NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 746 of 2022

(Arising out of Order dated 27.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench-IV in C.P. No. (IB)-2504 (ND)/2019)

IN THE MATTER OF:

Sugan Choudhary,
Suspended Director: Mansfield Cables Company Ltd.
R/o Khangawali, Bulandshahr,
Uttar Pradesh - 245408

…. Appellant

Vs

1. Arun Enterprises,
(Through its Partners)
B-48, Site-4,
Sahibabad Industrial Area, Ghaziabad,
Uttar Pradesh - 201010

2. Mr. Vinod Kumar Chaurasia
Interim Resolution Professional
Mansfield Cables Company Limited,
A-756, Sector-2, Rohini,
New Delhi-11008

…. Respondents

Present:

For Appellant:	Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Ashutosh Kumar, Mr. Somdev Tiwari and Ms. Malavika Chandramouli, Advocates.
For Respondents:	Mr. Rudreshwar Singh, Sr. Advocate with Mr. Gautam Singh, Mr. Naman Chawla, Advocates for Respondent No.1.
	Mr. Ishwar Mohapatra, Advocate with Mr. Vinod Chaurasia, IRP in person for Respondent No.2.
	Mr. Gautam Awasthi, Mr. Ayush Chaudhary and Mr. Sameer Pandey, Advocates for Intervener (Indian Bank).

Cont'd…/

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by Suspended Director of the Corporate Debtor – M/s Mansfield Cables Company Ltd. has been filed challenging order dated 27.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench – IV by which order Section 7 application filed by M/s Arun Enterprises – Respondent No.1 herein has been admitted. Aggrieved by which order this appeal has been filed by a Suspended Director of the Corporate Debtor.

2. Brief facts of the case necessary to be noticed for deciding this appeal are:

(i) The Corporate Debtor owned a property C-3, Site - C, Surajpur Industrial Area, Greater Noida, Uttar Pradesh. An agreement to sell dated 08.02.2016 was entered between Mr. JPS Chadha and Mr. Arun Dhir of M/s Arun Enterprises for sale of above land for consideration of Rs.3,65,00,000/-.

(ii) The Vendor has received an amount of Rs.51,00,000/- from the Vendee, which is noticed in the Agreement to Sell prior to applying for transfer of said property and thereafter the Vendee shall have the right to get the transfer deed of the property executed. Subsequently, another payment was made of Rs.50,00,000/-.

(iii) An agreement for cancellation of Sale Agreement dated 25.03.2017 signed by JPS Chadha and Arun Dhir, where JPS Chadha agreed to return payment along with interest @ 2% per month. As per details given in the Cancellation Agreement, JPS Chadha has given post-dated cheques out of which only two cheques of Rs.10 Lakhs each were encashed. Rest of the cheques were dishonored.

(iv) An Agreement of settlement also took place on 18.08.2017 between JPS Chadha and Arun Dhir which noted JPS Chadha failed to transfer property in name of Arun Dhir or his nominee and as per earlier agreement dated 25.03.2017 JPS Chadha failed to return the amount. It was agreed that in event of delay 2% per month interest shall be paid as per the Sale Agreement.

(v) Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on 14.05.2018 on an application filed by an Operational Creditor, against which an appeal being Company Appeal (AT) (Ins) No.270 of 2018 was filed which proceedings were terminated on 08.03.2019 by this Tribunal after recording settlement between the parties. In the said CIRP proceeding the Respondent No.1 has also filed its claim who was treated as 'Other Creditor'.

(vi) Respondent No.1 filed an application before the Adjudicating Authority claiming to be Financial Creditor, which was rejected by order dated 22.02.2019, against which order an appeal being Company Appeal (AT) (Ins.) No.434 of 2019 was preferred which appeal was dismissed as infructuous. In this appeal which was dismissed, a Review Application was filed in which a clarification was given by this Tribunal on 14.08.2018 giving liberty to the Respondent No.1 to approach the Adjudicating Authority for filing application as financial creditor with direction to the Adjudicating Authority to decide the said aspect afresh.

(vii) On 17.09.2019, Respondent No.1 filed an application under Section 7 before the Adjudicating Authority claiming default on part of the Corporate Debtor. The Adjudicating Authority took the view that amount of Rs.1,51,00,000/- was reflected as unsecured loan in the balance sheet of the Corporate Debtor. The Adjudicating Authority also noticed the Sale agreement dated 08.02.2016 and settlement dated 18.08.2017. The Adjudicating Authority held that the Corporate Debtor failed to return the amount of Rs.1,31,00,000/- to the Financial Creditor, hence, application under Section 7 was admitted and following finding was retuned in Para 19 and 20 of the order:

> *"19. Apparently, there is no dispute between the parties qua returning of the amount. On the basis of record available, it is established that only part payment has been made and still a sum of Rs. 1,31,00000 is due against the corporate debtor. The said fact also stands substantiate from the balance sheet of corporate debtor, wherein the said amount has been disclosed as unsecured loan.*
>
> *20. In view of the above said discussion, this Tribunal is of affirm view that a Respondent/Corporate Debtor failed to return the amount of Rs. 1,31,00,000/- to the operational creditor and there was no genuine pre-existing dispute between the parties."*

(viii) Aggrieved by order admitting Section 7 application, this appeal has been filed.

3. When the appeal came for hearing on 15.07.2022, Appellant submitted that the Appellant is ready to deposit amount of Rs.1,31,00,000/-. This Tribunal by order dated 15.07.2022 subject to deposit of Rs.1,31,00,000/- by Demand Draft passed an interim order that no steps shall be taken by the IRP, however, IRP shall ensure that the Corporate Debtor remains a going concern. Order dated 15.07.2022 is as follows:

"ORDER
(Through Virtual Mode)

> ***15.07.2022:*** *Learned Counsel for the Appellant submits that he is ready to deposit the amount of Rs.1,31,00,000/- which was found to be due by the Adjudicating Authority in paragraph 20 of the impugned order along with some interest components also.*
>
> *2. Issue Notice. Respondents may file Reply within one week. Rejoinder, if any, may be filed before the date fixed.*
>
> *3. List the Appeal on 12.08.2022.*
>
> *Subject to deposit of Rs.1.5 Crores by the Appellant by Demand Draft drawn in the name of "The Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi" within two weeks from today, no further proceeding shall take place in pursuance of the impugned judgment dated 27.05.2022. However, IRP shall ensure that the Corporate Debtor remains a going concern."*

4. In the appeal notices were issues. Reply and Rejoinder were filed. We have heard Shri Vaibav Gaggar, learned senior counsel for the Appellant, learned counsel appearing for Respondent No.1 as well as learned counsel appearing for the IRP and the Intervenor.

5. Learned counsel for the Appellant submits that application filed by the Respondent No.1 under Section 7 was not maintainable since there was

no financial debt owed by the Corporate Debtor. It is submitted that the money was disbursed to the Corporate Debtor in lieu of the agreement to sell dated 08.02.2016 which was entered by JPS Chadha, Director of the Corporate Debtor with Arun Dhir. Merely including of component of interest cannot entitle a creditor to the category of Financial Creditor. There was no time value of money in the transaction under which amount was paid to the Corporate Debtor. The Corporate Debtor was not aware of the transaction between JPS Chadha and Arun Dhir. No board resolution was passed for sale of property to the Respondent. The amount of Rs.1.31 Crore was being reflected in the balance sheet as advance against property, the respondent has unnecessarily dragged the Corporate Debtor into dispute whereas agreement as well as cancellation of agreement was entered with JPS Chadha. Respondent No.1 does not qualify as Financial Creditor. The agreement dated 08.02.2016 is an unregistered and unnotarised agreement which does not bear seal of the Corporate Debtor.

6. Learned counsel appearing for the Respondent refuting the submissions of learned counsel for the Appellant submits that it was the Corporate Debtor who approached the Appellant to advance money in return of his property situate at C-3, Site - C, Surajpur Industrial Area, Greater Noida, Uttar Pradesh. Amount was transferred in the bank account of the Corporate Debtor on 05.02.2016. The Corporate Debtor through its Director JPS Chadha entered into agreement to sell dated 08.02.2016. The Respondent further transferred Rs.50 Lakhs on 11.02.2016 and further

Rs.23 Lakhs by wife of one of the partners was transferred in the bank account of the Corporate Debtor. The Corporate Debtor failed to transfer said property in the name of the Respondent, hence, cancellation of sale agreement dated 25.03.2017 was entered which contain a clause that Corporate Debtor agreed to return the money advanced with 2% p.m. interest. JPS Chadha agreed and admitted that he failed to pay instalment due on 20.04.2017, 15.05.2017. Only instalment of an amount totaling to Rs.20 Lakhs on 21.10.2017 and 31.08.2017 were received by the Respondent and post-dated cheques handed over to the Respondent were returned. It is submitted that amount is reflected in the balance sheet of the Corporate Debtor as loan as has been noticed by the Adjudicating Authority. The Corporate Debtor having admitted the amount as loan, financial debt was proved. Return of amount at 2% p. m. interest clearly was towards the time value of money.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. The agreement to sell dated 08.02.2016, which is that transaction under which the amount was paid by the Respondent of Rs.51 Lakhs and subsequently, Rs.50 Lakhs, which transaction was for sale of property; C-3, Site-C, Surajpur Industrial Areas, Greater Noida for a consideration of Rs.3,65,00,000/-. It is useful to extract following part of the agreement to sell:

"WHEREAS the VENDOR aforesaid is the actual & absolute lawful owner and in possession of property No. C-3, Site C Surajpur Indl. Area Greater Noida hereinafter referred to as the Property.

AND WHEREAS the VENDOR aforesaid is desirous to sell the said property in the favour of the VENDER, or his/her nominee(s) for the total sale consideration of Rs. 3,65,00,000 (Rs. Three Crore Seventy Lakh only) and the VENDEE has also agreed to purchase the same for this very amount.

NOW THIS AGREEMENT TO SELL WITNESSTH AS UNDER:

1. *That the total sale consideration of the said industrial plot has been settled to as Rs. 36500000 (Rs. Thre Crore Sixty Five Lakh only) between both the parties*

2. *That the VENDOR has received a sum of Rs. 5100000.00 (Rs. Fifty One Lakh Only) vide Ch. No 008962 dt. 04.02.2016 from the VENDEE as advance money, the receipt of which the Vendor hereby acknowledges. This payment is being made in the following manner.*

3. *That the VENDEE shall apply and obtain the permission for Transfer the said property from the concerned authority in favour of the above said vendee his/her nominee(s) and shall execute the transfer Deed within two month after such*

permission or the time given by the concerned authority.

4. *That the Vendor has assured the vendee that the above sand property is free from all sorts of gilt, exchange, dispute, litigation, attachment, pledge and decree of any court of law, and if proved otherwise the Vendor shall be liable and responsible for the same and the Vendee shall have the rights to recover the entire amount with cost and expenses from the movable and immovable properties of the Vendor.*

5. *That the expenses to be incurred for the execution of the Sale Deed/Lease Deed/Transfer Deed on stamp duty, registration fees and other legal expenses will be borne by the Vendee. Vendor shall provide all the required set of papers with details of property under consideration as a working unit as required for transfer of property*

6. *That the Vendee shall have the rights to get the Transfer Deed of the same property executed in his/her favour or in favour of his/her nominee(s) tor which the Vendor has got no objection.*

7. *That the vendor shall be responsible for all outstanding dues and demands in respect of the said property up to the date of final transfer deed and that all future dues thereafter shall be paid by the Vendee.*

8. *That the vendor shall hand over the vacant possession of the said property to the vendee at the time of execution of final Transfer Deed.*

9. *That in case of breach of any clause by the VENDOR aforesaid or tail to get the plot transferred in the name of Buyer/Vendee on his nominee, the VENDEE shall have the right to get the Transfer Deed/ Sale Deed registered through Court of Law after depositing the balance amount of this Agreement to sell.*

10. *That if the vendor does not execute the Transfer Deed within the given time then he/she has to return the advance money to the Vendee along with interest @2% per month."*

9. The above transaction indicate the genesis of payment of amount of Rs.51 Lakhs and 50 Lakhs by Respondent No.1 was agreement of sale of property of the Corporate Debtor. The agreement for cancellation of sale was also entered on 25.03.2017 which agreement contains the agreement of JPS Chadha to return the payment along with interest of 2% p.m. The agreement of cancellation is as follows:

"***Agreement for cancellation of Sale Agreement dated 08-02-2016***

Sale agreement dated 08-02-2016 for sale of property No C-3, Site-C Surajpur was signed between

MR J.P.S CHADHA DIRECTOR MANSFIELD CABLE CO LTD, C-23 SITE-C SURAJPUR Greater NOIDA *of the One Part, hereinafter called the* ***SELLER/VENDOR.***

AND

MR. ARUN DHIR Partner M/s Arun Enterprises, B 48, Site 4 Sahibabad *of the other Part, hereinafter called the* ***PURCHASER/VENDEE.***

is hereby cancelled on dated 25-03-2017 *as the vendor has failed to transfer the above referred property in the name of the Purchaser within the stipulated period as per the above referred sale agreement. As per the above referred sale agreement the Seller shall pay an Interest of 2% per month on the payment paid by the purchaser.*

Sh. J.P. Chadha, Director, Mansfield Cable Co Ltd, has agreed to return the payment along with interest of 2% Per Month as per the following details:

S.No.	Date	Amount
1	15-04-2017	Rs 37,94,292.00
2	15-05-2017	Rs 78,11,506.00
3	15-06-2017	Rs 1,1728317.00

In case of any delay in the payment as per above mentioned dates, interest of 2% per month shall be added and in case of early payment the interest part shall be reduced accordingly."

10. The above agreements were entered by JPS Chadha as Director of the Corporate Debtor and there is no dispute that the amounts were paid in the account of the Corporate Debtor and JPS Chadha agreed to return the amount under the cancellation of sale agreement. The main question to be considered in this appeal is as to whether the amount which was paid by Respondent No.1 to the Corporate Debtor under the above transaction can be treated as a financial debt within the meaning of Section 5 Sub-section (8) of the I&B Code.

11. Part IV of the Section 7 application claims total amount disbursed as Rs. 2,17,68,723/- and with interest the claim was of Rs. 3,28,69,026/-. The brief synopsis and list of events which is part of Section 7 application filed by Respondent No.1 itself pleads that amounts were transferred to the Corporate Debtor against transfer of land and building situate at Surajpur Industrial Area. First two paragraphs of brief synopsis are as follows:

> *"The Petitioner had transferred various amounts in the account of corporate debtor against which corporate debtor had to transfer its land & building situated at SurajPur, Greater Noida, owned by the Corporate Debtor.*
>
> *The corporate debtor also agreed that the amount transferred by the Petitioner would be returned along with an interest of 2% per month if the land was not transferred in the name of Petitioner."*

12. In the Section 7 application, the Respondent No.1 has annexed Sale Agreement dated 08.02.2016, Cancellation of Sale Agreement dated 25.03.2017, Extract of the minutes of meeting dated 16.11.2016 and other documents which clearly indicate that the genesis of transaction is the Sale Agreement dated 08.02.2016, as noted above.

13. For a transaction to be treated as financial debt within the meaning of Section 5 Sub-section (8) of I&B Code, the law is well settled. The Hon'ble Supreme Court in ***"Anuj Jain IRP for Jaypee Infratech Ltd. vs. Axis Bank Limited, (2020) 8 SCC 401"*** while dealing with Section 5(8) of the I&B Code has laid down that a debt to be financial debt needs to be disbursed for time value of money. It was held that requirement of disbursement for time value of money pervades all clauses (a) to (i). In Para 45.1, the Hon'ble Supreme Court laid down following:

> *"**45.1.** As noticed, in Pioneer Urban, a suggestion made on behalf of the respondents with reference to the decision in Krishi Utapadan Mandi Samiti, that when the words "means and includes" are used in a definition, they are to be given a wider meaning and are not exhaustive or restricted to the items contained therein, was not accepted by this Court; and the statement of law in Krishi Utapadan Mandi Samiti was held to be not that of good law for it ignored the earlier precedents of larger and coordinate Benches and was also out of sync with the later decisions on the same point. However, the other*

> *extreme of interpretation, as canvassed by the petitioners, that a financial debt could only be a debt which is disbursed against the consideration for the time value of money, and such requirement pervades all clauses (a) to (i), was also not accepted as a matter of statutory interpretation by this Court while observing that the expression "and includes" speaks of subject-matters which may not necessarily be reflected in the main part of the definition. Thus, it is evident that this Court did not accept either of the extremities suggested by the parties in Pioneer Urban for interpretation and implication of the expressions "means and includes" in a definition clause of the statute. Significantly, in Pioneer Urban, none of the extremities had any bearing on the conclusion because, eventually, the amendment in question was held to be only clarificatory in nature; and this Court held that the Explanation added to Section 5(8)(f) of the Code by the Amendment Act did not enlarge the scope of the original section."*

14. Thus, question to be answered in the present case is as to whether the transaction amount claimed in Section 7 application can be accepted as financial debt within the meaning of Section 5 (8). When we look into the real nature of transaction, it is amply clear that the transaction was for sale and purchase of assets of the Corporate Debtor; plot at Surajpur Industrial Area and amounts were paid by the Respondent only for purchase of assets. The present is thus transaction for sale and purchase of plot of Corporate Debtor and the amount transferred to the Corporate

Debtor was towards part payment of consideration and the mere fact that agreement between the parties contain a stipulation for 2% p.m. interest cannot make the transaction to be a financial debt.

15. Learned counsel for the Appellant has relied on judgment of this Tribunal in ***"Sandeep Mittal vs. M/s ASREC (India) Ltd. & Ors., Company Appeal (AT) (Ins.) No.37 of 2024"*** where this Tribunal had occasion to consider nature of transaction where amount was due towards a sale consideration. In the above case, this Tribunal has considered Section 5(8). In the above case also this Tribunal held that application filed under Section 7 by the Financial Creditor was not maintainable since there was not financial debt as there was no disbursement for time value of money. In the above case also the agreement was agreement for sale of assets. In Paras 11, 12, 13 and 14 this Tribunal laid down following:

> *"11. The question as noticed above, which need to be answered, is the nature of transaction, which culminated into Agreement dated 27.11.1990. Whether the Agreement dated 27.11.1990 is an Agreement for sale of the assets, belonging to GPPL on which Financial Institutions have pari pasu charge, which were taken possession by GSFC, in the year 1986 or the transaction can be treated to be a loan transaction extended by Financial Institutions in favour of the Corporate Debtor, as contended by learned Counsel for the Respondent? The 'financial debt' as defined in*

Section 5, sub-section (8) of the IBC, provides as follows:

> *"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 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;*
>
> *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-clause (a) to (h) of this clause;"*

12. It is well settled position of law that 'financial debt' means a debt disbursed against consideration for time value and money and includes the transactions as enumerated in sub-clause (8) of Section 5. The 'financial debt', came for consideration before the Hon'ble Supreme Court in large number of cases. We may first notice judgment of the Hon'ble Supreme Court in ***Pioneer Urban and Infrastructure Ltd. vs. Union of India and ors. –2019) 8 SCC 416****. The Hon'ble Supreme Court in the above judgment held that definition of 'financial debt' goes on to state that a "debt" must be "disbursed" against the consideration of time value of money. It was further held that the expression "disbursed" refers to money, which has been paid against the consideration for the "time value of money". In paragraphs 70 and 71 of the judgment, the Hon'ble Supreme Court laid down following:*

> *"70. The definition of "financial debt" in Section 5(8) then goes on to state that a*

"debt" must be "disbursed" against the consideration for time value of money. "Disbursement" is defined in Black's Law Dictionary (10th Edn.) to mean:

> *"1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose."*

71. In the present context, it is clear that the expression "disburse" would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression "disbursed" refers to money which has been paid against consideration for the "time value of money". In short, the "disbursal" must be money and must be against consideration for the "time value of money", meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money. Thus far, it is clear that an allottee "disburses" money in the form of advance payments made towards construction of the real estate project. We were shown the Dictionary of Banking Terms (2nd Edn.) by Thomas P. Fitch in which "time value for money" was defined thus:

> *"present value: today's value of a payment or a stream of payment amount due and payable at some specified future date, discounted by a compound interest rate of discount rate. Also called the time value of money. Today's value of a stream of cash flows is worth less than the sum of the cash flows to be received or saved over time. Present value accounting is widely used in discounted cash flow analysis."*

(emphasis supplied)

That this is against consideration for the time value of money is also clear as the money

> *that is "disbursed" is no longer with the allottee, but, as has just been stated, is with the real estate developer who is legally obliged to give money's equivalent back to the allottee, having used it in the construction of the project, and being at a discounted value so far as the allottee is concerned (in the sense of the allottee having to pay less by way of instalments than he would if he were to pay for the ultimate price of the flat/apartment)."*

13. In subsequent judgment of the Hon'ble Supreme Court in ***Global Credit Capital Limited and Anr. vs. Sach Marketing Pvt. Ltd. & Anr. – (2024) SCC OnLine SC 649****, the Hon'ble Supreme Court has again dealt with the definition of 'financial debt' as occurring in Section 5, sub-section (8) of IBC and after noticing the judgments, the law was summarized in paragraph 20, which is as follows:*

> *"**SUMMARY***
>
> ***20.** Subject to what is held above, we summarize our legal conclusions:*
>
> *a. There cannot be a debt within the meaning of subsection (11) of section 5 of the IB Code unless there is a claim within the meaning of sub-section (6) of section 5 of thereof;*
>
> *b. The test to determine whether a debt is a financial debt within the meaning of sub-section (8) of section 5 is the existence of a debt along with interest, if any, which is disbursed against the consideration for the time value of money. The cases covered by categories (a) to (i) of sub-section (8) must satisfy the said test laid down by the earlier part of sub-section (8) of section 5;*
>
> *c. While deciding the issue of whether a debt is a financial debt or an*

> *operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and*
>
> *d. Where one party owes a debt to another and when the creditor is claiming under a written agreement/arrangement providing for rendering 'service', the debt is an operational debt only if the claim subject matter of the debt has some connection or correlation with the 'service' subject matter of the transaction."*
>
> *14. The Hon'ble Supreme Court in the above case has clearly laid down that for deciding as to whether the debt is a 'financial debt' the real nature of the transaction reflected in the writing has to be dealt with. It needs no emphasis that real nature of transaction need to be found out by the Court, when the issue is raised before the Court that transaction is not a 'financial debt'."*

16. Applying the test as noticed in the above case in the present case, it is clear that the disbursement was not made for time value of money and disbursement was for purchase of property of Corporate Debtor.

17. We may also notice the judgment of Hon'ble Supreme Court in ***"Global Credit Capital Ltd. v. Sach Mktg. (P) Ltd., (2024) 9 SCC 482"*** where the Hon'ble Supreme Court has laid down that real nature of transaction has to find out as to whether transaction is covered by Section 5(8). In Para 27.3 of the judgment Hon'ble Supreme Court held that:

> "***27.3.*** *While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and"*

18. The amount disbursed by the Respondent No.1 was towards part consideration of sale of asset. Amount admittedly was paid to the account of the Corporate Debtor. It is submitted by learned counsel for the Appellant that JPS Chadha who signed the agreement was not authorized since there was no seal of the Corporate Debtor in the Agreement. It is not necessary for us to answer the question as to whether the transaction was entered with the approval of the Corporate Debtor or not. Suffice it to say that amounts having transferred to the Corporate Debtor which amounts were basis for Section 7 application, the nature of transaction need to be looked into for ascertaining whether there was any financial debt or not.

19. Taking into consideration the entire facts and circumstances and fact that amounts were transferred by the Respondent No.1 to the Corporate Debtor towards sale consideration, which was fixed in the agreement dated 08.02.2016, the amount cannot be held disbursement for time value of money. The amount transferred for purchase of assets cannot be treated to be a financial debt. We, thus are satisfied that the Adjudicating Authority committed error in admitting Section 7 application filed by Respondent No.1.

20. We have noticed above that the Appellant offered to deposit Rs.1,50,00,000/- when the appeal was heard and by our order dated 15.07.2022 while granting interim relief, we have permitted deposit of Rs.1,50,00,000/- by the Appellant by way of Demand Draft. In the Rejoinder Affidavit which has been filed by the Appellant, there is a specific averment that Rs.1.5 Crore which has been deposited with this Tribunal has been issued from the personal account of Mr. JPS Chadha. In Para 3 of the Rejoinder Affidavit following is pleaded:

> *"3. That instead of raising its legitimate demand from the suspended director of the Corporate Debtor, the Respondent has unnecessarily dragged the corporate debtor into dispute. It is now pertinent to note herein that the demand drafts amounting to Rs. 1.5 crore which has been deposited with this Hon'ble Tribunal have also been issued from the personal account of Mr. Jatinder Pal Singh Chadha."*

21. From the facts on the record it is clear that it is JPS Chadha who entered into agreement dated 08.02.2016 as well as Cancellation Agreement dated 25.03.2017 and has also issued the post-dated cheques to the Respondent No.1. Apart from two cheques of Rs.10 Lakhs each rest of the cheques were dishonored.

22. In the facts of the present case as noticed above and discussion made, we are of the view that this appeal deserved to be disposed of with following directions:

(i) The order of the Adjudicating Authority admitting Section 7 application dated 27.05.2022 is not upheld. The CIRP against the Corporate Debtor is stand closed.

(ii) The amount deposited in pursuance of order of this Tribunal dated 15.07.2022, as noted above, was deposited from the account of Mr. JPS Chadha, whose post-dated cheques have not been honored. Ends of justice be served in directing the said amount to be refunded to Respondent No.1.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

2nd May, 2025

Archana