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INTEREST FREE TERM LOAN IS A "FINANCIAL DEBT" AS PER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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The Supreme Court of India (SC) in *Orator Marketing Private Limited v Samtex Desinz Private Limited*, Civil Appeal No. 2231 of 2021, judgment dated 26th July 2021 has held that an interest free term loan constitutes a financial debt under the Insolvency and Bankruptcy Code, 2016 (IBC).

The IBC provides that a financial debt is "a debt along with interest, if any, which is disbursed against the consideration for the time value of money" furthered by an inclusive list of examples that may be considered as a financial debt.

Since the inception of the IBC, the National Company Law Tribunal (NCLT), the Appellate Tribunal (NCLAT) and the SC have consistently taken the view that for a debt to qualify as a financial debt under the IBC, it would have to definitively satisfy the following requirements of Section 5(8) of the IBC:

- (i) disbursement; and
- (ii) consideration for the time value of money.

Orator Marketing Private Limited (Orator) filed an application before the NCLT as a Financial Creditor for an unsecured interest free term loan disbursed to Samptex Desinz Private Limited to the tune of Indian Rupees (INR) 1.60 crore to aid their working capital requirements as per a loan agreement dated 20 January 2018. Orator was an assignee of the debt from the original lender, Sameer Sales Private Limited. Upon default on 1 February 2020, Orator approached the NCLT for the initiation of a Corporate Insolvency Resolution Process (CIRP) under Section 7 of the IBC. The NCLT, by its order dated 23 October 2020, dismissed the application holding an interest free loan would not constitute a financial debt. An appeal before the NCLAT was also dismissed on the same ground on 8 March 2021. Thereafter, Orator appealed the matter before the SC under Section 61 of the IBC.

The SC held that the NCLT and NCLAT were guilty of not reading the IBC as whole but erred in reading Section 5(8) of the IBC in a disjoint fashion. Relying on the cases of *Innoventive Industries Limited v ICICI Bank Limited*, (2018) 1 SCC 407; *Swiss Ribbons Private Limited v Union of India* (2019) 4 SCC 17; and *Pioneer Urban Land and Infrastructure Limited v Union of India* (2019) 8 SCC 416 the SC held that the

interpretation of the IBC has to be undertaken with its intent to support the resolution of companies as going concerns whilst ensuring creditors are repaid.

It held that the provision of Section 5(8) of the IBC that reads,

"... a debt along with interest if any ..."

had been overlooked by the NCLT and the NCLAT to the extent of the term "if any" thereby providing that interest is not an essential requirement for a loan to be considered a "financial debt" under the IBC. Conformance with the mandatory aspect of the provision was necessary, being disbursement and time value of money and the same was held to be complied with in the loan agreement herein. The SC reiterated that the baseline requirement for the commencement of CIRP under the IBC was a default in the payment of a debt, financial or operational. It further held that the clauses (i) to (viii) of the provision only gave an inclusive list of examples of a financial debt. and could not be relied on exhaustively.

Conclusively, the SC held that an interest free term loan would constitute a financial debt under the IBC.

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