

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## Prayag Polytech Pvt. Ltd. Vs. Gem Batteries Pvt. Ltd.

### **Brief Facts**

In the abovementioned case, The Appellant filed an application under Section 7 of the Code, 2016 before NCLT, Delhi against the Respondents. The total debt owed was claimed to be of Rs. 20 Lakh by the appellant out of which 15 lakhs were cleared by the respondent with Interest. The loan agreement between the parties was an oral agreement and the appellant had no documents to establish that the money is payable on demand and there has been default and that Respondent is also bound to pay interest on the loan amount made available by the Appellant.

The FC submitted that that the CD deducted TDS on the interest paid by the CD while returning the loan which is sufficient to show that there was financial debt. The application was rejected by the NCLT and a fine of Rs. 1 lakh was imposed on him under section 75 of the Code, 2016. The appellant moved to NCLAT.



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## **Decision**

- a.** The NCLAT held that the Section 10 of the Contract Act, 1872 is not to be applied in the present case. Section 238 of Code has an overriding effect over the provisions of other acts that are inconsistent with the Code. The 'Financial contract' is defined in Rule 3(1)(d) of Application to Adjudicating Authority Rules which requires setting out the terms of the financial debt including tenure etc under Section 5(8) of the Code. **[Para 7].**
- b.** The NCLAT held that the action of the CD in deducting TDS on the payments by the CD would not prove that the debt owed is a financial debt as TDS can be deducted for various reasons. **[Para 6].**
- c.** NCLAT held that since the alleged FC had failed to show any record showing financial debt due apart from the deduction of TDS, the application under Section 7 stands rejected. **[Para 9].**

## **Link of the Order**

<https://ibbi.gov.in/uploads/order/05f54fd91b23cc75f82f072616c67585.pdf>



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