M/S ORATOR MARKETING PVT. LTD.

v.

M/S SAMTEX DESINZ PVT. LTD.

(Civil Appeal No. 2231 of 2021)

JULY 26, 2021

[INDIRA BANERJEE* AND V. RAMASUBRAMANIAN, JJ.]

Insolvency and Bankruptcy Code, 2016:

ss. 5(8), 7, 62 – Financial debt – Construction of – Person giving a term loan to a Corporate Person, free of interest, on account of its working capital requirements– Non-payment of the same by Corporate Debtor – Initiation of Corporate Insolvency Resolution Process-CIRP u/s. 7 by the appellant-lender – Rejection of the application by NCLT as also NCLAT holding that the claim cannot be termed to be a 'financial debt' – On appeal, held: Initiation of CIRP by a Financial Creditor u/s. 7 is the occurrence of a default by the Corporate Debtor – 'Default' means non-payment of debt in whole or part when the debt has become due and payable, and includes financial debt and operational debt – 'Financial debt' u/s. 5(8) means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon – If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt – Definition of 'financial debt' in s. 5(8) does not expressly exclude an interest free loan – 'Financial Debt' would be construed to include interest free loans advanced to finance the business operations of a corporate body – On facts, both NCLAT and NCLT misconstrued the definition of 'financial debt' in s. 5(8), by reading the same in isolation and out of context, thus, the order passed by the NCLAT and NCLT, set aside – Application u/s. 7 of the IBC stands revived.

s. 5(8) – Financial debt – Expression 'includes' – Construction of – Held: Legislature has the power to define a word in a statute – Where the word is defined to include something, the definition is prima facie extensive – Depending on the context in which the word

* Author

'includes' may have been used, and the objects and the scheme of the enactment as a whole, the expression 'includes' may have to be construed as restrictive and exhaustive – Words and phrases.

Interpretation of statutes: Construction/interpretation of statutory provision – Held: Legislative intent of the statute is to be seen in the words used by the legislature itself – In case of doubt, the object and purpose of the statute or the reason and spirit behind it, is to be seen – When a question arises as to the meaning of a certain provision in a statute, the provision has to be read in its context – The Statute has to be read as a whole.

Allowing the appeal, the Court Held:

1.1 Both the NCLAT and NCLT have misconstrued the definition of 'financial debt' in Section 5(8) of the Insolvency and Bankruptcy Code, 2016, by reading the same in isolation and out of context. The judgment and order of the NCLAT, affirming the judgment and order of the Adjudicating Authority (NCLT) and dismissing the appeal is patently flawed, and are set aside. [Para 8, 32]

1.2 In construing and/or interpreting any statutory provision, one must look into the legislative intent of the statute. The intention of the statute has to be found in the words used by the legislature itself. In case of doubt, it is always safe to look into the object and purpose of the statute or the reason and spirit behind it. Each word, phrase or sentence has to be construed in the light of the general purpose of the Act itself. The interpretative effort "must be illumined by the goal, though guided by the words". When a question arises as to the meaning of a certain provision in a statute, the provision has to be read in its context. The statute has to be read as a whole. The previous state of the law, the general scope and ambit of the statute and the mischief that it was intended to remedy are relevant factors. [Para 9, 10]

1.3 The definition of 'financial debt' in Section 5(8) of the IBC cannot be read in isolation, without considering some other relevant definitions, particularly, the definition of 'claim' in Section 3(6), 'corporate debtor' in Section 3(8), 'creditor' in

Section 3(10), 'debt' in section 3(11), 'default' in Section 3(12), 'financial creditor' in Section 5(7) as also the provisions, *inter alia*, of Sections 6 and 7 of the IBC. The eligibility of a person, to initiate the Corporate Insolvency Resolution Process, if questioned, has to be adjudicated upon consideration of the key words and expressions in the aforesaid Section and other related provisions. [Para 15, 18]

1.4 Corporate Resolution Process gets triggered when a Corporate Debtor commits a default. A Financial Creditor may file an application for initiating a Corporate Insolvency Resolution Process against the Corporate Debtor, when a default has occurred. A 'corporate debtor' means a corporate person who owes a debt to any person, as per the definition of this expression in Section 3(8) of the IBC. Under Section 5(7) of the IBC 'financial creditor' means any person to whom a financial debt is owed and includes a person to whom such debt has legally been assigned. Section 5(8) defines 'financial debt' to mean "a debt along with interest if any which is disbursed against the consideration of the time value of money and includes money borrowed against the payment of interest, as per Section 5(8)(a) of the IBC. The definition of 'financial debt' Section 5(8) includes the components of sub-clauses (a) to (i) of the said Section. [Paras 19-21]

1.5 The NCLT and NCLAT have overlooked the words "if any" which could not have been intended to be otiose. 'Financial debt' means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof 'financial debt' includes any amount raised under any other transaction, having the commercial effect of borrowing. Furthermore, sub-clauses (a) to (i) of Sub-section 8 of Section 5 of the IBC are apparently illustrative and not exhaustive. Legislature has the power to define a word in a statute. Such definition may either be

restrictive or be extensive. Where the word is defined to include something, the definition is *prima facie* extensive. [Paras 22, 23]

1.6 Of course, depending on the context in which the word 'includes' may have been used, and the objects and the scheme of the enactment as a whole, the expression 'includes' may have to be construed as restrictive and exhaustive. [Para 27]

1.7 The trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes *inter alia* financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body. [Para 31]

Poppatlal Shah Vs. State of Madras **AIR 1953 SC 274 : [1953] SCR 677;** *Innoventive Industries Ltd. Vs. ICICI Bank Ltd.* **(2018) 1 SCC 407 : [2017] 8 SCR 33;** *Swiss Ribbons Pvt. Ltd. And Anr. Vs. Union of India and Others* **(2019) 4 SCC 17 : [2019] 3 SCR 535;** *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India* **(2019) 8 SCC 416 : [2019] 10 SCR 381;** *Dilworth v. Commissioner of Stamps* **(1899) AC 99;** *State of Bombay v. Hospital Mazdoor Sabha and Ors.* **AIR 1960 SC 610 : [1960] 2 SCR 866;** *CIT Andhra Pradesh v. Taj Mahal Hotel Secunderabad* **(1971) 3 SCC 550 : [1972] 1 SCR 168;** *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. V. Axis Bank Ltd.* **(2020) 8 SCC 401 – referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2231 of 2021.

From the Judgment and Order dated 08.03.2021 of the National Company Law Appellate Tribunal, New Delhi Bench in Comp. App. (AT) (INS) No.1064 of 2020.

Nikhil Goel, Lzafeer Ahmad B. F., Advs. for the Appellant.

Aniruddha Deshmukh, Adv. for the Respondent.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

This appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the IBC) is against the final judgment and order of the National Company Law Appellate Tribunal (NCLAT), New Delhi in Company Application (AT)(Insolvency) No. 1064 of 2020 dated 08-03-2021, whereby the NCLAT has been pleased to dismiss the appeal of the Appellant and confirmed the order dated 23.10.2020 of the Adjudicating Authority, i.e., the National Company Law Tribunal (NCLT), New Delhi, dismissing the petition being CP(IB) No. 908/ND/2020, filed by the Appellant under Section 7 of the IBC with the finding that the Appellant is not a financial creditor of the Respondent. The Appellant is an assignee of the debt in question.

2. The short question involved in this Appeal is, whether a person who gives a term loan to a Corporate Person, free of interest, on account of its working capital requirements is not a Financial Creditor, and therefore, incompetent to initiate the Corporate Resolution Process under Section 7 of the IBC.

3. M/s Sameer Sales Private Limited, hereinafter referred to as to "Original Lender", advanced a term loan of Rs.1.60 crores to the Corporate Debtor for a period of two years, to enable the Corporate Debtor to meet its working capital requirement. The Original Lender has assigned the outstanding loan to the Appellant.

4. According to the Appellant the loan was due to be repaid by the Corporate Debtor in full within 01.02.2020. The Appellant claims that the Corporate Debtor made some payments, but Rs.1.56 crores still remain outstanding.

5. The Appellant filed a Petition under Section 7 of the IBC in the NCLT for initiation of the Corporate Resolution Process. The petition was, however, rejected by a judgment and order dated 23.10.2020. The Adjudicating Authority (NCLT) held :

"11. Heard the parties and perused the case records.

12. There is no dispute that the applicant initially had disbursed the amount interest free to the respondent company. A perusal of the application it is clear that the loan was given interest free.

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15. Mere grant of loan and admission of taking loan will ipso fact not treat the applicant as 'Financial Creditor' within the meaning of Section 5(8) of the Code.

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17. In the application the applicant himself has submitted that the loan was interest free. ….

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20. It is well settled that the onus lies on the applicant to establish that the loan was given against the consideration for time value of money. Onus to prove also lies on the applicant to establish that the debt claimed in the application comes within the purview of 'financial debt' and that the applicant is a financial creditor' in respect of the present claim in question. Applicant has miserably failed to substantiate with supporting documentary evidence that interest, as claimed at Part-V of the application, is payable as per the agreed loan covenants.

21. Hon'ble NCLT in the matter of Dr. B.V.S. Lakshmi vs. Geometrix Laser Solutions Private Limited has observed that "fc/- coming within the definition of 'Financial Debt' as defined under sub-section (8) of Section 5 the Claimant is required to show that (I) there is a debt along with interest, if any, which has been disbursed and (ii) such disbursement has been made against the 'consideration for the time value of money"

22. It is reiterated that in the present case neither the loan agreement has any provision regarding the payment of interest not there is any supporting evidence/document to establish applicable rate of interest to be paid on the said loan. The applicant has failed to prove that the loan was disbursed against consideration for time value of money, particularly when respondent company has affirmed that no interest has been paid not payable at any point of time.

23. Similarly, in the matter of Shreyans Realtors Private Limited & Anr. vs. Saroj Realtors & Developers Private Limited Company Appeal (AT) (Insolvency) No.311 of 2018, vide its order dated 04.07.2018 Hon'ble NCLAT has observed that when corporate debtor never accepted the component of interest and has given no undertaking to repay the loan with interest; the Appellants cannot claim to ow 'financial debt' from the 'Corporate Debtor' and thereby cannot be claimed to be a 'Financial Creditor' as defined under Section 5(7) & (8) of the Insolvency and Bankruptcy Code, 2016.

24. Therefore, neither the present claim can be termed to be a 'financial debt' nor does the applicant come within the meaning of 'financial creditor'. Once the applicant does not come within the meaning of 'financial creditor' he becomes ineligible to file the application under Section 7 of the Insolvency Code 2016.

25. for the reasons stated above this petition fails and the same stands dismissed as not maintainable."

6. Being aggrieved, the Appellant filed an appeal under Section 61 of the IBC. The appeal has been dismissed by the NCLAT, by the judgment and order impugned before this Court.

7. The relevant part of the impugned judgment and order is extracted hereinbelow for convenience:

"5. We have heard Counsel for both sides and perused the Appeal and the Reply filed by the Respondent. The fact that loan was advanced to the Respondent, is not in dispute. The narrow question involved is whether the transaction concerned can be treated as a transaction of Financial Debt as defined in Section 5(8) of IBC. The definition of "Financial Debt" under IBC Section 5(8) reads as under:-

"(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against theconsideration for the time value of money and includes—

(a) money borrowed against the payment ofinterest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes,debentures, loan stock or any similar instrument;Company Appeal (AT) (Ins) No.1064 of 2020;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing;and

(ii) the expressions, "allottee" and "realestate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2of the Real Estate (Regulation and Development) Act,2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation inrespect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"Company Appeal (AT) (Ins) No.1064 of 20206IBC separately defines debt under Section 3(11) as under:-

"(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"

It is apparent that there can be debts which do not necessarily fall in the definition of financial debt or operational. Money borrowed against payment of interest comes within the definition financial debt. However, if the money borrowed is not against payment of interest, under the definition of financial debt, the core requirement is to find whether there is "consideration for the time value of money". The facts of the matter disclose and the Appeal also records that when the Corporate Debtor was unable to get any further loan from the market after having taken loan from M/s. Tata Capital Financial Services Ltd., M/s. Sameer Sales which was related party to the Corporate Debtor, extended interest free unsecured loan to the Corporate Debtor payable on or after 1st February, 2020 and that too upon demand by the lenders. It would be appropriate to reproduce the Loan Agreement itself to understand the same. The Loan Agreement (Annexure A-2) reads as under:-

LOAN AGREEMENT

THE PRESENT LOAN AGREEMENT IS BEING EXECUTED BETWEEN M/S SAMEER SALES PVT. LTD. AND M/S SAMTEX DESINZ PVT. LTD. AT NEW DELHI ON THIS

20th DAY JANUARY Two thousand Eighteen.

BETWEEN

(1) M/S SAMEER SALES PRIVATE LIMITED, a company registered under the Companies Act, 1956 bearing CIN No. U51900DL1992PTC047363, having registered office at 122, Tribunal Complex, Ishwar Nagar, Mathura Road, New Delhi-110065, represented by its director, Kamlesh Rani

Bhardwaj hereinafter referred to the "Lender" which expression shall mean and include is nominees, assigns or successors, from time to time.

AND

(2) M/S Samtex Desinz Private Limited, a company registered under the Companies Act, 1956 bearing CIN No. U18209DL2017PTC320315, having registered office at A-36, Hoisery Complex Phase 2 NOIDA U.P. represented by its director Mr. Sumeer Duggal, hereinafter referred to the "Borrower" which expression shall mean and include its nominees assigns or successors from time to time.

BACKGROUND

1. That whereas consequent to the purchase of the business (except liabilities) of M/s. Samtex Desinz (Proprietorship Firm) the Borrower had availed of a term loan of Rs. 14,00,00,000.00 (Fourteen Crore Only) form M/S Tata Capital Financial Services Ltd., vide which all the assets of the Borrower have been mortgaged/assigned in favour of the aforesaid institutional lender. That the aforesaid terms facility is insufficient to cover certain working capital requirement of the Borrower and is insufficient to meet other requirement relating to payments stamps duty etc. of

SAMTEX DESINZ PRIVATE LIMITED

Director

Director/Autho. Sign

the Borrower and that therefore there is a shortfall of 2,00,00,000.00 (Two Crore Only)

2. That because of the aforesaid loan from the M/s Tata Capital no other institutions. Willing to extend unsecured loan to the Borrower, and therefore it is agreed that the lender is agreeable to extend a loan of Rs. 1,60,00,000.00 (One Crore Sixty Lakh Only) in favour of the Borrower.

TERMS AND CONDITIONS

1. *The Lender agrees to extend to the Borrower a term loan Rs. 1,60,00,000.00 (One Crore Sixty Lakh Only) for a period of two years commencing form the date of signing of this agreement.*

2. *The aforesaid amount shall become due and payable 01-02-2020 or upon demand by the lender.*

3. *That having regard to the status of the parties, the present loan is being extended without any charge on any of the assets at present or in the future.*

4. *Commencing of the date of this Agreement, the Loan shall bear NIL interest.*

5. *Notwithstanding anything contained in this agreement, the loan amount shall become immediately due and payable at any time on or after the expiry of a period of two years i.e. on or after 01/02/2020 upon demand by the Lender.*

6. *The Borrower agrees that so long as the loan as in outstanding the Borrower will inform the Lender in any change in the constitution of the Borrower.*

7. *The Borrower shall repay the entire loan on or before 04/02/2020 and that till such a time the entire amount is not repaid the terms of the present agreement shall remain in force. The Borrower is entitled to pre-pay the loan amount at any time, without any penalty, after giving the lender notice in writing of its intention of the same.*

8. *The agreement shall remain in force of the term indicated in Clause 7 above unless terminated earlier in accordance with Clause 7.*

9. *All notices under this agreement shall be in writing and shall be either delivered via special messenger and hand and upon the addresses as may be advised from time to time by either party.*

10. The agreement shall be governed by Indian Law and the Courts of Delhi shall have jurisdiction to settle any dispute arising out of or in connection with this agreement.

For the Borrower	
SamtexDesinzPvt Ltd	*For the Lender*
Director	*Director*
Witness:	

When we read the background as recorded in paragraphs – 1 and 2 of the above Loan Agreement, it is clear that the sister concern which extending the loan did not record anything other than the problem of the Corporate Debtor, for granting the loan. It is merely recorded that because of taking loan from M/s. Tata Capital Financial Services Ltd., no other institution is willing to extend unsecured loan to the Corporate Debtor "and therefore", the lender had agreed to extend the loan of Rs. 1,60,00,000/- to the borrower (i.e. Corporate Debtor). Then the above Agreement refers terms and conditions.

Appeal para-7(d) as under :-

"d. In these circumstances to ensure continued development of the business of the Corporate Debtor, Mr. Sameer Bharadwaj, the then Director and the Current Authorized Signatory of the Respondent, through the sister concern advanced a sun of Rs. 1.60 Crore. It is submitted that in compliance with the law, the aforesaid sum was extended under a loan agreement, however the sum was advanced interest free, since the development of the business was enough consideration for time value of money."

8. The judgment and order of the NCLAT, affirming the judgment and order of the Adjudicating Authority (NCLT) and dismissing the appeal is patently flawed. Both the NCLAT and NCLT have misconstrued the definition of 'financial debt' in Section 5(8) of the IBC, by reading the same in isolation and out of context.

9. In construing and/or interpreting any statutory provision, one must look into the legislative intent of the statute. The intention of the statute has to be found in the words used by the legislature itself. In

case of doubt, it is always safe to look into the object and purpose of the statute or the reason and spirit behind it. Each word, phrase or sentence has to be construed in the light of the general purpose of the Act itself, as observed by *Mukherjea, J. in* Poppatlal Shah Vs. State of Madras[1], and a plethora of other judgments of this Court. To quote Krishna Iyer, J, the interpretative effort "must be illumined by the goal, though guided by the words".

10. When a question arises as to the meaning of a certain provision in a statute, the provision has to be read in its context. The statute has to be read as a whole. The previous state of the law, the general scope and ambit of the statute and the mischief that it was intended to remedy are relevant factors.

11. In *Innoventive Industries Ltd. Vs. ICICI Bank Ltd.*[2], authored by Nariman, J., this Court analysed the scheme of the IBC and held:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means

1 AIR 1953 SC 274
2 (2018) 1 SCC 407

a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code.……

The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

12. In *Swiss Ribbons Pvt. Ltd. And Anr. Vs. Union of India and Others*[3], this Court speaking through Nariman, J. held:

"27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of

3 (2019) 4 SCC 17

banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. (See ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] at para 83, fn 3).

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

13. This Court further held:

"42. A perusal of the definition of "financial creditor" and "financial debt" makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an "operational debt" would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.

43. A financial creditor may trigger the Code either by itself or jointly with other financial creditors or such persons as may be notified by the Central Government when a "default" occurs. The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the corporate debtor, making it clear that once triggered, the resolution process under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the corporate debtor. Under Section 7(4), the adjudicating authority shall, within the prescribed period, ascertain the existence of a default on the basis of evidence furnished by the financial creditor; and under Section 7(5), the adjudicating authority has to be satisfied that a default has occurred, when it may, by order, admit the application, or dismiss the application if such default has not occurred. On the other hand, under Sections 8 and 9, an operational creditor may, on the occurrence of a default, deliver a demand notice which must then be replied to within the specified period. What is important is that at this stage, if an application is filed before the adjudicating authority for initiating the corporate insolvency resolution process, the corporate debtor can prove that the debt is disputed. When the debt is so disputed, such application would be rejected."

14. In *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India*[4], this Court speaking through Nariman, J. referred to several earlier

4 (2019) 8 SCC 416

judgments including *Innoventive Industries Ltd.* (supra) and *Swiss Ribbons Pvt. Ltd.* (supra) and held that even individuals who were debenture holders and fixed deposit holders could also be financial creditors who could initiate the Corporate Resolution Process.

15. The definition of 'financial debt' in Section 5(8) of the IBC cannot be read in isolation, without considering some other relevant definitions, particularly, the definition of 'claim' in Section 3(6), 'corporate debtor' in Section 3(8), 'creditor' in Section 3(10), 'debt' in section 3(11), 'default' in Section 3(12), 'financial creditor' in Section 5(7) as also the provisions, inter alia, of Sections 6 and 7 of the IBC.

16. Under Section 6 of the IBC, a right accrues to a Financial Creditor, an Operational Creditor and the Corporate Debtor itself to initiate the Corporate Insolvency Resolution Process in respect of such Corporate Debtor, in the manner provided in Chapter II of the IBC.

17. Section 7 of the IBC enables a Financial Creditor to file an application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor either by itself, or jointly with other Financial Creditors or any other person on behalf of the Financial Creditor, as may be notified by the Central Government, when a default has occurred.

18. The eligibility of a person, to initiate the Corporate Insolvency Resolution Process, if questioned, has to be adjudicated upon consideration of the key words and expressions in the aforesaid Section and other related provisions.

19. Corporate Resolution Process gets triggered when a Corporate Debtor commits a default. A Financial Creditor may file an application for initiating a Corporate Insolvency Resolution Process against the Corporate Debtor, when a default has occurred.

20. A 'corporate debtor' means a corporate person who owes a debt to any person, as per the definition of this expression in Section 3(8) of the IBC. Section 3(11) defines 'debt' to mean "*a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.*" The word 'claim' has been defined in Section 3(6) to mean *inter alia "a right to payment, whether or*

not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured." 'Default' is defined in section 3(12) to mean "*non-payment of a debt when the whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the Corporate Debtor, as the case may be*." Under Section 5(7) of the IBC 'financial creditor' means any person to whom a financial debt is owed and includes a person to whom such debt has legally been assigned.

21. The definition of 'financial debt' in Section 5(8) of the IBC has been quoted above. Section 5(8) defines 'financial debt' to mean "*a debt along with interest if any which is disbursed against the consideration of the time value of money and includes money borrowed against the payment of interest, as per Section 5(8) (a) of the IBC.* The definition of 'financial debt' in Section 5(8) includes the components of sub-clauses (a) to (i) of the said Section.

22. The NCLT and NCLAT have overlooked the words "if any" which could not have been intended to be otiose. 'Financial debt' means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof 'financial debt' includes any amount raised under any other transaction, having the commercial effect of borrowing.

23. Furthermore, sub-clauses (a) to (i) of Sub-section 8 of Section 5 of the IBC are apparently illustrative and not exhaustive. Legislature has the power to define a word in a statute. Such definition may either be restrictive or be extensive. Where the word is defined to include something, the definition is *prima facie* extensive.

24. In *Dilworth v. Commissioner of Stamps*[5] the Privy Council, dealing with a definition which incorporated the word "include", said, "The word 'include' is very generally used in interpretation clauses in order to

5 (1899) AC 99

enlarge the meaning; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those as things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."

25. In dealing with the definition of 'industry' in the Industrial Disputes Act 1947 in the *State of Bombay v. Hospital Mazdoor Sabha and Ors*[6], a three-judge Bench of this Court speaking through Gajendragadkar, J. said "It *is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted. Where we are dealing with an inclusive interpretation, it would be inappropriate to put a restrictive interpretation upon words of wider denotation."*

26. In *CIT Andhra Pradesh v. Taj Mahal Hotel Secunderabad*[7], this Court, speaking through A.N. Grover, J. construed the definition of plant in Section 10(5) of the Income Tax Act, 1922, which read "plant" includes vehicles, books, scientific apparatus and surgical equipment, purchased for the purpose of the business, profession or vocation and observed:-

"The very fact that even books have been included shows that the meaning intended to be given to 'plant' is wide. The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include."

6 AIR 1960 SC 610
7 (1971) 3 SCC 550

27. Of course, depending on the context in which the word 'includes' may have been used, and the objects and the scheme of the enactment as a whole, the expression 'includes' may have to be construed as restrictive and exhaustive.

28. In a recent judgment of this Court in *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. V. Axis Bank Ltd.*[8], this court, speaking through Maheswari, J. referred to various precedents on restrictive and expansive interpretation of words and phrases used in a statute, particularly, the words 'means' and 'includes' and held:-

"46. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become "financial debt" for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. It may include any of the methods for raising money or incurring liability by the modes prescribed in clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of "disbursement" against "the consideration for the time value of money" could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said clauses (a) to (i) of Section 5(8) would be falling within the ambit of "financial debt" only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in

8 (2020) 8 SCC 401

the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as "financial debt" within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money.

47. As noticed, the root requirement for a creditor to become financial creditor for the purpose of Part II of the Code, there must be a financial debt which is owed to that person. He may be the principal creditor to whom the financial debt is owed or he may be an assignee in terms of extended meaning of this definition but, and nevertheless, the requirement of existence of a debt being owed is not forsaken.

48. It is also evident that what is being dealt with and described in Section 5(7) and in Section 5(8) is the transaction vis-à-vis the corporate debtor. Therefore, for a person to be designated as a financial creditor of the corporate debtor, it has to be shown that the corporate debtor owes a financial debt to such person. Understood this way, it becomes clear that a third party to whom the corporate debtor does not owe a financial debt cannot become its financial creditor for the purpose of Part II of the Code.

49. Expounding yet further, in our view, the peculiar elements of these expressions "financial creditor" and "financial debt", as occurring in Sections 5(7) and 5(8), when visualised and compared with the generic expressions "creditor" and "debt" respectively, as occurring in Sections 3(10) and 3(11) of the Code, the scheme of things envisaged by the Code becomes clearer. The generic term "creditor" is defined to mean any person to whom the debt is owed and then, it has also been made clear that it includes a "financial creditor", a "secured creditor", an "unsecured creditor", an "operational creditor", and a "decree-holder". Similarly, a "debt" means a liability or obligation in respect of a claim which is due from any person and this expression has also been given an extended meaning to include a "financial debt" and an "operational debt".

49.1. The use of the expression "means and includes" in these clauses, on the very same principles of interpretation as indicated above, makes it clear that for a person to become a creditor, there has to be a debt, i.e., a liability or obligation in respect of a claim which may be due from any person. A "secured creditor" in terms of Section 3(30) means a creditor in whose favour a security interest is created; and "security interest", in terms of Section 3(31), means a right, title or interest or claim of property created in favour of or provided for a secured creditor by a transaction which secures payment for the purpose of an obligation and it includes, amongst others, a mortgage. Thus, any mortgage created in favour of a creditor leads to a security interest being created and thereby, the creditor becomes a secured creditor. However, when all the defining clauses are read together and harmoniously, it is clear that the legislature has maintained a distinction amongst the expressions "financial creditor", "operational creditor", "secured creditor" and "unsecured creditor". Every secured creditor would be a creditor; and every financial creditor would also be a creditor but every secured creditor may not be a financial creditor. As noticed, the expressions "financial debt" and "financial creditor", having their specific and distinct connotations and roles in insolvency and liquidation process of corporate persons, have only been defined in Part II whereas the expressions "secured creditor" and "security interest" are defined in Part I.

50. A conjoint reading of the statutory provisions with the enunciation of this Court in Swiss Ribbons [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] , leaves nothing to doubt that in the scheme of the IBC, what is intended by the expression "financial creditor" is a person who has direct engagement in the functioning of the corporate debtor; who is involved right from the beginning while assessing the viability of the corporate debtor; who would engage in restructuring of the loan as well as in reorganisation of the corporate debtor's business when there is financial stress. In other words, the financial creditor, by its own direct involvement in a functional existence of corporate debtor, acquires unique position, who could be entrusted with the task of ensuring the sustenance and growth of the corporate debtor, akin to that of a guardian. In the context of insolvency resolution process,

this class of stakeholders, namely, financial creditors, is entrusted by the legislature with such a role that it would look forward to ensure that the corporate debtor is rejuvenated and gets back to its wheels with reasonable capacity of repaying its debts and to attend on its other obligations. Protection of the rights of all other stakeholders, including other creditors, would obviously be concomitant of such resurgence of the corporate debtor."

29. In *Jaypee Infratech Ltd.* (supra), the debts in question were in the form of third-party security, given by the Corporate Debtor to secure loans and advances obtained a third party from the Respondent Lender and, therefore, held not to be a financial debt within the meaning of Section 5(8) of the IBC. There was no occasion for this Court to consider the status of a term loan advanced to meet the working capital requirements of the Corporate Debtor, which did not carry interest. Having regard to the Aims, Objects and Scheme of the IBC, there is no discernible reason, why a term loan to meet the financial requirements of a Corporate Debtor for its operation, which obviously has the commercial effect of borrowing, should be excluded from the purview of a financial debt.

30. In *Prabhudas Damodar Kotecha Vs. Manhabala Jeram Damodar*[9], this Court interpreting Section 41(1) of the Presidency Small Cause Courts Act, 1882, as amended by the Maharashtra Act XIX of 1976, observed that 'the golden rule is that the words of a statute must prima facie be given their ordinary meaning when the language or phraseology employed by the legislature is precise and plain'. Since Section 41(1) does not specifically exclude a gratuitous licensee or make a distinction between a licensee with material consideration or without material consideration, the expression 'licensee' in Section 41(1) was held to also include a 'gratuitous licensee'.

31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in

9 (2013) 15 SCC 358

whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes *inter alia* financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.

32. The appeal is, therefore, allowed. The judgment and order impugned is, accordingly, set aside. The order of the Adjudicating Authority, dismissing the petition of the Appellant under Section 7 of the IBC is also set aside. The petition under Section 7 stands revived and may be decided afresh, in accordance with law and in the light of the findings above.

33. Pending applications, if any, stand disposed of accordingly.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal allowed.