



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

No.213

(March 03, 2025)

**ILD Owners Welfare Association Vs. M/s. ALM Infotech City Pvt. Ltd.
Company Appeal (AT) (Insolvency) No. 2198 of 2024 & I.A. No. 8172 of 2024
Date of NCLAT Judgement: February 28, 2025**

Facts of the Case

The present appeal has been filed by ILD Owners Welfare Association (hereinafter referred as 'Appellant') against M/s ALM Infotech City Pvt. Ltd. (hereinafter referred as 'Respondent'). This appeal arises from the impugned order dated 30.07.24 passed by the Adjudicating Authority/AA.

The dispute pertains to a real estate project, ILD Trade Centre, Sector 47, Sohna Road, Gurgaon, which received its occupancy certificate on 19.11.10. Various unit holders booked their respective units, executed Builder Buyer Agreements (BBA), and subsequently received Conveyance Deeds in their favor from 2015 onwards. According to the Conveyance Deeds, each unit holder was required to pay ₹100 per square foot of the super area of their unit to the respondent towards Interest-Free Maintenance Security (IFMS). The IFMS was intended for maintaining common areas, services, facilities, and installations within the project.

Over time, complaints regarding maintenance arose from both individual unit holders and the Appellant. On 08.09.22, the Appellant took over the maintenance of the project. Subsequently, on 06.10.23, the Appellant issued a demand notice for ₹2.95 crore to the Respondent, alleging a default on financial debt. This was followed by an application under Section 7 of the IBC in April 2024. The AA through its order dated 08.05.24, directed the Appellant to file an affidavit demonstrating that the amount in question qualified as financial debt under Section 5(8) of the IBC. In compliance, the Appellant argued that the Conveyance Deed dated 09.12.15 obligated the Respondent to refund the IFMS, and thus, it qualified as financial debt. However, the AA dismissed the Section 7 application, holding that IFMS does not constitute financial debt, prompting the present appeal before the Appellate Tribunal.

The main issue raised before the Appellate Tribunal is: (i) Whether the amount deposited as Interest-Free Maintenance Security (IFMS) by the allottees qualifies as financial debt u/s 5(8) (f) of the IBC 2016.

NCLAT's observations:

The Appellate Tribunal analyzed Clauses 26 and 27 of the Conveyance Deed, which specified that IFMS was collected for maintaining common areas, services, installations, and amenities, with maintenance charges payable to the maintenance agency.



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The Appellate Tribunal considered whether this amount could be classified as financial debt. Referring to *Global Credit Capital Limited & Anr. vs. Sach Marketing Pvt. Ltd. & Anr. 2024.*, the Appellate Tribunal held that the classification of a debt depends on the nature of the transaction. It emphasized that a financial debt must involve disbursement for the time value of money, a necessary element u/s 5(8). Citing *Pioneer Urban Land and Infrastructure Limited & Anr. vs. Union of India & Ors. 2019*, the Appellate Tribunal reaffirmed that financial debt requires disbursement for the borrower's use against consideration for the time value of money.

The Tribunal further examined *Corab India Private Limited vs. Birendra Kumar Aggarwal 2024*, which dealt with whether a lease security deposit could be classified as financial debt. It upheld the AA's ruling that security deposits are not disbursed against time value of money and cited *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank Limited & Ors. 2020.*, which stressed that time value of money is a key condition for financial debt. Applying these principles, the Appellate Tribunal concluded that IFMS was collected for maintenance services and payable to the vendor or its maintenance agency, making it ineligible as financial debt. It further assessed whether IFMS could qualify as operational debt, which covers claims for goods, services, employment, or government dues. Citing *Consolidated Construction Consortium Ltd. vs. Hitro Energy Solutions Pvt. Ltd. 2020*, the Appellate Tribunal observed that operational debt must have a direct link to the provision of goods or services. Since IFMS was deposited for future maintenance services, it had characteristics of operational debt rather than financial debt.

The Appellate Tribunal also examined the Appellant's argument based on Section 6(6) of the Haryana Apartment Ownership Act, 1983, which mandates the association's role in maintenance. However, it held that this statutory obligation does not convert IFMS into financial debt, as the provisions merely define rights over common areas.

Order/Judgement: The Appellate Tribunal upheld the AA's decision rejecting the Section 7 application, ruling that IFMS does not meet the essential elements of financial debt u/s 5(8) of IBC. Reaffirming that security deposits for maintenance purposes cannot be classified as financial debt under IBC.

Case Review: The Appeal *dismissed*.