

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **Global Credit Capital Ltd. & Anr. Vs. Sach Marketing Pvt. Ltd. & Anr.**

### **Brief Facts**

In the present case, the dispute developed as a result of two agreements (the Agreements) signed by the corporate debtor and Sach Marketing on April 1, 2014, and April 1, 2015. Under these Agreements, the corporate debtor appointed Sach Marketing as a 'sales promoter' to promote its beer, subject to the latter depositing a minimum-security amount (Rs. 53,15,000/- in the first Agreement and Rs. 32,85,850/- in the second Agreement) with the corporate debtor, on which interest at 21% per annum would be paid. Sach Marketing initially filed a claim as an operational creditor, which was later dropped, followed by a claim as a financial creditor. The interim resolution professional (IRP) acknowledged the claim as both operational and financial debt. However, the claim was rejected on the grounds that Sach Marketing could not be considered a financial creditor.

Sach Marketing filed a challenge to this ruling with the National Company Law Tribunal (NCLT), but it was

dismissed. Meanwhile, the NCLT approved a resolution plan submitted by Kals Distilleries Pvt. Ltd. for the corporate debtor's bankruptcy proceedings. Sach Marketing petitioned the National Company Law Appellate Tribunal (NCLAT). On such an appeal, the NCLAT determined that Sach Marketing should be identified as a financial creditor rather than an operational creditor due to the nature of the claims emanating from the Agreement.

## **Decision**

In this decision, the Supreme Court established specific criteria for establishing the nature of debt. It stated that in order to determine whether a debt is operational or financial, the 'real character of the transaction covered in writing' must be determined.

### **Observations on Operational Debt**

The Supreme Court clarified a key element in determining whether a debt deriving from a written agreement for supplying services falls under the IBC's operational or financial debt categories. The Court emphasised that the written instrument cannot be regarded at face value; rather, it is critical to determine the true nature of the transaction by a thorough review of the agreement's terms.

In this instance, the court examined the agreements between the corporate debtor and Sach Marketing, who was hired as a sales promotion. Despite the alleged service agreements, various factors revealed that Sach Marketing's considerable security deposit did not correspond to the services to be delivered. Notably, the modest monthly payment of Rs. 4,000/- and the absence of any reward based on sales performance aroused concerns about the Agreements' genuineness.

Furthermore, the Supreme Court noted that, while the Agreements allowed for termination with a 30-day notice period, they made no provision for the forfeiture of the security deposit. The absence of a forfeiture clause, combined with the corporate debtor's obligation to refund the security deposit with 21% interest after the specified period, led the Court to conclude that Sach Marketing's payment for the security deposit had no bearing on the performance of other contractual obligations. As a result, the Supreme Court agreed with the NCLAT's judgement that the security deposit amounts were debts covered by IBC Section 3(11). Sach Marketing's right to demand a refund of the security deposit with interest constituted a 'claim' under section 3(6) of the IBC because it represented a right to payment. Importantly, the Supreme Court stated that for a debt to be classified as an operational debt under section 5(21) of the IBC, the claim must involve the provision of goods or services. A service contract requires a direct correlation between the agreed-upon service and the claim.

### **Observations on Financial Debt**

The Supreme Court emphasised that instances covered by categories (a) to (f) of section 5(8) of the IBC must first meet the basic criteria outlined in the earlier part of the provision. This need necessitates the existence

of a 'debt coupled with interest', in which the interest is measured against the 'time value of money'. The Supreme Court ruled in Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited and Phoenix ARC Private Limited v. Spade Financial Services Limited that the existence of a disbursement against consideration for the time value of money is a necessary condition even for transactions covered by clauses (a) to (i) of section 5(8) of the IBC, which define financial debt. In this case, the Court determined that the initial criteria was met because there was a debt with an annual interest rate of 21%, suggesting concern for the time worth of money.

The Supreme Court noted that in this case, there were documented arrangements for transferring payments to the corporate debtor. These agreements met the first criteria of paragraph (f) by fulfilling the definition of 'transaction' under section 3(33) of the IBC, which includes a written agreement or arrangement for the transfer of assets, monies, goods, and so on from or to the corporate debtor.

In light of these findings, the Supreme Court determined that the second criteria of clause (f) of section 5(8) was met, defining the debt as a financial debt under the IBC.

### **[Link of the Order](#)**

**<https://ibbi.gov.in/uploads/order/bbe1b129b0c5671d4f26635a22f06f35.pdf>**



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