



# 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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**M/s GLOBAL CREDIT CAPITAL LIMITED & ANR Vs. M/s SACH MARKETING PVT. LTD. & ANR.  
CIVIL APPEAL NO. 1143 OF 2022 & NOS.6991-6994 OF 2022  
Supreme Court Judgement dated April 25, 2024**

### Facts of the Case: -

The present appeals, Civil Appeal No. 1143 of 2022 and Civil Appeal Nos. 6991-6994 of 2022, challenge the separate impugned orders dated 7th October 2021 and 29th October 2021, respectively, passed by the Appellate Tribunal. These orders state that Respondents Nos. 1, 3, 4, and 5 are 'Financial Creditors.' Civil Appeal No. 1143 of 2022 is filed by M/s Global Credit Capital Ltd. & Anr. in the capacity of financial creditors (hereinafter referred to as 'Appellants') against M/s Sach Marketing Pvt. Ltd. & Anr. (hereinafter referred to as Respondent No. 1). As for Civil Appeal Nos. 6991-6994 of 2022 are concerned, these are filed by other creditors as financial creditors after their claims were rejected by the Resolution Professional (hereinafter referred to as Respondent No. 2). The CD in both the appeal is M/s Mount shivalik industries Ltd.

Civil Appeal No. 1143 of 2022 involves two agreements dated April 1, 2014, and April 1, 2015, respectively, between the CD and the Respondent No. 1. These agreements appointed the first respondent as a 'Sales Promoter' to promote the beer manufactured by the CD in Ranchi, Jharkhand. Each agreement mandated a minimum security deposit, with the CD undertaking to pay interest on the deposited amounts. Meanwhile, the Oriental Bank of Commerce initiated proceedings u/s 7 of the IBC against the CD, which was admitted by the AA on 12.06.18, leading to the imposition of a moratorium. Initially, the Respondent No. 1 filed a claim with the Respondent No. 2, as an operational creditor which was withdrawn, and a fresh claim was filed as a financial creditor. The Respondent No. 2 informed him that his claim will be accepted partly as financial debt and partly as operational debt. The AA initially accepted this claim in part but subsequently rejected it, prompting an appeal to the NCLAT by the Respondent no.1 and NCLAT held that the Respondent No. 1 is a Financial Creditor. Meanwhile, the CoC approved the Resolution Plan submitted by M/s. Kals Distilleries Pvt. Ltd. (hereinafter referred as Respondent No. 6 in Civil Appeal no: 6991-6994 of 22).

In Civil Appeal Nos. 6991-6994 of 2022, the same CD faced challenges from various creditors. The Respondent No. 5 provided financial assistance of ₹75,00,000/-, the Respondent No. 4 provided ₹1,62,00,000/-, the Respondent No. 1 advanced ₹ 25,00,000/-, and the Respondent No. 3 advanced ₹1,00,000/-. The Resolution Professional rejected the claims of these creditors as financial creditors. Consequently, they filed separate applications before the AA under sub-section (5) of Section 60 of the IBC. The AA rejected these applications, leading to appeals before the NCLAT. The NCLAT allowed these appeals, relying on its judgment order dated 07.10.21 which is the subject matter of challenge in Civil Appeal No. 1143 of 2022.



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## Supreme Court Observations: -

The court observed that the definition of “financial debt” under sub-section (8) of Section 5 of the IBC entails a debt disbursed against consideration for the time value of money. Previous judgments, such as the case of *Anuj Jain, IRP for Jaypee Infratech Ltd vs Axis bank Ltd. & Ors*, emphasize the importance of disbursement against the consideration for time value of money for a debt to qualify as a financial debt under the IBC. Additionally, the case of *Phoenix ARC Pvt. Ltd. vs Spade Financial Services Ltd. & Ors.*, further elucidated on this matter.

The court highlighted that “time value” refers to compensation for the duration for which money has been disbursed, often in the form of interest or discounting. It stressed that the nature of the transaction should be scrutinized beyond the face value of written agreements to discern its real essence. The Apex Court emphasized that a debt is considered operational only if a creditor's claim, under an agreement for providing a service, is directly connected or correlated to that service.

The Apex Court after examining the agreements dated April 1, 2014, and April 1, 2015, noted that while the first respondent acted as a Sales Promoter for the CD's beer, the compensation was a mere ₹4,000/- per month with no commission on sales quantity. Furthermore, since there was no clause regarding forfeiture of the security deposit, the CD was obligated to refund it with interest at 21% per annum, establishing it as a debt under subsection (11) of Section 3 of the IBC. Considering the provisions of sub-section (8) of Section 5 of the IBC, the Apex court affirmed that the debt, inclusive of interest, constituted consideration for the time value of money. Moreover, as the transaction involved the transfer of funds to the CD, it satisfied the conditions of clause (f) of sub-section (8). Therefore, the amounts covered by security deposits were deemed financial debts, rendering the first respondent a financial creditor under sub-section (7) of Section 5 of the IBC.

**Order/Judgement:** The Supreme Court upheld the view taken by the NCLAT under the impugned judgments and orders is correct and the contracts subject to Civil Appeal Nos. 6991 to 6994 of 2022 shared similar characteristics with those addressed in Civil Appeal No. 1143 of 2022.

**Case Review:** The Appeals are dismissed with no order as to costs.