



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

No.217

(April 01, 2025)

**ASL Sales and Services LLP in matter of Punjab National Bank vs. Vadraj Cement Ltd.  
I.A. 5996 OF 2024 in C.P.(IB) No. 3528/MB/2018  
Date of NCLT's Judgement: March 18, 2025**

### Facts of the Case

The present application, I.A. No. 5996 of 2024, was filed u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) r/w Rule 11 of the NCLT Rules, by M/s ASL Sales and Services LLP (hereinafter referred to as 'Applicant') before the National Company Law Tribunal, Mumbai Bench-I. The grievance was directed against the rejection of the Applicant's claim as a secured financial creditor by the Resolution Professional (hereinafter referred to as 'Respondent') of M/s Vadraj Cement Limited (Corporate Debtor), during the Corporate Insolvency Resolution Process (CIRP) initiated against the Corporate Debtor by Punjab National Bank via an admission order dated 2nd February 2024.

The Applicant had entered into an agreement dated 2nd January 2017 with the CD, whereby it was appointed as a Marketing Organizer to provide logistics, marketing, and distribution services for cement products manufactured by the CD. This agreement was effective from 16th January 2017 to 31st March 2018.

The Applicant had filed two claims with the RP.

- (i) A claim of ₹49,53,338.22 as Operational Debt under Form B, which was not disputed; and
- (ii) A claim of ₹9,98,65,318 as Secured Financial Debt under Form C.

This amount included ₹4.8 crore as Refundable Deposit and ₹20 lakh as Security Deposit, along with interest computed from January 2017 to February 2024 at agreed rates of 10.5% p.a. and 8% p.a., respectively. The Resolution Professional, however, rejected the claim under Form C, stating that the transaction under the agreement was operational in nature, connected to service provision and not disbursed against the time value of money. Consequently, the Applicant moved the AA, seeking directions to treat the ₹9.88 crore claims as a secured financial debt and for an interim stay on CIRP proceedings.

The Tribunal considered two main issues:

- (i) Whether the claims arising from the deposits of ₹20 lakh and ₹4.8 crore constituted financial debt or operational debt?
- (ii) Whether the post-dated cheques promised in the agreement created any security interest qualifying the claim as a secured debt?



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## NCLT's observations:

Upon examining the agreement, the Adjudicating Authority found that the ₹20 lakh Security Deposit was explicitly linked to the due performance of services under the agreement. It was refundable only after termination or expiry and subject to appropriation for dues, clearly indicating an operational nature as defined under Section 5(21) of the IBC. Hence, this amount constituted operational debt.

In contrast, the ₹4.8 crore refundable deposits were structured differently. Clause 3 of the agreement provided for repayment in monthly instalments starting February 2017 via post-dated cheques. While these cheques were never issued, and there was no service directly linked to the deposit, the AA noted that the refund obligation existed independently of service performance. Further, the deposit carried a fixed interest rate of 10.5% and had no forfeiture clause, signifying a disbursement for time value of money. Therefore, the refundable deposit satisfied the criteria for “financial debt” under Section 5(8) of the Code.

The AA rejected the claim that the post-dated cheques created a security interest under Section 3(31) of the IBC, as such instruments do not amount to mortgage, hypothecation, or charge. Additionally, it referenced the Applicant's earlier affidavit before the Bombay High Court stating that no security had been created in its favour. Hence, the AA held that the refundable deposit constituted unsecured financial debt. The AA relied on the precedent set in **Global Credit Capital Ltd. & Anr. vs. SACH Marketing Pvt. Ltd. & Anr. 2024**, where the Supreme Court ruled that the true nature of the transaction must be scrutinized, and only debts arising from service-related claims are considered operational in nature.

**Order/Judgement:** The AA, while partly allowing I.A. held that the claim of ₹20 lakh towards Security Deposit along with interest constituted an operational debt, whereas the claim of ₹4.8 crore towards Refundable Deposit along with interest qualified as a financial debt. However, the financial debt was deemed unsecured as no valid security interest had been created. Accordingly, the RP was directed to update the list of creditors to reflect these classifications, without requiring the Applicant to submit a fresh Form B for the operational debt, considering the CIRP was at an advanced stage.

**Case Review:** The IA is partly allowed and disposed of accordingly.