

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL
BENCH, NEW DELHI**

Company Appeal (AT) (Ins.) No. 882 of 2022

IN THE MATTER OF:

BASE REALTORS PRIVATE LIMITED

894-A, 893-A, Maruti Plaza Complex,
Shot No. FS-11, & FS-12, UGF W. No. 8,
Mehrauli, New Delhi - 110030

...Appellant

Versus

GRAND REALCON PRIVATE LIMITED

H.No. 4-B, Office No. 25, 1st Floor,
Ashirwad Complex, Behind Shiva Market,
Vill. Pitampura, New Delhi - 110034

...Respondent

Present:

For Appellant:

**PCA Abhishek Nahta, Adv. Raveena Paniker, Adv.
Rishabh Sachdeva. Advocates**

For Respondents:

Adv. Jeewesh Prakash, Adv. Ujjwal Mendiratta.

J U D G M E N T

Per: Justice Rakesh Kumar Jain.

This appeal is directed against the order dated 23.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench -V) by which an application filed by the Appellant under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') has been dismissed on the ground that amount of interest only claimed by the Appellant is not covered by the definition of financial debt and the application under Section 7 of the Code is not maintainable.

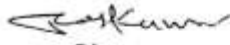
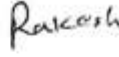
2. In brief, the Respondent allotted 5,60,000/- debentures of Rs. 1000 each (Rs. 10 face Value + Rs. 990 Security Premium) to the Appellant on 31.04.2011 on certain terms and conditions. Two relevant conditions of debentures are as under :

“(1) Debentures can be redeemed at any time at the option of the issuer. Debentures can also be redeemed at the request of the

debenture holders after expiry of 1(one) year but before 31st March, 2026 (i.e. the Maturity Date).

(2) Debenture shall carry a coupon rate of 6% p.a. payable on face value plus securities premium on quarterly rests.”

3. The Adjudicating Authority has reproduced the debenture certificate in its order for a quick reference, therefore, the same is reproduced as under:-

Issued in lieu of Debenture Certificate No. 3		
SE 47.		
DEBENTURE CERTIFICATE		
GRAND REALCON PRIVATE LIMITED		
CIN: U70200DL2010PTC203714 (Incorporated under the Companies Act, 1956)		
Registered Office: H.No. 4-B, Office No. 25, 1 st Floor, Ashirwad Complex, Behind Shiva Market, Vill. Pitampura, New Delhi-110034		
This is to certify that the person(s) named in this Certificate is/are the Registered Holder(s) of the within mentioned debenture(s) bearing the distinctive number(s) herein specified in the above named Company subject to the Memorandum and Articles of Association of the Company and the amount endorsed herein has been paid up on each such debenture.		
FACE VALUE (RS.)		10/- EACH
SECURITY PREMIUM (RS.)		990/- EACH
AMOUNT PAID-UP PER DEBENTURE (RS.)		1000/- EACH
Register Folio No: 1		Certificate No: 5
Name(s) of the Holder(s):	Base Realtors Private Limited	
No. of debentures held:	Five Lakhs and Sixty Thousand (in words)	560000 (in figures)
Distinctive No.(s):	From 00001 To 560000	(Both Inclusive)
Issued on this 13 th day of April, 2021 at New Delhi.		
	 Director	 Director
*No Transfer of Debenture(s) comprised in the Certificate can be registered unless accompanied by this Certificate.		

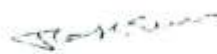
Issued in lieu of Debenture Certificate No. 1

MEMORANDUM OF TRANSFERS OF DEBENTURE(S) MENTIONED OVERLEAF

DATE	TRANSFER NO.	REGISTER FOLIO	NAME(S) OF TRANSFEREE(S)	INITIALS	AUTHORISED SIGNATORY

Terms and Conditions of Debentures

1. Debentures can be redeemed at any time at the option of the Issuer. Debentures can also be redeemed at the request of the Debenture holders after expiry of 1 (One) year but before 31st March, 2026 (i.e. the Maturity Date)
2. Debentures shall carry a coupon rate of 6% p.a. payable on face value plus securities premium on quarterly rests.
3. Debentures (if opted for redemption) shall be redeemed at face value plus securities premium and accrued interest till the date of redemption.
4. Debentures can be converted into equity shares at the request of the Debenture holders at any time before 31st March, 2026 (i.e. the Maturity Date)
5. Such conversion of Debentures into equity share shall happen at the FMV as on the date of conversion subject to applicable laws. For the purpose of calculating the conversion ratio, the value of debentures shall include face value plus securities premium and accrued interest.
6. If on or before the Maturity Date i.e. 31st March, 2026, the option for conversion of Debentures into equity share is not exercised by the Debenture holders then such Debentures shall be redeemed compulsorily.


Director


Director

4. The salient features of the debenture held by the Appellant are as under:
- “(i) The debentures are redeemable at the request of debenture holder after

expiry of one year. The debenture certificate was issued on 13.04.2021, therefore, it can be redeemed by the Appellant after expiry of one year i.e. from 13.04.2021.(ii) The debentures can be redeemed by the debenture holder after expiry of one year but before 31.03.2026 (i.e. the maturity date). Meaning thereby it can be redeemed after 13.04.2021 but definitely before 31.03.2026. (iii) The debenture carries an interest at the rate of 6% p.a. (iv) The interest is payable on the face value plus securities premium on quarterly rests.”

5. The debenture is defined under Section 2(30) of the Companies Act, 2013 (in short ‘Act’) which read as under:-

2(30). “debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not
 Provided that— (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
 (b) such other instrument, as may be prescribed by the Central Government in consultation with Reserve Bank of India, issued by a company, shall not be treated as debenture;”

6. Section 71 of the Act deal with the debenture which reads as under:-

“71(1) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption:

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

(2) No company shall issue any debentures carrying any voting rights.

(3) Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.

(4) Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

(5) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

(6) A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with such rules as may be prescribed.

(7) Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion:

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three fourths in value of the total debentures at a meeting held for the purpose.

(8) A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(9) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

(10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

(11) 1[***]

(12) A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

(13) The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.”

7. The debenture is, thus, a debt borrowed by the Appellant at a fixed rate of interest.

8. The Appellant filed an application under Section 7 of the Code in respect of interest of three quarters which accrued and became payable as a

debt. The Adjudicating Authority has reproduced part 'iv' of the application which we also reproduce the same for a quick reference:-

PART IV

PARTICULARS OF FINANCIAL DEBT															
<p>1. TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT</p>	<p>Principal amount of debt extended against Debentures issued by the Corporate Debtor to the Financial Creditor</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 30%;">Date</th> <th style="width: 70%;">Amount (in INR)</th> </tr> </thead> <tbody> <tr> <td>31st March 2011</td> <td>56,00,00,000</td> </tr> </tbody> </table> <p>(Copy of Bank Statements attached as Annexure-2A)</p> <p>The amount of debt is in the nature of interest due on Debentures and hence is "receivable" in nature.</p> <p>The due date on which the interest became accrued & due along with the amount of interest is given below:</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 30%;">Date</th> <th style="width: 70%;">Amount (in INR)</th> </tr> </thead> <tbody> <tr> <td>1st July 2021</td> <td>71,80,274</td> </tr> <tr> <td>1st Oct. 2021</td> <td>84,00,000</td> </tr> <tr> <td>1st Jan. 2022</td> <td>84,00,000</td> </tr> <tr> <td>TOTAL</td> <td>2,39,80,274</td> </tr> </tbody> </table>	Date	Amount (in INR)	31 st March 2011	56,00,00,000	Date	Amount (in INR)	1 st July 2021	71,80,274	1 st Oct. 2021	84,00,000	1 st Jan. 2022	84,00,000	TOTAL	2,39,80,274
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TOTAL	2,39,80,274														
<p>2. TOTAL AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>Total Interest amount currently in default amounting to INR 2,39,80,274/- (Indian Rupees Two crore thirty-nine lakh eighty thousand two hundred and seventy-four only) being accrued but not received against Debentures of Corporate Debtor calculated at interest/coupon rate of 6% p.a. for the period of Three Quarters for FY 2021-2022 commencing from 13th April 2021.</p>														

		<p>The date on which the interest amount default occurred: <u>29th October 2021.</u></p> <p>A calculation sheet in tabular form towards the aforesaid default amount is enclosed herewith and annexed as Annexure- 4</p>
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9. The debentures, allotted to the Appellant on 31.04.2011 was carrying interest at coupon rate of 6% p.a. payable at the end of every quarter starting from 13.04.2021. The interest in the 1st quarter i.e. 01.07.2021 (for the period 13.04.2021 to 30.06.2021/first quarter) accrued of an amount of Rs. 71,80,274/- but the same was not paid by the Respondent/Corporate Debtor. The Appellant served a letter dated 21.07.2021 demanding interest of the first quarter in the financial year 2021-22 which was duly received by the Respondent on 26.07.2021. The interest was not paid but the Corporate Debtor rather it requested for an extension of three months' time to pay the interest due of the first quarter alongwith second quarter as it was alleged that the cash flow in business got severely affected due to Covid-19. The Appellant acknowledged the genuine difficulty of the Respondent vide its letter dated 30.07.2021 and allowed the extension of time for payment of interest of the first quarter alongwith second quarter.

10. On 01.10.2021, interest of second quarter accrued to the tune of Rs. 84,00,000/-. The Appellant again served a letter demanding the interest of both first and second quarter for the financial year 2021-22.

11. Since the aforesaid amount was not being paid, therefore, the Appellant served a default notice on 29.10.2021 and a legal notice on 22.11.2021 to the Respondent demanding interest due on the debentures of

first and second quarter for the financial year 2021-22 and in the meantime the interest of third quarter (01.10.2021 to 31.12.2021) also become payable of an amount of Rs. 84,00,000/- which again was not paid.

12. The Appellant, thus, added the interest of three quarters fell due on 01.07.2021 of an amount of Rs. 71,80,274/-, on 01.10.2021 to the tune of Rs. 84,00,000/- and on 01.01.2022 to the tune of Rs. 84,00,000/-, total amounting to Rs. 2,39,80,274/- as debt which was not being paid despite demand and attributed default to it w.e.f. 29.10.2021.

13. The application filed under Section 7 of the Code was dismissed by the Adjudicating Authority on the ground that only the interest amount would not fall within the definition of financial debt until and unless principal amount has also become due and payable.

14. Counsel for the Appellant has submitted that an application under Section 7 of the Code shall be maintainable even on the component of interest if it crosses the threshold limit being part of the financial debt. In this regard, it is submitted that the financial debt is a debt with interest if any, disbursed against the consideration for the time value of money and includes debentures. It is further submitted that the Hon'ble Supreme Court in the case of M/s Orator Marketing Pvt. Ltd. Vs. M/s Samtex Desinz Pvt. Ltd. Civil Appeal No. 2231 of 2021 has held that interest free loan is a financial debt and the application under Section 7 was held to be maintainable. It is submitted that on the same analogy the interest which became due and payable would attract the provisions of Section 7 of the Code.

15. On the other hand, Counsel for Respondent has vehemently argued that as per the scheme of the Code, the financial debt means the debt

alongwith interest and not the interest independently and further submitted that there is no error in the approach of the Adjudicating Authority. It is also argued that the decision in the case of M/s Orator Marketing Pvt. Ltd. (Supra), relied upon by the Appellant is not applicable because it deals with the aspect of principal amount though advanced without interest which had become due and payable.

16. We have heard Counsel for the parties and perused the record with their able assistance.

17. From the resume of the facts, narrated herein before, the question which arises for our consideration is as to whether an application under Section 7 of the Code can be filed and maintained in respect of the component of interest which became due and payable without asking for the principal amount which has not yet become due and payable?

18. In order to answer this question, certain provisions of the Code need to be referred to as also its scheme. The Code is divided into 'V' parts. Section 3 in Part 'I' provides the definition of terms arising time and again in the Code whereas Section 5 gives the definition of the terms which arises in part 'II' of the Code.

19. We would refer to some definitions arising in part 'I'. We would first refer to the definition of Corporate Debtor which means a corporate person who owes a debt to any person. Corporate person is defined under Section 3(7) which means "a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider" and

person is defined under Section 3 (23) which includes a company. The word debt is defined under Section 2 (11) which means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. Claim is defined in Section 2(6) means a right to payment and if debt is not paid then it is a default which is defined in Section 3(12) which means non-payment of debt as a whole or part of it or instalment which becomes due and payable.

20. Now the question is that who can recover the debt. Section 3(10) provides definition of creditor which says that any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder. It is pertinent to mention that the definition of financial debt, operational debt, financial creditor and operational creditor is not provided in Section 3 rather the same are provided in Section 5 in part 'II' which deals with insolvency resolution and liquidation for corporate persons. Certain definitions provided in Section 5 of the Code are also required to be referred to, namely, Section 5(7) financial creditor and 5(8) financial debt. According to 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 shall also include any amount raised by issuing debentures. As per Section 5(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

21. Since the application has been filed under Section 7 of the Code by the Appellant as a financial creditor, therefore, it would be relevant to refer to the provision of Section 7 which read as under:-

“7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with 2[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

3[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub- section (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish

–
(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or

on the basis of other evidence furnished by the financial creditor under sub-section (3):

[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]

(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate-

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”

22. As per the above provision, a Financial Creditor would be entitled to file an application for the initiation of CIRP against the Corporate Debtor before the Adjudicating Authority when the default has occurred. As per Section 7(5), if the Adjudicating Authority is satisfied that a default has occurred and the application filed under Section 7 is complete in so far as the conditions are provided in Section 7(2) are concerned and there is no disciplinary proceedings pending against the RP then it may order admission of the application. Whereas Section 7(5)(b) provides that if the Adjudicating Authority is satisfied that no default has occurred or the application filed under Section 7 is incomplete in so far as Section 7(2) is

concerned or any disciplinary proceeding is pending against the proposed resolution professional then it may reject the application.

23. Thus, in order to maintain the application under Section 7 of the Code the financial creditor has to show the default as a condition precedent. In this regard, we may have to refer to definition of default provided in Section 3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid. The debt has also been defined as a liability in respect of claim towards a financial debt or operational debt and the claim means the right to payment. There is no dispute, in so far as the facts of this case are concerned that the amount of interest became due and payable by the Corporate Debtor to the Appellant on 01.07.2021 to the tune of Rs. 71,80,274/- in view of the condition enumerated in the debenture which says that the debenture shall carry a coupon rate of 6% p.a. on the face value plus securities premium on quarterly rests and also in view of Section 71(8) of the Act.

24. We may also refer to Para 27 and 28 of the Judgment of the Hon'ble Supreme Court, rendered in the Case of Innovative Industries Ltd. Vs. ICICI Bank, 2018 1 SCC 401, in which the scheme of the code has been deliberated and explained in respect of Section 7 of the Code:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which

defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

25. We would also like to refer to another decision of the Hon'ble Supreme Court in the case of M/s Orator Marketing Pvt. Ltd. (Supra). In the said case the original debtor advanced a term loan of Rs. 1.60 Crores to the Corporate Debtor for a period of two years to enable the Corporate Debtor to use it for its working capital requirements. The loan was later on assigned to the Appellant therein who filed the petition under Section 7 to recover principal amount (interest free loan). The question was raised by the Respondent therein that interest free loan would not come within the purview of financial debt, therefore, the application filed as a Financial Creditor would not be maintainable. The Hon'ble Supreme Court made the following observations in Para 19, 22, 31, 47, 48 and 49 which are reproduced as under:-

“19. Corporate Resolution Process gets triggered when a Corporate Debtor commits a default. A Financial Creditor may file an application for initiating a Corporate Insolvency Resolution Process against the Corporate Debtor, when a default has occurred.

22. The NCLT and NCLAT have overlooked the words “if any” which could not have been intended to be otiose. ‘Financial debt’ means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof ‘financial debt’ includes any amount raised under any other transaction, having the commercial effect of borrowing.

“47. As noticed, the root requirement for a creditor to become financial creditor for the purpose of Part II of the Code, there must be a financial debt which is owed to that person. He may be the principal creditor to whom the financial debt is owed or he may be an assignee in terms of extended meaning of this definition but, and nevertheless, the requirement of existence of a debt being owed is not forsaken.

48. It is also evident that what is being dealt with and described in Section 5(7) and in Section 5(8) is the transaction vis-à-vis the corporate debtor. Therefore, for a person to be designated as a financial creditor of the corporate debtor, it has to be shown that

the corporate debtor owes a financial debt to such person. Understood this way, it becomes clear that a third party to whom the corporate debtor does not owe a financial debt cannot become its financial creditor for the purpose of Part II of the Code.

49. Expounding yet further, in our view, the peculiar elements of these expressions “financial creditor” and “financial debt”, as occurring in Sections 5(7) and 5(8), when visualised and compared with the generic expressions “creditor” and “debt” respectively, as occurring in Sections 3(10) and 3(11) of the Code, the scheme of things envisaged by the Code becomes clearer. The generic term “creditor” is defined to mean any person to whom the debt is owed and then, it has also been made clear that it includes a “financial creditor”, a “secured creditor”, an “unsecured creditor”, an “operational creditor”, and a “decree-holder”. Similarly, a “debt” means a liability or obligation in respect of a claim which is due from any person and this expression has also been given an extended meaning to include a “financial debt” and an “operational debt”.

31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor.

‘Default’ means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of ‘debt’ is also expansive and the same includes inter alia financial debt. The definition of ‘Financial Debt’ in Section 5(8) of IBC does not expressly exclude an interest free loan. ‘Financial Debt’ would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.”

26. After referring to various definition appearing in Part I and Part II of the Code and explaining the scheme with the help of the decision in the case of Innovative Industries Ltd. and taking a cue from the decision of the Hon’ble Supreme Court in the case of M/s Orator Marketing Pvt. Ltd. (Supra), we are of the considered opinion that in the facts and circumstances of the present case the application filed under Section 7 of the Code could be maintained in respect of the component of interest which became due and payable, without asking for the principal amount which has not yet become due and payable. The question posed in the earlier part of this orders is duly

answered in favour of the Appellant. The appeal is thus allowed and the impugned order is hereby set aside though without any order as to cost.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi

15th November, 2022

Sheetal