

## Case Snippets

**Volume 03, Number 36 (September 9, 2020)**

### Mrs. Rita Kapur Vs Invest Care Real Estate LLP

Company Appeal (AT) (Insolvency) No. 111 of 2020

**Once the ‘Debt’ is converted into “Capital”  
it cannot be termed as ‘Financial Debt’ and  
the Appellant cannot be described as  
‘Financial Creditor’.**

In the present case the Appellant filed Appeal under Section 61 read with Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Impugned order dated 26.11.2019 passed by the Adjudicating Authority.

**Facts of the case:-**The Appellant has given loan of Rs.40 Lakhs to the Respondent No.1 – Invest Care Real Estate LLP, and the same was to be repaid in four instalments but neither the principal amount nor interest were paid to her. Her grievance is that the ‘loan’ has been converted into ‘equity’ on 25.03.2014. She has also averred that there is irregularity in purchase of Non-judicial e-Stamp paper of dated 05th June, 2013 and amount paid from the account of Respondent No.1. It was further alleged that the loan has been converted into equity, which is against the terms and conditions of ‘Loan Agreement’ dated 09.07.2013.

Appellant has also disputed that how her “Loan” can be converted into “Equity” based on a certified copy of the Resolution signed by two ‘Designated Partner’ and not by other partners. She has also alleged of pre-planned acts to deceive and defraud and has alleged illegality.



She wants that CIRP be commenced immediately and the order of the Adjudicating Authority be set aside.

The Respondent submitted that the Appellant is not a Financial Creditor rather a related party and hence in no way she can be treated as a 'Financial Creditor' etc.

NCLAT observed that the provisions of Section 7 of the I&B Code, 2016 provides for initiation of the CIRP by 'Financial Creditor; only and that too, if there is a 'Debt' and 'Default'. So, the first question is the Appellant must be a 'Financial Creditor'.

While taking into the consideration section 5[7], 5 [8] and section 7 of the IBC , and facts of this case NCLAT observed that it is latently & patently clear that once the 'Debt' is converted into "Capital" it cannot be termed as 'Financial Debt' and the Appellant cannot be described as 'Financial Creditor'.

Hence, the grievance of the Appellant does not fall under the provision of 'Insolvency and Bankruptcy Code, 2016'. Accordingly, the Appeal is devoid of merits and the same is hereby dismissed. However, the Appellant is at liberty to approach an appropriate forum for seeking necessary relief(s) for redressal of grievances, of course, in accordance with Law.

Appeal dismissed.

