



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

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**NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY VS. ANAND SONBHADRA, NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY VS. MANISH GUPTA & ANR.  
CIVIL APPEAL NO. 2222 OF 2021 AND 2367-2369 OF 2021  
DATE OF SUPREME COURT'S JUDGMENT: 17<sup>TH</sup> MAY 2022**

**"THE APEX COURT WAS OF THE VIEW THAT IN THE LEASE IN QUESTION, THERE HAS BEEN NO DISBURSEMENT OF ANY DEBT (LOAN) OR ANY SUMS BY THE APPELLANT TO THE LESSEE. THE APPELLANT WOULD, THEREFORE, NOT BE A FINANCIAL CREDITOR WITHIN THE AMBIT OF SECTION 5(8) OF IBC," (Para 56)**

### **Facts of the Case: -**

The Appellant 'NOIDA' filed appeal No. 2222 OF 2021 against the judgment passed by the NCLAT, wherein NCLAT had held that the NOIDA is an Operational Creditor 'OC' under IBC and cannot be considered as a Financial Creditor 'FC' of the Corporate Debtor 'CD' under the provisions of the Code. The appellant 'NOIDA' initially submitted Form 'B' and claimed as an OC in regard to the dues outstanding under the lease. Subsequently the appellant filed claim in Form 'C' and claimed as FC. Finally, the matter was considered by NCLT which held that there was no financial lease in terms of the Indian Accounting Standards and there was no financial debt. By the impugned order, NCLAT affirmed the view taken by the NCLT.

Further, appeals 2367-2369 of 2021 were filed against an interim order passed by the NCLAT staying the order passed by the NCLT, whereby NCLT had directed to admit the appellant as a FC and it also directed to admit the whole of the claim of the appellant. In view of the order passed, which is the subject matter of Appeal No. 2222/2021, NCLAT found it fit to pass an order staying the order passed by the NCLT. Hence the present appeals.

The common question in both the appeals were whether the appellant is entitled to be treated as a FC within the meaning of the IBC.

### **Supreme Court's Observations: -**

The Apex Court made inquiry into the various rules of the Indian Accounting Standards which define the characteristics of a financial Lease and referred to Rule 63 of the IAS which states that a lease will be a financial lease if the term of the lease is for the major part of the economic life of the underlying assets, even



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if the title is not transferred. The Apex Court held that the lease in question is for a period of ninety years and the principle of the economic life of the underlying asset which is the "land" is inapposite in the present case.

The Apex Court further held that it may not be possible to hold that the lease is for the major part of the economic life of the land. It cannot be said that at the expiry of 90 years the land will cease to be economically usable. Therefore, we cannot accept the argument of the appellant that after 90 years appellant would not get the empty parcel of land and the land would not be of any commercial use to the appellant after the expiry of the lease.

The Apex Court further examined the contention of NOIDA based on Rule 62 and 65 of IAS which states that a lease may be classified as a financial lease if it transfers substantially all the risks and rewards incidental to the ownership of the underlying asset and held that all rewards incidental to the ownership are not transferred to the lessee by NOIDA and thus the conditions of Rule 62 and 65 do not meet in the present scenario and therefore, NOIDA cannot be considered as a FC under Section 5(8)(d) of IBC.

The Apex Court also examined the case of NOIDA in view of Section 5(8)(f) of the Code which classifies a creditor as a FC in the case of a debt. The Court negated the contention of NOIDA and held that in view of the facts of the appeals, it is unable to hold that the lessee has raised any amounts from the appellant. The question, therefore, of considering the last limb of Section 5(8) (f), namely, whether it has commercial effect of a borrowing could not arise. But it is safe to say that the obligation incurred by the lessee to pay the rental and the premium cannot be treated as an amount raised by the lessee from the appellant.

### **Order: -**

The Apex court dismissed the appeals in view of the above observations and stated that NOIDA is an OC.

**Case Review: - Appeal Dismissed.**