
Joshi Colony Patpar Ganj,
Opp. Karishma Apartments Delhi,
North East Delhi – 110092
Email: sameer93gupta@gmail.com **...Respondent**
cirp.ibc@gmail.com **No. 2**

3. **M/s. Elambar Enterprises Pvt. Ltd.**
B-19/5 3rd Floor, Gali No. 3,
Joshi Colony Patpar Ganj,
Opp. Karishma Apartments Delhi,

Cont'd.../

North East Delhi – 110092
Email: sameer93gupta@gmail.com ...Respondent
cirp.ibc@gmail.com No. 3

4. M/s. Albatross Homes Pvt. Ltd.,
718 Plot No. 6, Jaina Tower 2,
District Centre, Janakpuri West,
Delhi – 110058
Email: sameer93gupta@gmail.com
cirp.ibc@gmail.com ...Respondent No. 4

5. Mr. Pankaj Khetan,
Interim Resolution Professional,
M/s. Pytex Jewellers Prviate Limited,
K-37/A, Basement, Kailash Colony,
Near Kailash Colony Metro Station
Delhi – 110048 ...Respondent
Eamil: Pankaj.khetan@yahoo.com No. 5

Present:

For Appellant: Mr. Nitesh Jain, Mr. Vatsal Chandra, Advocates

For Respondents: PCA Abhishek Nahta, Advocate Raveena Panika, Advocate Rishabh Sachdeva.

J U D G M E N T

ASHOK BHUSHAN, J.

1. This Appeal has been filed by a Suspended Director of the Corporate Debtor challenging the Order dated 12th July, 2022 passed by the National Company Law Tribunal, New Delhi, Bench-IV (hereinafter referred to as **"The Adjudicating Authority"**) by which order, the Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"The Code"**) filed by the Respondents-Financial Creditors has been admitted by the Adjudicating Authority.

2. Brief facts of the case necessary for deciding this Appeal are:-

(i) The Respondents extended financial facility to the extent of Rs. 3,10,00,000/- to the Corporate Debtor out of which Corporate Debtor returned an amount of Rs. 15 Lacs to Respondent No. 4 on 23rd August, 2018. No document was executed between the parties regarding the transfer of the money.

(ii) On 11th February, 2019, a Demand Notice was sent to the Corporate Debtor by the Respondent Nos. 1,2,3 and 4 demanding repayment of unpaid loan in default. Notice of Demand was separately issued by the Respondent Nos. 1 to 4. For example, Respondent No. 2 issued demand notice on 11th February, 2019 demanding payment of amount of Rs. 2 Crores towards principal amount in default with interest of Rs. 40,85,355/- totaling Rs. 2,40,85,355/-.

(iii) Notice of Demand sent by the Respondents was replied by the Corporate Debtor vide Letter dated 21st February, 2019 stating that loan was given for tenure of 5 years hence the notice has *mala fidely* been issued. Corporate Debtor requested for withdrawal of notice.

(iv) On 6th June, 2019, the Respondents again sent Notices to the Corporate Debtor for repayment of the amount including principal as well as interest.

(v) On 30th November, 2020, an Application under Section 7 of the Code was filed by the Respondent Nos. 1 to 4 jointly claiming a total debt of Rs. 3,66,61,212/-. Corporate Debtor filed a Reply to the Section 7 Petition. The Adjudicating Authority heard the matter on 01st July, 2022 and by Order dated 12th July, 2022 admitted Section 7 Application.

3. Aggrieved by the Order of the Adjudicating Authority, this Appeal has been filed by a Suspended Director of the Corporate Debtor.

4. Learned Counsel for the Appellant challenging the Order submits that there being no loan agreement entered into between the Corporate Debtor and the Respondents there was no financial debt. The conditions required to be fulfilled for a debt to be financial debt were not satisfied in the present case. The deduction of TDS does not prove that Corporate Debtor owed any financial debt to the Respondents. Respondents not being registered under the Banking Regulation Act, 1949, Respondents have no permission, no license under the Banking Regulation Act, 1949 could not have advanced any loan to the Corporate Debtor. The Adjudicating Authority without considering the relevant provisions of the IBC, 2016 has admitted Application under Section 7 of the Code.

5. On behalf of the Respondents, we have heard C.A. who refuting the submissions of Learned Counsel for the Appellant, submits that there were materials enough on record to prove the financial debt. Demand Notice dated 11.02.2019 was replied by the Corporate Debtor where grant of loan was admitted and there was no denial that interest is payable by the Corporate Debtor. The Corporate Debtor deposited TDS which was other than interest from security which clearly proved that loan was taken with interest.

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

7. The financial debt is defined in Section 5(8) of the Code, which is to the following effect:

> *"Section 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 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 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;"

8. For proving a debt to be financial debt, pre-condition which is required to be proved is that debt is disbursed against the consideration for the time value of money. The definition of financial debt is inclusive definition. Section 5(8)(f) of the Code is as follows:

"Section 5(8)

.....

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

9. The word transaction has also been defined in Section 3(33) of the Code which also contains an inclusive definition which is to the following effect:

> *"Section 3(33) "transaction" includes a agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;"*

10. When we revert back to the facts of the present case, there is no loan agreement between the parties which fact is undisputed. Whether there are any other materials on record which may prove that there was any financial debt by the transaction between the parties is the question to be answered.

11. We may first notice the Demand Notice issued by the Financial Creditors to the Corporate Debtor. All the demand notices dated 11/02/2019 and the Replies received from the Corporate Debtor dated 21st February, 2019 are part of Section 7 Application. Demand Notices were sent separately by all the Respondents. The notice dated 11th February, 2019 demanded principal amount as well as the amount of interest by the Financial Creditor. For example, we extract the entire notice dated 11/02/2019 sent by the Respondent No. 1 formerly known as KVM Fashion Pvt. Ltd. which is to the following effect:

> *"To,* *Date:11.02.2019*
>
> *Pytex Jewellers Prviate Limited*
> *Unit No. 200, A-9, GD-ITL,*
> *Northex Tower, Ring Road,*

Netaji Subhash Place
New Delhi – 110034

Subect: Demand notice demand payment in respect of unpaid financial debt due from M/s. Pytex Jewellers Private Limited situated at unit no. 200,A-9,GD-ITL, Northex Tower, Ring Road, Netaji Subhash Place, New Delhi 110034 under Section 7 of the Insolvency and Bankruptcy Code, 2016.

Sir,

1. *This letter is a demand notice issued on behalf of our client "M/s. KVM Fashion Private Limited" demanding payment of an Unpaid Financial debt due from M/s. Pytex Jewellers Private Limited.*
2. *Please find particulars of the unpaid financial debt below:*

Particulars of financial debt

M/s. KVM Fashion Private Limited (Financial Creditor) had provided short term loan to M/s. Pytex Jewellers Prviate Limited having CIN U27205DL200PTC154403 situated at unit no. 200,A-9, GD-ITL, Northex Tower, Ring Road, Netaji Subhash Place, New Delhi 110034 (Debtor) from 9th May 2017 to 2nd June 2017 for an amount of Rs. 2,00,00,000/- (Rupees Two Crore Only), repayable within a year.

Details of disbursement of loan:

S. No.	Date of payment	Payment amount (Rs.)	Mode of payment	Bank
1.	09.05.2017	50,00,000	RTGS	IDBI Bank Ltd.
2.	15.05.2017	40,00,000	RTGS	IDBI Bank Ltd.
3.	15.05.2017	30,00,000	RTGS	IDBI Bank Ltd.
4.	17.05.2017	20,00,000	RTGS	IDBI Bank Ltd.

5.	19.05.2017	10,00,000	RTGS	IDBI Bank Ltd.
6.	02.06.2017	50,00,000	RTGS	IDBI Bank Ltd.
	Total	2,00,00,000		

The said loan is provided for short term (i.e. for 1 year), However, M/s. Pytex Jewellers Private Limited had defaulted in repayment of loan. Details of default are as under:

Principal amount in default : Rs. 2,00,00,000/-

Interest amount in default: Interest at the rate 12% p.a. accruing from 09.05.2017 to date of actual realization – Rs. 40,85,355/-

Total Amount in Default :- 2,40,85,355/-

Following documents are enclosed along with this letter showing loan disbursed to M/s. Pytex Jewellers Private Limited:

a. *Copy of bank statement of IDBI Bank:- Showing Loan of Rs. 2,00,00,000/- disbursed from 09.05.2017 to 02.06.2017.*

b. *Ledger account of M/s. Pytex Jewellers Private Limited in books of accounts of M/s. KVM Fashion Private Limited.*

If you believe that the loan has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us and communicating the same to our client "M/s. KVM Fashion Private Limited" within ten days of receipt of this letter, the following:

a. *An attested copy of the record of electronic transfer of the unpaid amount from the bank amount of the M/s. Pytex Jewellers Private Limited, or*

b. *An attested copy of any record that KVM Fashion Private Limited, B-19/5 T/F Fali No. 3 Joshi Colony Patparganj, Opposite Karishma Appt. New Delhi – 110092 has received the payment.*

We request you to unconditionally repay the unpaid loan in default, in full within ten days from the receipt of this letter.

Details for remittance of payment towards repayment of loan are as follows:

a. *Through RTGS/NEFT*

Beneficiary Name : KVM Fashion Private Limited
Bank Name : IDBI Bank Lapat Nagar Branch
Account No. : 0191102000014447
IFSC : IBKL0000191

b. *Through Cheque – Account payee cheque in favour of KVM Fashion Private Limited*

Failing to pay aforesaid financial debt within 10 days form the receipt of this letter shall result in initiating corporate insolvency resolution process against M/s. Pytex Jewellers Private Limited.

Yours sincerely,
For Soni Chatrath & Co.
Parv Bansal
(Partner)"

12. A perusal of the Demand Notice indicates that in addition to repayment of principal debt of Rs. 2,00,00,000/- and interest amounting to Rs. 40,85,355/- has been claimed. The notices dated 11.02.2019 by all the Respondents were replied by the Corporate Debtor in its Reply dated 21st February, 2019. The Reply to Notices given by the M/s. KVM Fashion Pvt. Ltd. by the Corporate Debtor is as follows:

"To, *21.02.2019*
M/s. KVM Fashion Private Limited
C/o Soni Chatrath & Co.
(Chartered Accountant)
906, 09th Floor, New Delhi House Building
Barakhamba Road, New Delhi – 110001

*Sub: **<u>Reply to your Notice dated 11.02.2019</u>***

Sir,

This is in furtherance to your notice dated 11.02.2019, whereby you have called upon us to repay an amount of Rs. 2,40,85,355/- (Rupees Two Crores Forty Lakhs Eighty Five Thousand Three Hundred Fifty Five Only). The undersigned herein came under utter shock and surprise to receive your notice. The undersigned Director of our company and has always been in a cordial relations from past so many years and on the basis of that relationship, a loan for 2,00,00,000/- (Rupees Two Crores Only) was extended by you, for a tenure of 5 years and repayable on or after 01.06.2022.

Despite knowing the fact that the loan was given for a tenure of 5 years, you have malafidely issued the said notice dated 11.02.2019 in order to unnecessarily pressurize us in the times of our financial crunch. However, if you believe any document to be in your possession, suggesting contrary to the facts as narrated hereinbefore by the undersigned, kindly provide us the copy of the same.

In the light of the facts explained by us you are requested to unconditionally withdraw your notice dated 11.02.2019 and cooperate us as per the terms settled between us at the time of advancement of the aforesaid loan.

Thanking you
Pytex Jewellers Pvt. LTd.
Pradeep Tayal
(Director)"

13. From the Reply given by the Corporate Debtor, the conclusions are inescapable, firstly, the Corporate Debtor admitted grant of loan. The plea taken in the Reply was that loan was granted for a tenure of 5 years. The second conclusion which may be drawn from the Reply is that the claim of interest which was claimed by the Demand Notice was not refuted. Corporate Debtor did not take any plea that no interest is payable.

14. In Section 7 Application, the Financial Creditors have also brought on record Form 16-A for the financial year ending 31st March, 2018 which Form 16-A indicates that TDS was deducted by the Corporate Debtor and deposited under Section 194-A of Income Tax Act, 1961.

15. It is true that deduction of TDS and deposit by the Corporate Debtor does not itself prove that there is any financial debt but deduction of TDS and deposit in Form 16-A under Section 194-A of Income Tax Act clearly proves that the deduction which was deposited was TDS relating to "Interest other than interest on securities". Form 16-A which was filed by the Financial Creditor along with Section 7 Application at least support the case of the Financial Creditors that loan which was granted to the Corporate Debtor was with interest.

16. We have also indicated above that when demand notice was issued demanding both principal and interest, the Corporate Debtor never at the relevant time refuted that no interest is payable or there was no interest with the loan.

17. Learned Counsel for the Appellant relying on a Judgement of this Tribunal in Company Appeal (AT) Ins. No. 251 of 2020 in **"Pawan Kumar Vs. Utsav Securities Pvt. Ltd. & Anr."** submits that there being no loan agreement between the parties, financial debt cannot be proved. It is submitted that in the above case, this Tribunal has also held that deduction of TDS does not prove a financial debt. This Tribunal in paragraph 18 and 20 to 22 laid down following:

> *"18. Thus, we are of the view that on 14.02.2018 aforesaid amount after deduction of TDS has been paid to the Financial Creditor on this basis it cannot be concluded that the transaction in question is a financial debt.*
>
> *.....*
>
> *20. On the other hand, as per the Corporate Debtor in absence of a Financial Contract defined in Rule 3(1) (d) the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 between the Corporate Debtor and Financial Creditor, the transaction cannot be termed as Financial Debt. RBT on 18.02.2013 issued guidelines to Non-Banking Finances Companies for fair practices which states that the Non-Banking Finances Company should convey in writing to the borrower in vernacular language as understood by the borrower by means sanctioned letter or otherwise, the amount of loan sanctioned alongwith the terms and conditions including annulised rate of interest. Thus, it is*

obligatory on the part of the Financial Creditor that there should be a loan agreement in writing only.

21. We have considered the submissions, the Financial Creditor has not furnished any document to show that the transaction in question is a loan transaction. So far as the section 10 of Indian Contract Act and Rule 3(1)(d) of the Rules is concerned we again refer the Prayag Polytech (supra) in which this Tribunal held that:

> *"7. As regard relying on Section 10 of the Contract Act, 1872, in our view IBC is a complete code in itself. Section 238 of IBC has overriding effect on provisions inconsistent with IBC. The 'Financial contract' is defined in "Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules ,2016" Rule 3(1)(d) requires setting out the terms of the financial debt including tenure etc. We find that Appellant has failed to show any record showing financial debt to be there. As such, we are unable to find any fault in the impugned order while rejecting Section 7 application."*

22. With the aforesaid, we are of the view that the Financial Creditor as per the Rule 3(1)(d) is must between the corporate debtor and the financial creditor for setting out the terms of a Financial Debt including the tenure of the Debt, interest payable and the date of repayment. In the absence of such Financial Contract, the Financial Creditor has failed to satisfy that when the debt and interest become due and payable."

18. There can be no dispute to the preposition that on the basis of deduction of TDS it cannot be concluded that transaction in question is a financial debt. In the above judgement, this Tribunal has also referred to a Financial Contract defined in Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Rule 3 (1)(d) of the above Rules defines financial contract in following manner:

> *"Rule 3(1)(d) "financial contract" means a contract between a corporate debtor and a financial creditor setting out the terms of the financial debt, including the tenure of the debt, interest payable and date of repayment;"*

19. Form 1 under above Rule, 2016 contains the details which are required to be submitted in an Application by the Financial Creditors. Part-V of the Form 1 is as follows:

"

PART V PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]	
1.	*PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPNAIES (IF THE CORPORATE DEBTOR IS A COMPANY)*
2.	*PARTICULARS OF AN ORDER OF A COURT, TRIBUAL OR ARBITRAL PANEL (ATTACH A COPY OF SUCH ORDER)*
3.	*RECORDS OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)*
4.	*DETAILS OF SUCCESSION CERTIFICAT,E OR PROBATE OF A WILL, OR LETTER OF*

	ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925)
5.	*THE LATEST AND COMPLETE COPY OF THE FINANICAL CONTRACT REFLETING ALL AMENDMENTS AND WAIVERS TO DATE (ATTACH A COPY)*
6.	*A RECORD OF DEFAULT AS AVIALBLE WITH ANY CREDIT INFORMATION COMPANY (ATTACH A COPY).*
7.	*COPIES OF ENTRIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891) (ATTACH A COPY)*
8.	*LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT.*

20. Column 8 of Part-V refers to list of other documents to prove the existence of financial debt. The Rules thus clearly contemplates that financial debt can be proved on "OTHER DOCUMENTS" also.

21. In the above judgement, in paragraph 21, this Tribunal has held that financial creditor has not furnished any document to show that the transaction is a loan transaction. Present is not a case where no documents have been submitted by the Financial Creditors to prove the transaction as a financial transaction. The documents which were filed, included the demand notice dated 11.02.2019, Reply Notice dated 21.02.2019 (containing the admission of loan by the Corporate Debtor), Form 16-A as well as Balance Sheets were filed.

22. We may refer to recent three-member Judgement of this Tribunal in Company Appeal (AT) Ins. No.183 of 2021 in the matter of **"Arrow Engineering Ltd. Vs. Golden Tobacco Limited"** in which case also there was correspondences and letters between the parties but no MoU was formerly executed containing the conditions of transaction between the parties and contention was raised that there being no written agreement, financial debt is not proved. The Adjudicating Authority took the view that no MoU having been formerly executed, conditions of Section 10 of Contract Act has not been fulfilled. We may refer to paragraph 20 and 21 of the Judgement which are to the following effect:

> *"20. The Adjudicating Authority after referring the Letter of Intent dated 03.06.2011 observed that MoU having not been formally executed is incomplete and does not fulfill the conditions of Section 10 of the Contract Act. The Adjudicating Authority has not adverted to the letter dated 10.10.2011 which was sent by the Respondent and confirmed by the Appellant which letter was treated as MoU by the Respondent themselves in the letter dated 01.02.2012. MoU dated 10.10.2011 having contained the agreement of both the parties, the said letter ought to have been looked into to find out the real nature of transaction between the parties. The Balance Sheet of the Respondent, as noted above, also clearly mentions the aforesaid acknowledgement of amount of Rs. 40.75 Crores as advance which debt is clearly acknowledged and as noticed above in Notes-25(7)(a) in the Balance Sheet of 2014-15, it was mentioned by the Corporate Debtor that in event BIFR directs after-sale of the property, the amount of Rs. 40.75 Crores shall also be refunded with interest to the Appellant. The Adjudicating Authority has not referred to the Balance Sheets which were also part of the Application filed under Section 7 by the Appellant in Part-V under the heading as 'Particulars*

of Financial Debt (Documents, Records and Evidence of Default)'. It is useful to extract Column 3 under the above heading:-

"PART-V

PARTICULARS OF FINANCIAL DEBT (Documents, Records and Evidence of Default)		
3.	*Record of default with the information utility, if any (attach a copy of such record)*	*Balance Sheets for the Financial Years 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2018-2019. Copies of the Balance Sheets are annexed as Exhibit 'G' to 'L' hereto.*

21. When we consider all the above documents and correspondences including the Balance Sheets, the conclusion is inescapable that the amount of Rs. 40.75 Crores advanced by the Appellant was nothing but was a financial debt within the meaning of 'I&B Code' and the Adjudicating Authority committed error in holding that the Appellant is not a 'Financial Creditor'."

23. This Tribunal in the above case referring to documents and correspondences between the parties concluded that financial debt was there despite there being no MoU formerly executed between the parties containing the terms and conditions of transaction. Further when we look into the definition of transaction as contained in Section 3(33) of the Code as extracted above, the definition is an inclusive definition and the provision does not lead to the conclusion that unless there is written transaction between the parties incorporating the terms and conditions of the loan, no transaction can come within the meaning of Section 5(8) of the Code. Financial Debt can be proved from other documents as contemplated in Column 8 of Part-V of Form 1 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as noted above.

24. In the facts of the present case, we are satisfied that loan was granted by the Financial Creditors to the Corporate Debtor which was proved from the materials brought on record by the Financial Creditors.

25. Now we come to the submission of Learned Counsel for the Appellant that the Respondents Financial Creditors has no license under Section 22 of Banking Regulation Act, 1949 hence no Financial Facility could have been extended by the Financial Creditors. Section 22 contains the prohibition that no Company shall carry on banking business unless it holds a license issued on behalf of bank. Section 22 of the Banking Regulation Act, 1949 prohibits banking business. Present is not a case that Respondents are carrying on any banking business hence advancing a loan by the Respondents to the Corporate Debtor is not prohibited by Section 22 of the Banking Regulation Act.

26. We may also notice that as per the provision of Section 5(8) of the Code amount raised from an allottee in Real Estate Projects is treated to be financial debt. If the submission of Learned Counsel for the Appellant is accepted then any amount raised from an allottee shall not be treated as a financial debt since they do not have any license under Section 22 of the Banking Regulation Act, 1949. The definition of Financial Debt as contained in Section 5(8) of the Code is expansive definition and use of the expression "any other transaction" is a wide enough to cover the loan advanced by the Respondents to the Corporate Debtor and we are satisfied that loan advanced by Respondents cannot be disregarded relying on Section 22 of the Banking Regulation Act, 1949.

27. The Adjudicating Authority after considering the materials on record and submissions of parties rightly came to the conclusion that the Financial Debt as claimed by the Respondents were disbursed against the consideration for the time value of money. In paragraph 9, following finding has been made by the Adjudicating Authority:

> *"9. As regard the contention of the corporate debtor that the debt claimed by the applicant is not a financial debt, we are of the view that as per sub-section (7) of section 5 of the Code, only such creditor could be the 'financial creditor' of the corporate debtor to whom a 'financial debt' is owed by the corporate debtor; and, as per sub-section 8 of section 5 of the Code, the key requirement of a financial debt is 'disbursal against the consideration for the time value of money', which includes the events or modes of disbursement as enumerated in sub-clauses (a) to (i) of Section 5(8) of the code. As per the facts of the case before us, we are of the view that the loan was commercial effect of borrowing and element of time value of money. Accordingly, we find no force in the contention of corporate debtor that the debt claimed is not a financial debt."*

28. We concur with the above view taken by the Adjudicating Authority that ingredients of financial debt were fully proved in the facts of the present case.

29. We thus do not find any error in the Order of the Adjudicating Authority warranting any interference in this Appeal. There is no merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

12th January, 2023
New Delhi

Basant B.