



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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**S. Chandriah Vs. Sunil Kumar Agarwal, Resolution Professional of Digjam Limited & Ors
Company Appeal (AT) Insolvency No. 21 of 2022 & Company Appeal (AT) Insolvency No. 22 of 2022
Date of NCLAT's Judgment: JULY 22, 2022**

Acknowledging the Liability of earnest money as a 'Financial Liability' is not akin to admitting as a 'Financial Debt'.

Facts of the Case: -

S. Chandriah (Appellant) had offered to purchase surplus land available at the premises of M/s. Digjam Limited (Corporate Debtor/ CD) vide a letter dated September 14, 2018, in Surat. Subsequently, the Appellant paid a sum of ₹7 Crores as Earnest Money to the CD. Meanwhile, M/s Oman Inc (Operational Creditor), filed an Application against the CD under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) which was admitted by the National Company Law Tribunal (NCLT) vide an order dated April 26, 2019. Consequently, Corporate Insolvency Resolution Process (CIRP) of the CD was started.

Subsequently, the Appellant was required to file his claims before the Resolution Professional (RP). On May 22, 2019, the Appellant filed his claim in "Form-F" under "Claim by Creditor other than Financial and Operational Creditor". Thereafter, the Appellant on July 02, 2019, filed his claim under "Form-C" as a Financial Creditor. Besides the receipt issued by the CD, the said Earnest Money also reflected in the Annual Reports of the CD for the FY 2018-19 and FY 2019-20, as "Other Financial Liability". The claim of the Appellant of ₹7 Crores was admitted by the RP under the category of "Other Creditors". However, this debt was not considered by the CoC while approving the Resolution Plan.

The Erstwhile RP averred that the Appellant had remitted funds to CD as interest free advance to be adjusted against sale consideration for the proposed sale of land which shall not fall under Financial Debt. Aggrieved by this order of NCLT, the Appellant filed two applications before NCLAT, *Firstly*, for his claim to be admitted as a Financial Debt and *Secondly*, challenging the approval of the Resolution Plan. The Appellant also sought direction for the RP to admit him as a Member of the Committee of Creditors (CoC) which was earlier dismissed by the NCLT.

The main issue to be adjudicated in this Appeal is as to whether the payment of Earnest Money of ₹7 Crores by the Appellant to the CD is a Financial Debt within the meaning of Section 5(8) of the Code.



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NCLAT's Observations:-

The Bench observed that Section 5(8) of the IBC defines the Financial Debt as “A Financial Debt is a debt alongwith interest which is disbursed against the consideration for the time value of money and include any of the event specified in sub-Clause (a) to (i)..”. As per Section 8, for a debt to be Financial Debt, essential condition to be proved is that the debt is disbursed against the consideration for the time value of money. The word ‘time value of money’ has been defined in Black’s Law Dictionary to the following effect: “The price associated with the length of time that an Investor must call only when investment matures, or the related income is earned”. Thus, time value of money means the price received for the length of time for the money for which the money has been disbursed. Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India* [(2019) 8 SCC 416] discussed the Scope of Section 8 at length. In the case at hand, the precise question to be answered is as to whether the payment of Earnest Money even if it is accepted as disbursement is against the consideration for the time value of money.

It was observed that the disbursement made by the Appellant to the CD was only a payment of Earnest Money which was to be adjusted in sale of the land. The disbursement was not in consideration for the time value of money. It is not a case where any interest free loan was advanced to the CD rather in this case, Earnest Money was paid by the Appellant to the CD. Regarding the Earnest Money liability of the CD being classified as a ‘Financial Liability’ in the Annual Return of the CD for FY 2018-19 and FY 2019-20, the Court said that acknowledging the Liability of Earnest Money as a Financial Liability is not akin to admitting as a “Financial Debt”.

Regarding the second issue as to whether the Resolution Plan violates provisions of Section 30(2)(e) and 30(2)(f), the Court observed that “the Resolution Plan envisages as noticed above that the amount for “Other Creditors” is Nil”. Thus, the CoC’s commercial decision not to allocate any amount to the other creditors cannot be questioned. Appellant was not able to prove violation of any provision of the IBC in approving the Resolution Plan by the CoC.

Order: - The Bench did not find any merit in the appeals.

Case Review: - *Appeals dismissed.*