

NCLAT: Financial creditor can maintain an application under Section 7 of the IBC which is only relating to the interest component due, without the principal amount becoming due and payable

In the recent decision of *Base Realtors Private Limited v. Grand Realcon Private Limited*¹, the National Company Law Appellate Tribunal, New Delhi (“NCLAT”) has upheld the maintainability of an application filed under Section 7² of the Insolvency and Bankruptcy Code, 2016 (“IBC”) relating to the component of interest due and payable, without asking for the principal amount which has not yet become due and payable.

Brief Facts

Debt: On April 31, 2011, the Grand Realcon Private Limited (“**Respondent**”) allotted redeemable optionally convertible debentures to Base Realtors Private Limited (“**Appellant**”) with a coupon rate of 6% payable on face value, plus premium on securities after end of each quarter. The debentures had the maturity date of March 31, 2026. As the debenture certificate was issued on April 13, 2021, the debentures could be redeemed after expiry of one year from the said date and interest was to be calculated from the said date.

Default: At the end of quarter ending June, September and December 2021, interest aggregating to an amount over INR 2,39,00,000 (Indian Rupees two crores thirty nine lakhs) accrued in favour of the Appellant. However, the Respondent did not pay the Appellant the amounts accruing at the end of each quarter, despite the Appellant issuing default notices at the end of each quarter.

Application under Section 7 of the IBC: The Appellant filed an application under Section 7 of the IBC before NCLT, Delhi-V (“NCLT”) in respect of the accrued interest of 3 (three) quarters (“**Application**”). The NCLT dismissed the Application on the ground that only the interest amount would not fall within the definition of “financial debt” until and unless principal amount has also become due and payable. Aggrieved, the Appellant filed an appeal before the NCLAT.

Issue

Whether an application under Section 7 of the IBC can be maintained in respect of only the component of interest which became due and payable, without asking for the principal amount which has not yet become due and payable.

¹ Company Appeal (AT) (Ins.) No. 882 of 2022, NCLAT, judgement dated November 15, 2022

² An application under Section 7 of IBC is filed for the initiation of corporate insolvency resolution process by financial creditor, against a company (corporate debtor).

NCLAT: Findings and Rationale

The NCLAT set aside the order of the NCLT and answered the issue in the affirmative by holding that the application filed under Section 7 of the IBC could be maintained relating to the component of interest which became due and payable, without asking for the principal amount which has not yet become due and payable. The rationale for the decision was:

1. Relying on *Innovative Industries Ltd. v. ICICI Bank*³ and *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.*⁴ to hold that default is the trigger and condition precedent to maintaining an application under Section 7 of the IBC. This reasoning was further elaborated by referring to the definition of “default”⁵ under Section 3(12) of the IBC and the term “debt”⁶ used therein and corresponding it to the facts of the case.
2. The debenture is a debt borrowed by the Appellant at a fixed rate of interest. There is no dispute that interest became due and payable by the Respondent to the Appellant at the end of each quarter, and that the Respondent defaulted in paying this interest to the Appellant.
3. While referring to the definition of “financial debt”⁷ and “financial creditor”⁸, the NCLAT was faced with the Respondent’s objection that financial debt includes debt *along with* interest and not the interest independently. While the judgement doesn’t specifically deal with this argument, it relies on the decision of *Orator Marketing* (supra) to import the expansive definition of “default” and “financial debt” under the IBC which includes any amount raised under any other transaction, having the commercial effect of borrowing (Section 5(8)(f) of the IBC).

JSA Comment

After *Orator Marketing* (supra) recognised “financial debt” sans interest, this NCLAT judgment impliedly expanded the definition of “financial debt” to also include cases where only interest is payable, even if principal amount has not yet become due or payable. This expands the scope of Section 7 IBC proceedings wherein the adjudicating authority can also admit a corporate debtor into CIRP if the financial creditor can establish that there is a default of interest above INR 1,00,00,000 (Indian Rupees one crore) (threshold under Section 4 of the IBC), due and payable by the corporate debtor to the financial creditor.

³ (2018) 1 SCC 401.

⁴ 2021 SCC OnLine SC 513

⁵ 3(12) “default” means non-payment of debt when 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;

⁶ 3(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;

⁷ 5(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes– (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

⁸ 5(7) “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

Insolvency and Debt Restructuring Practice

JSA is recognized as one of the market leaders in India in the field of insolvency and debt restructuring. Our practice comprises legal professionals from the banking & finance, corporate and dispute resolution practices serving clients pan India on insolvency and debt restructuring assignments. We advise both lenders and borrowers in restructuring and refinancing their debt including through an out-of-court restructuring as per the guidelines issued by the Reserve Bank of India, asset reconstruction, one-time settlements as well as other modes of restructuring. We also regularly advise creditors, bidders (resolution applicants), resolution professionals as well as promoters in connection with corporate insolvencies and liquidation under the IBC. We have been involved in some of the largest insolvency and debt restructuring assignments in the country. Our scope of work includes formulating a strategy for debt restructuring, evaluating various options available to different stakeholders, preparing and reviewing restructuring agreements and resolution plans, advising on implementation of resolution plans and representing diverse stakeholders before various courts and tribunals. JSA's immense experience in capital markets & securities, M&A, projects & infrastructure and real estate law, combined with the requisite sectoral expertise, enables the firm to provide seamless service and in-depth legal advice and solutions on complex insolvency and restructuring matters.

This Prism has been prepared by:



Dheeraj Nair
Partner



Vishrutyi Sahni
Senior Associate



Ridhima Sharma
Junior Associate



14 Practices and
23 Ranked Lawyers



15 Practices and
18 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



Among Top 7 Best Overall
Law Firms in India and
10 Ranked Practices

13 winning Deals in
IBLJ Deals of the Year

6 A List Lawyers in
IBLJ Top 100 Lawyer List



Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year 2021



Ranked #1
The Vahura Best Law Firms to Work
Report, 2022

Top 10 Best Law Firms for
Women in 2022

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.