

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

IA No.717/MB/C-I/2022

In

CP. (IB) No. 1231/MB/C-I/2021

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

Filed by

Axix Bank Limited,

Reg. Office At: Trishul, 3rd Floor, Opp.
Samartheshwar, Temple Law Garde, Ellisbridge,
Ahmedabad – 380006.

...Applicant

Versus

Mr. Nageswara Rao

Administrator Reliance Capital Limited

Trade World, B-Wing, 7th Floor, Kamala Mills
Compound, Senapati Bapat Marg, Lower Parel, Mumbai
– 400013.

...Respondents

In the matter of

CP (IB) No. 1231 of 2021

Reserve Bank of India

...Financial Creditor

Versus

Reliance Capital Limited

...Corporate Debtor

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Vikram Nankani, Sr. Advocate.

For the Respondent : Mr. Rohan Kadam, Advocate.

ORDER

Per Coram:

1. This Application is filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**IBC/Code**) by **Axix Bank Limited** ("the Applicant"), seeking admission of claims as Financial Creditor of **Reliance Capital Limited** ("the Corporate Debtor"). The Applicant has sought the following prayers:

- (a) Acceptance of its claim of an amount of Rs.1,45,02,42,799.04/- (Rupees One Hundred and Forty-Five Crores Two Lakhs Forty-Two Thousand Seven Hundred and Ninety-Nine and Four Paise only) as Financial Creditor of the Corporate Debtor and;
- (b) Allowing the Applicant to become a member of the Committee of Creditors during the Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor.
- (c) Pass such or further order(s) as this Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.

Brief Facts:

2. In or around April 2019, Reliance Home Finance Limited ("**RHFL**") RHFL proposed the issuance of Commercial Papers to raise funds to meet 'short term working capital requirements'.

3. In order to protect its interest, the Applicant got a tripartite Obligor Undertaking dated April 10, 2019 ("**Obligor Undertaking**") [*Exhibit B at pg. 166 of Vol. II*] executed by Reliance Capital Ltd. ("**CD**") and RHFL to ensure that any dilution of CD's stake ("**Stake Sale**") in Reliance Nippon Life Asset Management Limited ("**Reliance Nippon**") would be utilized towards the payment due under the Commercial Papers.
4. The Applicant agreed to subscribe to the Commercial Papers issued by RHFL of a face value of INR 124 Crore ("**Commercial Papers**") [*Exhibit C, D and E at pg. 178, 181 and 184 of Vol. II respectively*]. The Letters of Offer were issued by RHFL on April 15, 2019 and Deal Confirmation was executed on April 16, 2019. Thereafter, the Commercial Papers were issued on April 16, 2019 by the Issuing and Paying Agent i.e. ICICI Bank Limited.
5. Since the execution of the Obligor Undertaking and the subsequent issuance of the Commercial Papers, CD has diluted and sold its stake in Reliance Nippon (reduced to 4.28% from 42.88%) for which it has realised an amount of Rs. 5500 Crores from the said sale. However, despite the stake sale, CD has failed to make payment towards its payment obligations in relation to the Commercial Papers.
6. The Applicant addressed various letters to the CD for making the payments under the Obligor Undertaking [*Exhibit F, G and H at pg. 187, 189 and 191 of Vol. II respectively*], however, no response was received from the CD. The Applicant issued a legal notice dated October 10, 2019 [*Exhibit I at pg. 194 of Vol. II*] to CD and

RHFL for payment of an amount of approx. INR 120 Crore pursuant to their obligation under the Obligor Undertaking.

7. Thereafter, the CD was admitted into CIRP and the Public Announcement was made by the Administrator on December 07, 2021 [*Exhibit J at pg. 199 of Vol. II*]. Accordingly, the Applicant filed FORM C dated December 20, 2021 [*Exhibit K at pg. 201 of Vol. II*] submitting its Claim as a Financial Creditor of the CD. The Applicant claimed that the CD was a guarantor under the Obligor Undertaking.
8. The Administrator rejected this Claim filed by the Applicant vide its email dated January 24, 2022 [*Exhibit L at pg. 214 of Vol. II*] stating as per the terms of the Obligor Undertaking, the CD has not guaranteed to discharge the obligations of RHFL in case of a default. Further, the Administrator also requested the Applicant to submit the proof of claim in the appropriate form under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
9. Thereafter, the Applicant filed its claim again in the capacity of Financial Creditor vide Form C dated February 25, 2022 [*Exhibit M at pg. 217 of Vol. II*], however, the Applicant did not withdraw its previous Form C.
10. The Administrator rejected the Form C dated February 25, 2022 vide email dated February 28, 2022 [*Exhibit N at pg. 226 of Vol. II*] stating, "*We note that the Obligor Undertaking (as defined below) is an undertaking for the purposes of utilizing money/proceeds from the sale of*

Reliance Nippon Life Asset Management Limited shares in a certain manner and not for paying/repayment of financial debt of Reliance Home Finance Limited. Therefore, the claim of Axis Bank as a financial creditor of RCL cannot be admitted."

Submissions on behalf of the Applicant:

I. The Obligor Undertaking is in the nature of a Guarantee towards the payments under the Commercial Papers:

11. Clause 2 of the Obligor Undertaking has been wholly misread by the Respondent inasmuch as it clearly states that the CD has an obligation to make payment due under the Commercial Papers. It is submitted that the obligation to pay under the Commercial Papers is crystallized upon the occurrence of the Stake Sale. It is pertinent to note that the Stake Sale has not been disputed by the Respondent. Further, it is submitted that the terms of a guarantee under Section 126 of the Contract Act, 1872 are not required to be in a specified format. It is submitted that if the terms of the Obligor Undertaking and the Commercial Papers are read as a whole, the obligation of the CD to pay the dues under the Commercial Papers is clearly made out. Reliance is placed on a judgment dated 13.11.2019 passed by this Hon'ble Tribunal in MA No. 1124/2019 in CP No. 2714/2018. The relevant paragraph is reproduced hereinbelow:

"Now, the points for consideration are basically of two-fold whether the documents relied upon by the Respondents for being considered as Financial Creditors are correct and will the same fasten any liability on the Corporate Debtor who is projected as obligor/guarantor as the case may be. The basic principle is that "Documents speak for themselves", a simple verification of the above documents infact are sufficient enough to conclude that the Corporate Debtor has a liability

to pay the amounts as claimed in the documents. Any amount of interpretation from the side of the Applicants that there is no privity of Contracts or the term 'obligor does not bind them, nor documents does not directly or indirectly connect the Claimants with that of the Corporate Debtor, is of no consequence or for consideration,"

12. The Definition of 'Obligor' under SARFAESI Act, 2002 is, *"Obligor means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower."*
13. Further, *"financial asset means debt or receivables and includes (1) a claim to any debt or receivables or part thereof, whether secured or unsecured; or..."*. Since Commercial Paper is an unsecured money market instrument issued in the form of a promissory note, it can be classified as a financial debt under **Section 5(8)(c) of IBC**, *"any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;"* and the CD has a **contingent obligation to pay the aforesaid debt**, either in whole or in part, depending on the value of the Stake Sale.
14. Therefore, once the Stake Sale has materialized, the CD has the obligation to pay the Financial Debt i.e. the amount due under the Commercial Papers pursuant to the Obligor Undertaking and the Applicant should be classified as a Financial Creditor.
15. The contention of behalf of the Administrator that there is no promise to perform or pay in case of default by RHFL (Issuer of the Commercial Papers) on the part of the Obligor (Corporate

Debtor) is belied by the express language of Cause 2 of the Obligor Undertaking. The sale of shares/stake in Reliance Nippon Asset Management Company Limited by RHFL, is only a trigger event for ascertaining the due date for payment. It does not absolve the Corporate Debtor (Obligor) from the liability to pay, on account of default by RHFL, as is clear from the words "*..... or otherwise, including.....*" and in the manner provided for in sub-clause (a) and (b), which payment mechanism is independent of the proceeds of stake sale referred to above. Admittedly, RHFL has not paid the Applicant. Consequently, the liability of the Corporate Debtor gets triggered to discharge the financial debt, which the corporate debtor is obliged to pay to the Applicant.

II. Due Amount under Commercial Papers is a Financial Debt under Clause 5 (8) (i) of IBC:

16. The Obligor Undertaking provides for an indemnity clause (Clause 6), wherein the CD has indemnified the Applicant against any breach of the Obligor Undertaking by the CD or RHFL, including but not limited to any losses, liabilities, damages, judgments, settlements, and expenses, incurred or suffered by the Applicant arising out of or resulting from any breach by the CD or RHFL of any of the terms of the Obligor Undertaking. It is an admitted position that RHFL has not paid any amount under the Commercial Papers, therefore, the obligation of the CD to indemnify the Applicant in case of any default of the Obligor Undertaking (after the Stake Sale has happened) has arisen since the Obligor Undertaking has been breached.

17. Therefore, the obligation of the CD can be termed as a financial debt under Clause 5(8) (i) i.e., *"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."*

III. Due Amount under Commercial Papers is a Financial Debt under Clause 5 (8) (f) of IBC:

18. The Obligor Undertaking specifically refers to making payments under the Commercial Papers issued by RHFL to the Applicant i.e., discharging a '**financial debt having a commercial effect of a borrowing**'. The Obligation to pay under the Obligor Undertaking gets triggered upon occurrence of the Stake Sale, creating an independent payment obligation (of a financial debt) of CD towards the Applicant.
19. That the present transaction under the Obligor Undertaking and the subsequent issuance of Commercial Papers has a commercial effect of borrowing in terms of Section 5(8)(f) of the Code, wherein the repayment obligation of the borrowed amount was always that of Corporate Debtor. The Obligor Undertaking clearly refers to payments under 'Commercial Papers'. Therefore, in order to ascertain the nature of the debt obligation, it is imperative to refer to both the documents together and look at the transaction as a whole.
20. The language used in the Obligor Undertaking is expressly clear that there is a payment obligation towards the amount under the Commercial Papers.

21. The Administrator rejected the Applicant's claim stating that:

"... We note that the Obligor Undertaking (as defined below) is an undertaking for the purposes of utilizing money/proceeds from the sale of Reliance Nippon Life Asset Management Limited shares in a certain manner and not for paying/repayment of financial debt of Reliance Home Finance Limited. Therefore, the claim of Axis Bank as a financial creditor of RCL cannot be admitted..."

The reasoning provided by the Administrator is contrary to the above explanation that the CD's obligation is with respect to payment of financial debt of RHFL.

Submissions on behalf of the Respondent/Corporate Debtor:

22. On April 16, 2019 the Applicant had subscribed to commercial paper of Rs.124 Crores issued by Reliance Home Finance Limited ("RHFL"). The Applicant, RHFL and the Corporate Debtor had also executed on "Obligor Undertaking". Under this 'Obligor Undertaking' the Corporate Debtor had undertaken to utilize the sales proceeds generated from the sale of all or any portion of its or its affiliates' shareholding in Reliance Nippon Life Asset Management Ltd ("RNLAM") towards making payments to the Applicant in respect of the Commercial Papers issued by RHFL. [See Clause 2 of Exhibit B/pg. 170. Vol II of Appn.].

23. On the basis of this 'Obligor Undertaking', the Applicant submitted two Form C Claims dated December 20, 2021 [See Exhibit K of Appn/Pg. 201 Vol II of Appn.] & February 25, 2022 [See Exhibit Mof Appn/Pg.217 Vol II of Appn.] to the Administrator seeking admission into the Committee of Creditors

as a 'Financial Creditor' on the footing that the 'Obligor Undertaking' constituted 'financial debt' under the Code. Both Form C claims were rejected by the Administrator vide communication dated January 24, 2022 [**See Exhibit K of Appn/Pg.214 Vol II of Appn.**] & February 28,2022 [**See Exhibit K of Appn/Pg.226 Vol II of Appn.**]

24. The Applicant was directed to file its claim via the appropriate form [**See Exhibit K of Appn/Pg.233 Vol II of Appn.**]
25. By this Application, the Applicants seeks the issuance of Orders by this Tribunal for admitting it as a 'financial creditor' into the Corporate Debtor's committee of Creditors (**Coc**) on the strength of the 'Obligor Undertaking' bearing a 'financial debt' under section 5(8) of the code. [**See reliefs sought /Vol.I, Pg. 10-11 of Appn.**]
26. The Applicant contends that it is owed a 'financial debt' under the following two grounds;
 - I. It is asserted that eh 'Obligor undertaking' is and /or asking to a 'Guarantee' and therefore it attracts the definition of 'financial debt' under Section 5(8) of the Code.
 - II. Alternatively, it has urged that the 'Obligor Undertaking' and the Commercial papers must be construed together to constitute 'financial debt' under Section 5(8) of the Code.

27. These contentions are not sustainable in law for the reasons elaborated hereinbelow. These reasons must be assessed and examined in the following factual backdrop.

Sr. No.	Date	Event	Reference
1.	April 10, 2019	The Applicant, the corporate Debtor and RHFL executed the “Obligor Undertaking”. Under this Agreement, the corporate Debtor had merely undertaken to utilize proceeds arising from the sale of all or any portion of shareholding held by it or its affiliates in RNLAM towards purchasing the Commercial Papers from the Applicant or infuse funds into RHFL to redeem the Commercial papers issued by RHFL.	Exhibit B/pg.170, Vol II of Appn.
2.	April 16, 2019	The Applicant subscribed three commercial Papers issued by RHFL, of (i) INR 39 crores, (ii) INR 41 crores; and (iii) INR 44 crores (Total amount of INR 124 Crores)	Exhibit C/Pg. 178, Exhibit D/Pg. 181, Exhibit E/Pg. 184 of Vol II of Appn.
3.	December 06, 2021	The Hon’ble Tribunal admitted the Corporate Debtor into the Corporate insolvency Resolution Process (“CIRP”). It further appointed the Respondent, Mr. Nageswara Rao Y as the Administrator to discharge the functions of the Interim Resolution Professional/ Resolution Professional.	
4.	December 07, 2021	The Administrator issued a public announcement declaring the commencement of CIRP of the Corporate Debtor and	Exhibit J/Pg. 199, Vol II of Appn.

Sr. No.	Date	Event	Reference
		invited claims from creditors to be submitted on or before December 20,2021.	
5.	December 20, 2021	The applicant submitted its claim under Form C (Proof of claim of Financial Creditor) for INR 1,44,85,03,128.04/- as on December 06,2021, with the Administrator. Under this Form C, the Applicant arrayed RHFL as the Principal borrower and the Corporate Debtor as a guarantor. The Applicant sought to be declared as a 'financial creditor' on the basis of the 'Obligor Undertaking'	Exhibit K of Appn/Pg. 201, Vol II of Appn.
6.	January 24, 2022	The Administrator rejected the Applicant's claim for 'Financial Debt' by <i>inter alia</i> stating that the Corporate Debtor (by way of the 'Obligor Undertaking' _ had not furnished a guarantee in terms of the Indian Contract Act, 1872. The Administrator further, instructed the Applicant to file its claims under the appropriate form (other than Financial Creditor)	Exhibit L of Appn/Pg.241, Vol II of Appn.
7.	February 25,2022	The Applicant fled a second Form C with the Administrator seeking to be declared as a 'Financial Creditor' in respect of the 'Obligor Undertaking'. In this Form C, the Applicant now arrayed the Corporate Debtor as the principal borrower. It further alleged that the 'Obligor Undertaking' and 'Commercial Papers' issued by RHFL must be construed together to constitute a 'financial debt' under Section 5(8) of the Code. Along with a	Exhibit M of Appn./Pg. 217, Vol II of Appn.

Sr. No.	Date	Event	Reference
		legal opinion from its counsels to the Administrator.	
8.	February 28,2022 and March 03, 2022	The Administrator rejected the Applicant's second Form C previously and requested the Applicant to file its claim under the appropriate form (other than Financial Creditor).	Exhibit N/Pg.226 and Exhibit O/Pg.233, Vol II of Appn.
9.	March 10, 2022	Applicant filed the present IA.	

I. The Obligor undertaking is not a Guarantee that attracts the definition of 'financial debt' under section 5(8) of the code:

28. The Terms 'Guarantee' is defined under section 126 of the Indian Contract Act, 1872 to mean,

126. "Contract of Guarantee", "Surety", "principal debtor" and "Creditor". - "A contract guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety" the person in respect of the whose default guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

29. Thus, Section 126 postulates that a 'guarantee' must possess the following twin essential attributes'

I. First, there must be a contract to perform or discharge the liability of a third party.

II. This contract to perform a third party's promise must in case of that third party's default.

30. The promise to perform in the event of a default by a third party is **a basic ingredient of a 'guarantee' and is a *sin quo non*. This basic ingredient is lacking in the present case.**
31. Under the 'Obligor Undertaking", **the Corporate Debtor has not promised in the event of RHGL'S default,** to perform RHFL'S obligation to pay under the Commercial Papers or discharge RHFL'S liability.
32. The Obligor undertaking is a merely a contingent contract, whereby the Corporate Debtor had undertaken *inter alia* that upon the sale of its or its affiliates shares in RNLAM, It would use the proceedings to use the proceeds to purchase the Commercial Papers from the Applicant or infuse funds into RHFL to redeem the Commercial Papers issued by RHFL. This undertaking was not premised on RHFL'S default in serving the Commercial Papers, a basic ingredient of a 'guarantee'.
33. In *Phoenix ARC(P) Ltd. V. Ketulbhai R. Patel* (Paras 24-25, 2021 2 SCC 799), an argument was advanced before the Supreme Court that a Pledge Agreement was a 'guarantee'. The Supreme Court negated this contention after analysing and applying the definition of 'guarantee' under Section 126 of Contract Act. **It held that the Pledge Agreement was not guarantee since the Corporate Debtor had not entered into a contract to perform the promise or discharge the liability of a borrower in case of his default.**
34. The principals in Phoenix ARC's case apply here. The 'Obligor Undertaking' lacks a covenant/promise to perform in case of

RHFL (borrower's) in servicing the Commercial paper. It is thus not a guarantee, and it does not attract the definition of 'financial debt' under Section 5(8) of the Code.

35. It is the highest form of security.

II. The Applicant does not owe a 'financial debt' under section 5(8) of the code:

36. The Applicant has alternatively urged that the 'Obligor Undertaking' and the issuance of Commercial Papers construed together is a 'financial debt' u/s 5(8) of the Code. Even this contention is not legally sustainable.

37. 16. Section 5(8) reads as under;

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-

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

38. The Corporate Debtor does not owe such a 'financial debt' for the following reasons.

I. The Applicant itself commercially understood the 'Obligor Undertaking' as not having the 'Commercial effect of borrowing.

a. In its first Form C [*See Exhibit K of Appn/Pg.201, Vol II of Appn.*], the Applicant specifically took the plea that RHFL Was the principal borrower, and Corporate Debtor was only a 'guarantor'.

Thus, whilst espousing this position, the Applicant communicated its own commercial understanding that the Corporate Debtor was not the

borrower but had acted as assurance /security provider.

II. Even in law there is no 'financial debt' owned to the Applicant under Section 5(8) of the Code;

a. The 'sin qua non; of every 'financial debt' is that there must be a disbursal of money against time value vis a vis the Corporate Debtor. This position in law was lid down by the *Supreme Court in para 46 of Anuj Jain v Axis bank (2020 8 SCC 401).*

i. In Anuj Jain's Case, money had been disbursed to Jaypee Associates Ltd ("JAL") and mortgages were created in favour of the lenders on the assets of the Jaypee Infratech Ltd. ("JIL").

ii. Axis Bank who held a mortgage on JIL's assets argued that it was a financial creditor of JIL even though money had not been directly disbursed to JIL against time value. *(See Para 40.1.4 of the Judgment).*

iii. Standard Chartered Bank ("SCB") had similarly disbursed money to JAL and had a mortgaged JIL's assets in its favour. SCB argued that it was a 'financial creditor' of JIL on the ground that the mortgaged contained an unequivocal promise by JIL to pay JAL's debts. *[See Para 40.3 of the Judgment).*

iv. Both arguments were negated by the Supreme Court which held that the basic and essential element of a

‘financial debt’ was a disbursal against consideration for value of money *vis a vis* the Corporate Debtor [*See paras 46-50 of the Judgment*].

39. In the present case, it is an admitted position that there has been no disbursal to the Corporate Debtor for consideration against the time value of money.
40. In *Pioneer Urban Land and Infrastructure Ltd & Anr. V. UOI & Ors. (Paras 75-76, 2019 8 SCC 416)*, one of the questions that arose for consideration was whether flat purchasers were always considered as ‘financial creditors’ under the Code.
- i. The Court ruled that flat purchase agreements attracted the definition of ‘financial debt’ under Section 5(8) of the Code and that flat purchasers were ‘financial creditors’.
 - ii. It held that flat purchasers were financial creditors since they had disbursed money under a Flat Purchase Agreement to the builder for consideration (i.e. a flat) against the time value of money and which had ‘commercial effect of borrowing’ under section 5(8) (f).
 - iii. The Supreme Court observed that the expression ‘borrow’ *inter alia* meant *to obtain or receive (something, such as money) on temporary use*. It further observed that the expression ‘Commercial’ *inter alia* meant, “having profit as the main aim.” [*See paras 75-76 of the Judgment*]

iv. In other words, for transaction to have a 'commercial effect of borrowing, money must be lent and/or received by the Corporate Debtor for temporary use with 'profit as the main aim'.

41. On going through the facts and submissions of the Applicant and the Corporate Debtor it is concluded that the Applicant has not established that the money was disbursed to the Corporate Debtor and hence the question of default on the part of the Corporate Debtor does not arise.

42. We also Applied the principles enunciated in *Anuj Jain and Piorneer's case*. It is apparent that no 'financial debt' is owed to the Applicant under Section 5(8) of the Code since;

- i. There has been no disbursement to the Corporate Debtor against consideration for the time value of money.
- ii. Disbursement has been made to independent juristic person. i.e. RHFL under the Commercial Papers.
- iii. No money has been lent to the Corporate debtor for 'temporary use.' In other words, there has been no borrowing by the Corporate Debtor.
- iv. **RHFL** had a 'commercial interest' in the Commercial papers since the same was subscribed by the Applicant. The Corporate Debtor did not have a 'Commercial interest' in the same.

43. For these reasons, the Applicant's contention that it is owned a financial debt under Section 5(8) of the Code is not sustainable in law.
44. Any reliance on the indemnity clause of the 'Obligor Undertaking' is also misplaced. Said indemnity clause [*See Clause 6 of Exhibit B/Pg. 171, Vol II of Appn.*] only relates to a breach of the Agreement itself. It is not an indemnity issued in respect of the Commercial Papers issued by RHFL.
45. Plainly, is not an indemnity that would constitute 'financial debt' under Section 5(8) of the Code. As stated above, the obligations under the Undertaking do not attract the definition of 'financial debt'. A *fortiori*, an indemnity of the obligations under the Agreement will equally not constitute a 'financial debt' under Section 5(8) of the Code.
46. Finally, and pursuant to the Tribunal's directions by order dated May 10, 2022, the Respondent has filed an Additional Affidavit dated May 27, 2022 with financial statements for FY 2019-2020 and 2020-2021. In these statements, the 'obligor Undertaking' and/or the Commercial Papers issued by the RHFL are not reflected therein as a liability. [*see Financial Statements at Annex. B of Additional Affidavit*].
47. For the reasons stated hereabove, it is construed as that the Applicant does not owed a 'Financial Debt' under the Code.

Without proof of disbursement, the said amount cannot be claimed as financial debt, as a disbursement is a sine qua non for any debt to fall within the ambit of the definition of financial debt. Reliance is placed on Judgment of the Hon'ble NCLAT in *Dr. B.V.S Laxmi Vs. Geometrix Laser Solution Private Limited [2018] 142CLA321:*

“30. In the present case, the Appellant has failed to bring on record any evidence to suggest that she disbursed the money has been made against 'consideration for the time value of money'. There is nothing on the record to suggest that the Respondents borrowed the money. In absence of such evidence, the Appellant cannot claim that the loan if any given by the Appellant comes within the meaning of 'financial debt' in terms of sub-section (8)(a) of Section 5 of the 'I & B Code’.”

48. For the aforesaid reasons, the above Application is liable to be rejected. Accordingly, the IA NO. 717/2022 In C.P. (IB) No. 1231/MB/C-I/2021 is disposed as rejected.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)
07.10.2022
SAM

Sd/-

JUSTICE P. N. DESHMUKH
MEMBER (JUDICIAL)