

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/IB/115/CHE/2021

*(filed under section 7 of the Insolvency and Bankruptcy Code,2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016)*

In the matter of *The Mahalakshmi Textile Mills Limited*

VISVAS PROMOTERS PRIVATE LIMITED

Represented by its Managing Director

Mr. Sankar Iyer Seetharaman

Registered Office at

Sree Meenakshi Nilayam,

Vasudhara Enclave,

84, T.P.K. Road,

Andalpuram,

Madurai – 625 003

...Applicant/Financial Creditor

-Vs-

THE MAHALAKSHMI TEXTILE MILLS LIMITED

Pasumolai P.O.,

Madurai – 625 004

...Respondent/Corporate Debtor

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *Karthik Seshaadri, Advocate
Abhinav Parthasarathy, Advocate*

For Respondent : *Chandramouli Prabhakar, Advocate*

Order Pronounced on 15th November 2023

ORDER

(Heard through physical mode)

This is an Application filed by **VISVAS PROMOTERS PRIVATE LIMITED** (hereinafter the “Financial Creditor”) against **THE MAHALAKSHMI TEXTILE MILLS LIMITED** (hereinafter the “Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor herein.

2. In Part-I of the Application, it is stated that the Financial Creditor is a Private Limited company incorporated on 11.09.2000 with CIN: U45201TN2000PTC045690. In Part – II of the Application, it is stated that the Corporate Debtor was incorporated on 14.09.1925 with CIN: U99999TN1925PLC001605 and the Registered office of the Corporate Debtor is situated at Pasumolai P.O., Madurai – 625 004.

3. In Part – III of the application, the Financial Creditor has proposed one D. Sangamithra with Registration No: IBBI/IPA-001/IP-N00712/2018-2019/12319 as the “Interim Resolution Professional” of the Corporate Debtor. The Written Consent of the IRP is appended at Page 273 of the Application.

4. In Part-IV of the Application, a total sum of Rs.28,55,30,262/- (Rupees Twenty Eight Crore Fifty Five Lakhs Thirty Thousand Two Hundred and Sixty Two Only) including interest @ 18% p.a. has been claimed by the Financial Creditor as the Financial debt, due and payable by the Corporate Debtor. The Date of Default is stated to be 22.02.2021.

CASE OF THE APPLICANT / FINANCIAL CREDITOR

5. Learned Counsel for the Financial Creditor submitted that the Corporate Debtor approached the Financial Creditor seeking monies at various stages towards settling all the dues that had accrued over time. It is stated that the Financial Creditor at the request of the Corporate Debtor made the payments to clear various dues of the Mills through and / or on behalf of the Corporate Debtor and as such the Financial Creditor financed the Corporate Debtor from 2006 to 2021.

6. It is stated that the Financial Creditor settled the dues of the Corporate Debtor to various people, agencies, workmen and employees and statutory authorities over a period of time and the Corporate Debtor also acknowledged its liability to a sum of Rs.7,67,88,316/- (Rupees Seven Crores Sixty Seven Lakhs Eighty Eight Thousand Three Hundred and

Sixteen only) as on 31.03.2020 vide its letter dated 20.05.2020, without considering the other dues.

7. It is submitted that the Financial Creditor further lent a substantial sum of money between September and November 2020 and the Corporate Debtor has so far repaid only a sum of Rs.1,42,48,163/- (Rupees One Crore Forty Two Lakhs Forty Eight Thousand One Hundred and Sixty Three only) between 21.09.2020 and 05.10.2020. It is submitted that the Corporate Debtor had promised the Financial Creditor that all the remaining dues would be settled by the Financial Year 2021, however, the Corporate Debtor defaulted in repayment of the said dues.

8. It is submitted that the Financial Creditor had agreed to convert Rs.5,00,00,000/- (Rupees Five Crore Only) paid towards the sale value pertaining to a Bungalow at Chokkikulam, Madura as loan at the request of the Corporate Debtor. Thereafter, a preliminary demand was made vide letter dated 20.05.2021 by the Financial Creditor to the Corporate Debtor, which remains unanswered till date.

9. It is submitted that the Corporate Debtor has not repaid any amounts despite availing these funds from time to time and cannot now deny that it is not a loan. It is stated that there is no scope of the Company's

operations being revived and it is necessary that the Company be admitted into Insolvency so that the existing Management is superseded in the interest of the Company and all other stakeholders.

10. It is submitted that the Corporate Debtor has admitted in the Memorandum of Settlement under Section 18(1) of the Industrial Disputes Act dated 09.09.2020 that the monies received from the Applicant are in the nature of Loans. It is submitted that the Corporate Debtor, who is a signatory to the Sale Deed dated 22.02.2021 has acknowledged various recitals in the said Sale Deed which would show that the Corporate Debtor has acknowledged receipt of monies from the Applicant in the nature of loans and is also privy to the contents of the Board Resolution dated 16.10.2020 of the Applicant through which the same has been converted in its Books and as such it cannot claim ignorance of such terms.

11. It is submitted that the Corporate Debtor has acknowledged receiving Rs.15,58,07,794/- and a reading of the said registered document would show that the Corporate Debtor had joined the execution of the document, confirmed the various transactions and also confirmed the factum of the simple interest of 18% on the amounts that it had borrowed in order to tide over its difficulties.

12. It is submitted that even Interest portion is ignored, the principal outstanding is Rs.15,58,07,794/- and therefore the amount due is more than one crore for the Application to be admitted into CIRP under Section 7 of IBC, 2016. It is stated that the Corporate Debtor has admitted a portion of the money outstanding by it as on 31.03.2020 for a sum of Rs.7,67,88,315/-. It is submitted that since the debt is more than a sum of Rs.1 Crore, this is a fit case for admission into CIRP.

13. It is submitted that the Sale Deed dated 22.02.2021 was executed jointly between the Applicant and the Respondent with Mr. I Vetrivel. It is stated that the Respondent had initially transferred the said Property on 24.09.2012 in favour of the Applicant, however a legal opinion was obtained and it was opined that the Sale Deed dated 24.09.2012 was not done with proper permission of the Board as per the Companies Act and thus demanded the difference between the sold value and present day market value. Accepting such advise, the Applicant and the Respondent jointly sold the said property and divided the Sale Proceeds of Rs.8.5 Crores.

14. It is stated that the Corporate Debtor has so far repaid a sum of Rs.8,50,52,663 inclusive of the proceeds of the Sale Deed dt 22.02.2021

and is in default for a sum of Rs.28,55,30,262 and cannot escape on a technicality that the monies were in the nature of an Advance and not a Loan.

REPLY OF THE RESPONDENT / CORPORATE DEBTOR

15. The Corporate Debtor / Respondent in reply has submitted that the Applicant is not a Financial Creditor and that there is no '*Financial Debt*' as per the provisions of the IBC, 2016. It is stated that there is no Written Agreement / Financial Contract between the Financial Creditor and the Corporate Debtor. It is submitted that the instant petition filed by the petitioner seeking initiation of CIRP against the Corporate Debtor is based on a false claim and with a *mala fide* intention. There is no 'financial debt' or 'disbursement' against time value of money and consequently there is no 'default' committed by the Corporate Debtor in order to trigger the provision of IBC, 2016.

16. It is stated that in Part – IV of the Application, the Financial Creditor has mentioned the '*Date of Default*' as 22.02.2021 and as such the said Date of Default falls squarely within the period stipulated under Section 10A of IBC, 2016 i.e. from 25.03.2020 to 25.03.2021. In the said

circumstances, the Financial Creditor cannot file an Application under Section 7 of IBC, 2016.

17. It is stated that the Corporate Debtor is a Company incorporated in the year 1925 under the provisions of the Indian Companies Act, 1913. The Company had a huge Textile Mill in Madurai. Due to various labour unrests in the factory, the Corporate Debtor which was a hugely profitable venture until the 1970's had to be shut. The Ministry of Handloom unsuccessfully attempted to run the said Company between the years 1990 to 1996, and the said mill was once again closed in the year 1996 due to labour unrest.

18. It is stated that the Hon'ble High Court of Madras commenced the Winding Up proceedings of the Corporate Debtor under the provisions of Companies Act, 1956 in CP No. 68/1985. The Managing Director's father Mr. A.L. Lakshmanan, in his capacity as a Shareholder of the Corporate Debtor, after settling various debts of the Corporate Debtor successfully applied for revival of the said Company before Hon'ble High Court and the order of Winding up was revoked by the Hon'ble High Court vide an order dated 22.12.2006.

19. It is submitted that when Mr. AL Lakshmanan (one of the Shareholders of the Corporate Debtor) was taking steps to revive the Company, the said Mr. S. Subramaniam claimed to represent the interests of the Company based upon a purported Memorandum of Understanding dated 13.10.2004. It is submitted that at that juncture, the Financial Creditor approached the said Mr. S. Subramaniam to purchase one of the valuable properties of the Company at a throwaway price. In this regard, the Hon'ble Madras High Court in W.P. 1476 of 2005 vide its order dated 08.09.2008 held as under;

18. *It is in this factual background, the claim of the parties will have to be determined. The MTML is a company and property owned by the company cannot be dealt with other wise than resorting to legal provisions. As of now, there are statutory claims by ESI, PFO, Commercial Tax Department, Punjab National Bank and ICICI Bank. This is apart from the dues payable to the workmen in terms of the labour enactments. The respective creditors have attached the properties of the mills under various statutory enactments. The Nationalised Bank (PNB) had also moved the DRT to recover the dues from MTML before the DRT. **In this background, the right of the so called power agent S Subramanian to enter into any deal with the properties of the MTML and deal with the same on the basis of the so called MOU between him and then Managing Director dated 13.10.2004 is doubtful. It has got no legal sanction. Also, it is not even a registered documents even for looking into it.***

19. *The power of the Managing Director to enter into such an MOU without involving the entire company is also questionable. Even otherwise the said Subramanian had not complied with the*

conditions made by this Court in WA. No. 28 of 2006 dated 01.03.2006. Further the modification application filed by him in W.A. 160 of 2006 was not bonafide as he did not pay the dues agreed by him. He cannot enter into the company with a so called MOU and try to sell the properties of the Company especially when several statutory attachment orders are slapped over the properties of MTML by various statutory authorities. Unless those attachment orders are raised in a manner known to law, the question of getting of any direction from this Court to sell the properties by sale or otherwise is not permissible. Fortunately, the said Subramanian had not obeyed the orders of the Division Bench dated 01.03.2006 and 24.05.2006 and therefore, he cannot be allowed to touch the properties of the MTML. Even persons who claim to be bonafide purchasers of the properties cannot question the sale brought about by the Commercial Tax Department."

20. It is stated that the Financial Creditor entered into an Agreement with Mr. S. Subramaniam on 22.03.2007 in order to acquire the property of the Corporate Debtor. It is stated that inter – se agreement purportedly executed by the Financial Creditor with S. Subramaniam, is an unregistered agreement, wherein the Corporate Debtor was not even a signatory.

21. It is submitted that the said Sale could not go through since the Financial Creditor realized that the said Mr. S. Subramaniam had no rights whatsoever to validly convey any title or sell any properties or any of the assets of the Corporate Debtor. Only thereafter, the Applicant

directly dealt with the Managing Director of the Corporate Debtor since the year 2010. However, it was never agreed between the parties that the said dues shall ever be treated as a "Loan" to the Corporate Debtor.

22. It is submitted that any communications / correspondences or any discussions between the years 2006-2010 and any *inter-se* dealings between the Applicant and Mr. S. Subramaniam cannot form the subject matter of the instant proceedings. Further, criminal proceedings are pending before the jurisdictional Police Authorities regarding the very same amounts and thus the Financial Creditor is estopped from claiming the said amounts from the Corporate Debtor under the garb of a Financial Debt, especially when the said amounts were paid directly to Mr. Subramaniam and not to the account of the Corporate Debtor.

23. It is submitted that the Applicant herein has filed a case before the Police Authorities under Section 420 of the Indian Penal Code against Mr. S. Subramaniam (bearing F.I.R. No. 11 of 2019) before the Central Crime Bureau, Madurai claiming that they had paid money to tune of Rs.4.50 Crores to Mr.S. Subramaniam. It is submitted that the said sum also form part of the Claim which has been filed before this Tribunal as one of the so-called debts "advanced" to the Corporate Debt. This has been

conveniently suppressed before this Tribunal by the Applicant and the said FIR is still being investigated.

24. It is submitted that the Secretarial Compliance Report of the Financial Creditor from the Financial year 2006 – 2007 to 2013 – 2014 clearly shows that no loans were provided by the Financial Creditor to the Corporate Debtor.

25. It is submitted that interest rate at 18% p.a. as claimed by the Financial Creditor in Part – IV is untenable and without any basis. It is stated that the Financial Creditor in Para 4 of its notice dated 20.05.2021 claims that *“You have promised to repay the loan with interest @ 15% p.a. with quarterly rest or simple interest of 18% p.a. whichever lower”*. However the Financial Creditor has failed to produce a single communication / correspondence / email / notice whereby the Financial Creditor had any point of time claimed Interest or has produced a single document wherein the Corporate Debtor has agreed in writing to any such interest.

26. It is submitted that interest rate at the rate of 18% p.a. which is claimed by the Financial Creditor unilaterally was arrived at and fixed by the Board of Directors of the Financial Creditor vide a Board Resolution

dated 16.10.2020. Therefore,, when there was no agreed interest rate between the parties, the Applicant, just for the purpose of the instant Application and in order to satisfy the ingredients of Section 7 of IBC, 2015 cannot claim interest of 18%. It is submitted that the Applicant has clearly claimed exorbitant amounts and interest over and above the actual sum advanced and such a claim cannot be allowed under this petition as it does not qualify as Financial Debt and the Applicant is thus not entitled to initiate proceedings as a 'Financial Creditor' under the IBC, 2016.

27. It is submitted that various details contained in Page Nos. 6 to 13 of the Application in Form – I clearly show that the amount of Rs.15,58,07,794/- are merely ad-hoc advances which have been paid from time to time by the Applicant to the Corporate Debtor. It is stated that the Applicant and the Corporate Debtor, at no point of time, either orally or in writing ever mutually agreed to any rate of Interest or Repayment Period and the said amounts which were transferred from time to time were always treated only as Ad-hoc advances which were supposed to be treated as the purchase consideration towards the purchase of Corporate Debtor's Asset.

28. It is submitted that the Applicant has made bogus claims before this Tribunal with a *mala fide* intention and the contention of the Applicant that they have given to the Corporate Debtor a Loan of Rs.15,58,07,794/-(Rupees Fifteen Crores Fifty- Eight Lakhs Seven Thousand and Seven Ninety-Four only) along with 18% interest is grossly untrue. This can be contrasted with the statement regarding balance conformation provided by the Applicant himself on 23.05.2020.

29. It is submitted that the Applicant would not fall under the definition of a '*Financial Creditor*' under the provisions of IBC, 2016. It is stated that the Applicant itself has noted under its letter demanding repayment of amounts on 20.05.2021 that it is only property developer and promoter and that Financing is not its profession. It is submitted that the funds were made available to the Corporate Debtor as advance for purchase of company properties under the sale agreement executed between the applicant and the Respondent. These points are clearly emphasized by the Applicant itself and this clearly indicates that there was no *ad-idem* between the parties. When such is the case, there is no legal right with the Applicant that enables them to exercise any rights as a '*Financial Creditor*' under the provisions of IBC, 2016.

30. It is submitted that whatever the monies that have been transferred by the Applicant to the Corporate Debtor have never been disbursed as a "Loan" but have only been paid either as (i) an Advance towards Purchase of Assets of the Corporate Debtor, (ii) an Advance in order to settle some liabilities of the Corporate Debtor in order to lift the various attachments so that the said property may be unencumbered and freely transferred to the Applicant or (iii) an amount to be paid as per the contractual terms of the Sale Agreements between the Applicant and the Corporate Debtor.

31. It is submitted that primarily the Applicant is seeking refund of the monies advanced by it towards purchase of the assets of the Corporate Debtor, for which purpose it has to approach the Civil Court and not by filing of the present Application under Section 7 of IBC, 2016 and as such the present Application deserves to be dismissed.

FINDINGS OF THIS TRIBUNAL

32. Heard the submissions of the Learned Counsel for the Applicant and Respondent and perused the record. Upon hearing the

submissions, the following issues arise for the consideration before this Tribunal

- (i) Whether the Applicant is a 'Financial Creditor' under the provisions of IBC, 2016 and whether there is any 'Financial Debt' which is due and payable by the Corporate Debtor to the Applicant under the provisions of IBC, 2016.
- (ii) Whether the present Application falls within the period mentioned under Section 10A of IBC 2016?

ISSUE NO. (i)

33. The Applicant / Financial Creditor in Part – IV of the present Application at Page No. 6 to 13 has listed the details of the amount which were paid to the Corporate Debtor from the year 2006 to 2021. It is stated that a total sum of Rs.15,58,07,794/- was paid to the Corporate Debtor over the said period. The Financial Creditor has not placed on record any documents / Financial Contract which is entered into between the parties. Further, in the Demand Notice dated 20.05.2021 the Financial Creditor has specifically stated that the amounts were transferred for the purpose of acquiring a property of the Corporate Debtor situated at Pasumalai, Madurai. The portion of the said letter dated 20.05.2021 is extracted hereunder:

"2. As you know very well, we are only property developers and flat promoters in Madurai. Financing is not our profession. The Funds were made available to your company as advance for purchase of your company properties under sale agreement executed between us. The above advances was paid out of loan raised from commercial banks on huge rate of interest."

34. While this being the fact, this Tribunal is required to examine whether the said advance amount paid by the Applicant could qualify as a 'Financial Debt'. Section 5(8) of IBC, 2016 defines 'Financial Debt' which is as follows;

(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 dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;

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

1[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;

35. In the present case, as already alluded *supra*, the Applicant has not placed on record any Financial Contract in order to show that the money was advanced by way of loan with interest. On the contrary it is stated that there was an oral agreement and based upon which, the Applicant disbursed the money to the Corporate Debtor. Admittedly, there is no agreement of loan and interest and no document / Financial Contract placed on record in order to stipulate the period of repayment.

36. Further, the Applicant in Paragraph 31 of the Rejoinder filed before this Tribunal has stated "It is reiterated that though monies were lent as advances for purchase of properties, the same was revised and agreed upon by the parties concerned that the payments are nothing but a loan". Therefore, in the absence of any acknowledgment in writing through which the Corporate

Debtor had requested / agreed to convert the said Advances into a Loan, the same cannot be considered to have a "commercial effect of borrowing" in order to bring the same within the ambit of a Financial Debt under Section 5(8)(f) of IBC, 2016.

37. Further, it is to be noted that the Applicant had paid various monies to one Mr. S Subramaniam, who claimed to have a valid MoU dt 13.10.2004 to act on behalf of and sell the properties of the Corporate Debtor based on which several entries between 2006 to 2010 have been claimed in the Application. The Corporate Debtor vide its Reply has placed on record the copy of the FIR which has been lodged by the Applicant / Financial Creditor against Mr. S Subramaniam, whereby it is stated that the said Mr. Subramaniam has cheated the Applicant / Financial Creditor to an extent of nearly Rs.4,20,00,000 (Rupees Four Crores Twenty Lakhs) by promising that he would clear various dues of the Corporate Debtor, however has instead spent the said monies for his own enrichment and siphoned it.

38. Further, in the Rejoinder filed before this Tribunal, regarding the factum of an FIR being lodged against Mr. S Subramaniam the Applicant has contended in Paragraph 10 that "Action taken against Mr. S.

Subramaniam does not bar the Financial Creditor from seeking to initiate

Corporate Insolvency Resolution Process under the IBC". In the present case, we are not venturing into the merits of such FIR or the veracity of such claims filed by the Applicant / Financial Creditor, however, a prima facie perusal of the averments clearly show that the Financial Creditor on the one hand lodges FIR for the amount paid to one Mr. S. Subramaniam and on the other hand includes the said amount in the present Application as due from the Corporate Debtor. Thus, on this count alone, the present Application is required to be rejected.

39. At this juncture, it is required to be noted that the monies paid by the Applicant were always treated as an Advance and never as a 'Loan' in the books of the Corporate Debtor. Even in the books of the Applicant / Financial Creditor until 16.10.2020, it was only treated as an 'Advance' and subsequent the Applicant / Financial Creditor unilaterally converted the said Advance amount as Loan with effect from 2006 with interest by passing a Board Resolution dated 16.10.2020. The Applicant / Financial Creditor has miserably failed to place on record any acknowledgment or communication from the Corporate Debtor between 01.04.2020 and 22.02.2021 wherein the Corporate Debtor has at any point of time

acknowledged to pay Interest upon the said amount or agreed to convert the said Advances as a Loan.

40. Further, the Sale Deed dated 22.02.2021 does not show that the Corporate Debtor had confirmed that any Interest was agreed upon at 18% p.a. as contended by the Applicant / Financial Creditor. Thus, we are unable to accept the submission of the Applicant / Financial Creditor that that the said Advances were converted as a 'Financial Debt' with the concurrence of and pursuant to the Oral Understanding with the Corporate Debtor.

41. At this juncture, it is significant to refer to the Judgment of Hon'ble NCLAT in the matter of **M/s VRG Healthcare Pvt. Ltd. Vs. M/s VRG Infrastructure Pvt. Ltd.** in *Company Appeal (AT) (Insolvency) No. 778 of 2020*, wherein it is held as under;

13. It is further submitted that not a single document has been produced to show that the said amount was to be repaid after a particular period. Additionally, no default date has been specified in the Section 7 application. Therefore, without prejudice, it cannot be said that the alleged amount became "due and payable" by the Respondent. In the light of the Hon'ble Supreme Court decision in the case of "*Innoventive Industries case at para 30 and in Swiss Ribbons case at para 50*", it is stated that the trigger of a financial creditors application is non-payment of dues. In the legal notice dated 10.01.2019, the Appellant has not claimed that the alleged loan was

given for any particular period and to be repaid at a particular date by the Respondent.

14. It is further submitted that the Hon'ble Supreme Court judgment in "*Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., (2021) SCC Online SC 513*", relied by the Appellant during argument, does not and cannot overrule the decision of the Hon'ble Supreme Court in Anuj Jain. In 'Orator Marketing' case, the Hon'ble Supreme Court does not deal with consideration for time value of money. 'Orator Marketing' case simply deals with the issue of interest. Further, the facts of 'Orator Marketing' case are significantly different from the fact of the matter at hand, whereby, there was a grant of term loan based on a written agreement between the parties agreeing to NIL interest. In the instant case, no such agreement or document has been brought forward by the Appellant. Further, the 'Orator Marketing' case, the amount disbursed met the requirements of amount being disbursed in consideration of time value of money. In the instant case, the amounts disbursed do not meet such a threshold, particularly without any underlying agreement or other record to substantiate the claim.

15. This Appellate Tribunal in the case of "*Starlog Enterprises Ltd. v. Avil Menezes, IRP for AMW Motors Ltd., at para 7, (2021 SCC Online NCLAT 2307)*", has distinguished the facts of 'Orator Marketing' to reaffirm that consideration for time value of money is an essential ingredient in classification of Financial Debt.

16. The Impugned Order has clearly stated that there has been no disbursement, in the first instance, and consequently, consideration for time value of money is absent, the Appellant cannot seek to challenge the second observation without satisfying the preliminary challenge to his claim. For the aforesaid reasons, the Respondent prayed that the instant Appeal be dismissed.

17. After hearing the parties and going through the pleadings made on behalf of the parties, we are of the considered view that we agree with the findings given by the Adjudicating Authority that the Appellant has not produced any agreement between the Appellant and the Respondent that any interest would be payable by the Respondent/Corporate Debtor against the alleged loan. Further, the Adjudicating Authority rightly come to the conclusion that in order to qualify the debt to be a 'financial debt', it is necessary that the amount

advanced to the Corporate Debtor is against the time value of money, which is totally absent in the present matter. Further, it was held that since the Appellant is not a financial creditor as the Appellant has not disbursed money against the consideration for the time value. Accordingly, the claim of the Appellant is not a 'financial debt' within the meaning of Section 5(8) of the IBC. Keeping in view of the aforementioned, we do not find any merit in the Appeal to interfere with the order impugned passed by the Adjudicating Authority. The impugned order dated 20.03.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in Company Petition (IB) 4186/MB/2019 is hereby affirmed. The instant Appeal is hereby dismissed. I.A., if any, stands disposed off. No order as to costs.

(emphasis supplied)

42. Further, the Hon'ble NCLAT in the matter of **Niyati Chemicals Vs. Minepro Minerals Pvt. Ltd.** in *Company Appeal (AT) (Insolvency) No. 861 of 2020* has held that the providing advance against business dealings is not covered under Financial Debt;

2. Heard the counsel for the Appellant at length. The 'Financial Debt' means a 'Debt' alongwith interest, if any which is disbursed against the consideration for the time value of money as per section 5(8) of the I&B Code, 2016. We have gone through the impugned order passed by the Adjudicating Authority which is a reasoned order and includes the ledger account in the book of Respondent about the flow of money and supply of goods. It is very much clear that the Appellant was advancing the money for supply of above powder and the Respondent after manufacturing was supplying the same to the Appellant. No doubt, these are Commercial Advances during the business dealings. As far as I&B Code, 2016 is concerned "providing advance against business dealings" is not covered under 'Financial Debt' and hence Section 7 of I&B Code, 2016 cannot be invoked for such transactions. We agree with the Adjudicating Authority, the case

is devoid of merit both on facts and law and hence, require to be dismissed and hence the Appeal is dismissed.

(emphasis supplied)

43. Thus, qualitative and quantitative analysis of the merits of the present case would manifest the fact that the Applicant is not a 'Financial Creditor' in respect of the Corporate Debtor and also the 'debt' which is due and payable by the Corporate Debtor to the Applicant does not qualify to be a 'Financial Debt'. Accordingly, issue no. (i) is answered.

ISSUE NO. (ii)

44. The Applicant in Part – IV of the Application has clearly mentioned the date of default as 22.02.2021. As per Section 10A of IBC, 2016 for the default which had occurred during 25.03.2020 to 25.03.2021, no Application under Section 7, 9 and 10 of IBC, 2016 can be filed. Section 10A of IBC, 2016 is as follows;

10A. Suspension of Initiation of corporate insolvency resolution process.

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

45. As per the Ministry of Corporate Affairs Notification S.O. 3265(E) dated 24th September 2020, the period of 10A was extended three months from 25th September 2020. Thereafter, the Ministry of Corporate Affairs vide Notification S.O. 4638(E) dated 22.12.2020 has extended the 10A period for three months from 25th December 2020. Thus, the 10A period would fall from 25.03.2020 till 25.03.2021.

46. In the present case, the Applicant / Financial Creditor has categorically mentioned in Part – IV of the Application, the date of Default as 22.02.2021. Thus, even as per the Applicant the default had occurred for the first time only on 22.02.2021. The Applicant has not filed any Application to change the date of default in Part – IV of the Application, nor has advanced any arguments rebutting the date of default as falling outside the scope of Section 10A of IBC, 2016. In the said circumstances, it is clear that the date of default as mentioned in Part – IV of the Application

squarely falls within the Section 10A period and as such no Application under Section 7, 9 and 10 of IBC, 2016 can ever be filed against the Corporate Debtor if the default has occurred during the Section 10A period.

47. Thus, we are of the view that the Application falls within the period mentioned under Section 10A of IBC 2016 and as such this Application is required to be rejected on the said count also. Accordingly, issue no. (ii) is answered.

ORDERS PASSED BY THIS TRIBUNAL

48. This Tribunal vide its order dated 31.03.2023 had passed the following order;

Ld. Counsel Mr. Abhinav Parthasarathy appears for the Applicant. Ld. Counsel Mr. Chandramouli Prabhakar appears for the Respondent.

In this matter it is seen that an Escrow Account has been opened by the Financial Creditor which is with Union Bank of India, Kochadai Branch, Madurai bearing Account No.493901010032735

The Respondent Corporate Debtor in the matter The Mahalakshmi Textile Mills Ltd is directed to deposit an amount of Rs.2,01,72,389/- within a period of seven working days from the date of this order.

The said Union Bank of India is directed not to permit any withdrawal from the said account without specific orders of this Court in this regard.

Union Bank of India is further directed to keep the entire amount in an Interest bearing Recurring Fixed Deposit. Such Fixed Deposit Receipt shall remain in custody of the Bank. No loan, foreclosure of the said Fixed Deposit is permitted except with the leave of this Court. In case of maturity of Fixed

Deposit, the same may be rolled over till further instructions from this Tribunal.

Both the parties are directed to file a Memo of Compliance within a period of ten days from the date of this order.

List this matter for further hearing and for reporting compliance of today's order on 27.04.2023.

49. Thereafter, when the matter came up for hearing on 27.04.2023, it was observed as follows;

Applicant is represented by Ld. Counsel Mr. Abhinav Parthasarathy. Respondent is represented by Ld. Counsel Mr. Chandramouli Prabhakar through video conferencing mode.

Order dated 31.03.2023 records "the Respondent is directed to deposit an amount of Rs. 2,01,72,389/- within a period of seven (7) working days from the date of this order".

Respondent submits that the certified copy of the order was made available to him and the bank branch only on 25.04.2023 and they have complied with the order. He further submits that they are in the process of filing a memo attaching there with deposit slips and RTGS details.

Respondent is permitted to file a memo within a period of 2 working days from the date of this order after serving the same on the opposite side.

List the matter on 08.05.2023 for hearing.

50. It is seen that pursuant to the order of this Tribunal's dated 31.03.2023, the Respondent was directed to make the payment of Rs.2,01,72,389/- within a period of 7 working days from the date of the order. The Respondent had stated that on account of delay in obtaining

certified copy there was some delay in complying with the Order. Thereafter, one of the Cheques issued by the Promoter for Rs.66,00,000/- had been dishonoured and the Respondent duly paid the same on 04.05.2023. Thus, there was a delay of nearly 30 days, from 08.04.2023 until the date of payment i.e. 04.05.2023.

51. Be that as it may, the Respondent has complied with the order dated 31.03.2023, albeit with a delay of 30 days. In any case, we are of the view that the present Application is not maintainable, since there is no 'Financial Debt' and the Applicant does not qualify to be a 'Financial Creditor' in respect of the Corporate Debtor. Also the date of default mentioned in the Application, falls within Section 10A period. Hence, the amount deposited in the Escrow Account cannot be accrued to the benefit of the Applicant / Financial Creditor in the present Application.

52. In the said circumstances, with immediate effect, we permit the Corporate Debtor to withdraw the said amount of Rs.2,01,72,389/- lying to the Credit of Escrow Account No. 493901010032735 maintained with Union Bank of India, Kochadai Branch, Madurai together with Interest

accrued thereon. The Union Bank of India, is directed to release the amount to the Corporate Debtor together with Interest accrued thereon.

53. With the above said directions, this Application stands

dismissed. No costs.

- Sd -

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond