



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Number 234

(July 28, 2025)

M/s. Kaliber Associates Pvt. Ltd. vs. M/s. J.R. Modi Associates Pvt. Ltd.
Company Petition No. (IB)-1122(ND)/2020
NCLT, New Delhi: 10th July 2025

Facts of the Case: -

The present Company Petition was filed by M/s. Kaliber Associates Pvt. Ltd., through its Liquidator (hereinafter referred as 'Applicant' or 'Financial Creditor') u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) r/w Rule 4 of the Insolvency and Bankruptcy (Application to AA) Rules, 2016, seeking initiation of CIRP against M/s. J.R. Modi Associates Private Limited (hereinafter referred as 'Respondent' or 'Corporate Debtor') for default in repayment of financial debt amounting to ₹9,05,00,000/-.

The Applicant, currently under liquidation, had disbursed loans and advances totaling ₹29,05,00,000/- to the CD, of which ₹9,05,00,000/- remained unpaid. This outstanding amount was recorded in the CD's Audited Financial Statements for FY 2017-18 as "Advance against Property" and supported by NeSL records. Several demand notices issued by the Applicant between 2019 and 2020 remained unanswered. Supporting documents included bank statements, audited financials, NeSL records, and legal notices.

The Respondent denied availing any loan or financial assistance and claimed the entries were advances against pending property transactions. Its balance sheet dated 31.03.18 reflected ₹9,05,00,000/- as advance from Applicant, while the Applicant's balance sheet showed it as short-term loan and advance to the CD.

CIRP was initially admitted by the AA on 31.03.2022, *ex- parte*. The Hon'ble NCLAT, by order dated 27.05.22, set aside the admission and remanded the matter for fresh consideration after accounting for the CD's reply. Another *ex parte* order dated 21.04.23 admitting CIRP was again set aside by the NCLAT for not considering the CD's reply dated 12.08.21. Eventually, the AA took on record the reply filed on 05.09.24 and noted that the disbursement was acknowledged in the CD's financials. The default date of 18.01.19, supported by NeSL record, fell within the limitation period, with the application filed on 18.12.2020.



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NCLT's Observations:

The AA observed that the transaction between the parties, even in the absence of a formal agreement, met the two essential components of “financial debt” under Section 5(8) of the Code, namely (i) disbursement of funds and (ii) the commercial effect of borrowing or “time value of money.” The Applicant had demonstrated that the advances were not mere commercial deposits but formed part of a financial arrangement entailing a return.

Reliance was placed on precedents such as:

- *Alliance Broadband Services Pvt. Ltd. vs. Manthan Broadband Services Pvt. Ltd.* [MANU/NC/7518/2019] where "advance against property" was held as financial debt.
- *Black Soft Tech Pvt. Ltd. vs. Quinn Logistics India Ltd.*, Company Appeal (AT) (Insolvency) No. 43 of 2017, where commercial benefit from an investment was deemed financial debt.
- *M/s Orator Marketing Pvt. Ltd. v. M/s Samtex Desinz Pvt. Ltd.*, Civil Appeal No. 2231 of 2021, where even an interest-free loan was considered financial debt under Section 5(8)(f), if it had the commercial effect of a borrowing.

It was held that the disbursed amount satisfied the definition of “financial debt” under Section 5(8)(f) of the Code and that the Applicant was a “Financial Creditor” under Section 5(7). The Corporate Debtor’s acknowledgement of liability in its audited accounts further corroborated the existence of debt and default.

Order/Judgement: The AA, having been satisfied that the application met the requirements of Section 7(5)(a) of the Code, admitted the petition. A moratorium under Section 14 of the Code was imposed, and the Applicant was directed to deposit ₹2,00,000/- towards IRP expenses.

Case Review: *Petition Admitted.*