

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 749 of 2024**

**[Arising out of the Impugned Order dated 01.03.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-V in I.A. No. 3878 of 2023 In C.P. No. 979 of 2022]**

**In the matter of:**

**COROB INDIA PVT. LTD.**

Through its Authorized Signatory  
502 & 503, Kohinoor City Wing A Office Area Industrial  
Estate and Premises Cooperative Society Ltd.,  
Wing B, 5th floor, Kirol Road,  
Off LBS Marg, Kurla,  
Mumbai – 400070

...Appellant

**Versus**

**1. MR. BIRENDRA KUMAR AGRAWAL**

Resolution Professional of  
Renaissance Indus Infra Private Limited  
IBBI Registration No.: U45400MH2012PTC236737  
913, Corporate Annexe, Sonawala Lane,  
Near Udyog Bhavan, Goregaon (E),  
Mumbai – 400063

...Respondent No.1

**2. CANARA BANK**

PB NO. 292, Warden House,  
Sir Phirozeshah Mehta Road,  
Fort, Mumbai-400 001

...Respondent No.2

**Present :**

For Appellant : Ms. Misha, Mr. Vaijyant Paliwal and Ms. Kirti Gupta,  
Advocates.

For Respondent : Mr. Kunal Kanungo, Ms. Tanushree Sogani, Mr. Atishay  
Jain, Advocates for R-1.

## **J U D G M E N T**

### **(Hybrid Mode)**

#### **Per: Barun Mitra, Member (Technical)**

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**IBC** in short) by the Appellant arises out of the Order dated 01.03.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-V) in I.A. No. 3878 of 2023 in C.P. (IB) No. 979 of 2022. By the impugned order, the Adjudicating Authority has partially allowed the relief sought by the Appellant in IA No. 3878 of 2023. Aggrieved by the fact that all the reliefs were not granted by the Adjudicating Authority the present appeal has been filed by Corob India Pvt. Ltd.- Appellant.

**2.** Coming to the brief facts of the case, the Appellant- Corob India Pvt. Ltd. desired to obtain a premises on lease from Renaissance Indus Infra Pvt. Ltd.- Corporate Debtor. For this purpose, the Appellant and the Corporate Debtor executed a lease deed dated 12.12.2018. In terms of the lease deed, the Corporate Debtor agreed to provide the subject premises on lease to the Appellant for a period of 10 years commencing from 12.12.2019. Article 3.4 of the lease deed noted that the Appellant had provided Security Deposit and a Bank Guarantee ("**BG**" in short) to the Corporate Debtor. In terms of the lease deed the Corporate Debtor was required to handover possession of the leased premises to the Appellant on 12.10.2019 which the Corporate Debtor failed to

do. The Corporate Debtor in their e-mail dated 22.02.2022 acknowledged the delay in handing over possession of the leased premises to the Appellant. Further, admitting their poor financial condition, the Corporate Debtor also acknowledged that it was not in position to grant the Appellant the benefit of rent-free occupation. The Appellant issued a Notice of Default to the Corporate Debtor on 30.06.2022 in terms of the lease deed. Despite issue of Notice of Default, the Corporate Debtor continued to remain in breach of the lease deed. Eventually, on 12.08.2022 the Appellant issued a Termination Notice to the Corporate Debtor in terms of the lease deed. Subsequently, the Corporate Debtor was admitted into CIRP on 31.03.2023 following which the Appellant lodged its claim in respect of the BG and Security Deposit in Form-C and Form-F with the Resolution Professional ("**RP**" in short)-Respondent No. 1. the RP responded on 18.05.2023 informing the Appellant that the claim lodged by the Appellant in Form-C had been admitted in the category of "Other Creditors". Thereafter, the Appellant filed IA No. 3878 of 2023 before the Adjudicating Authority seeking (a) return original BG issued by Respondent No. 2 on behalf of the Appellant to the Corporate Debtor (b) RP to return the Security Deposit amount along with the 18% interest per annum provided by the Appellant to the Corporate Debtor (c) alternatively the RP to admit the amount of Security Deposit as financial debt owned by the Corporate Debtor to the Appellant in terms of Form-C submitted by the Appellant on 18.04.2023 and admit the Appellant's claims as financial creditor. The matter was heard by the Adjudicating Authority and the orders passed on 01.03.2024. In the impugned order, the RP was directed to return the original BG to the Appellant

but the other reliefs sought by the Appellant were rejected. Aggrieved by this impugned order, the present appeal has been preferred by the Appellant.

**3.** We have heard Shri Vaijyant Paliwal, Ld. Advocate appearing for the Appellant while Shri Kunal Kanungo, Ld. Advocate appeared representing Respondent No.-1.

**4.** Making his submissions, the Ld. Counsel of the Appellant stated that the Security Deposit made by the Appellant with the Corporate Debtor for the purpose of the lease deed was an asset belonging to the Appellant and not to the Corporate Debtor. It was submitted that the Appellant also addressed a letter on 16.05.2023 to the RP stating that the Security Deposit lying with the Corporate Debtor was an asset of the Appellant and should be refunded forthwith. Since, the leased premises were never handed over to the Appellant by the Corporate Debtor and the lease deed stood terminated, the Security Deposit should have been returned by the RP more so as the Corporate Debtor had agreed to return the Security Deposit during the meeting held with them on 07.12.2022. It was contended that commencement of CIRP does not create any new rights but only preserves the status quo. Hence, the Security Deposit which never formed part of the assets of the Corporate Debtor should be returned by the RP to the Appellant. It is the case of the Appellant that the Adjudicating Authority committed an error in not directing the RP to return the Security Deposit to the Appellant or to admit the claim filed by them in Form-C as a financial debt. The RP was required to respect and honour the obligations as it existed prior to CIRP. It was further asserted that the Security

Deposit was to be used for carrying out construction of the leased premises and hence it deserves to be treated as financial debt under the IBC framework. While admitting that the Appellant had lodged their claim in the Form-C for admission of the Security Deposit as a financial debt, it was stated that the same was done without prejudice. It was also contended that the Adjudicating Authority erred in entering into the dispute whether the Appellant was an Operational Creditor when no such contentions were raised by the Appellant. The Security Deposit not being an asset of the Corporate Debtor, the RP could not have taken control and custody of the same in pursuance of Section 18 of the IBC. It was also contended that the impugned order is in the teeth of the judgment of Hon'ble Supreme Court in the case of ***Embassy Property Development Pvt. Ltd. Vs State of Karnataka and Ors. (2020) 13 SCC 308*** which held that the purpose of moratorium provided for in Section 14 of IBC is only to preserve that status quo and not create new right. It was, therefore, a patent mistake on the part of both the RP and the Adjudicating Authority to have failed to consider that the Security Deposit was an asset of the Appellant and not an asset of the Corporate Debtor.

**5.** Rebutting the arguments of the Appellant, the Ld. Counsel for the RP contended that on verification of the lease deed and its terms and stipulations, it was found that Security Deposit could not be considered as a loan. The nature of transaction at the time of disbursement of the amount is the most important factor to determine the status of the party and no party can be allowed to take a stand convenient to them at a later stage. Since, the Security

Deposit had been advanced as interest free Security Deposit, it cannot be treated as a financial debt. The nature of transaction between the parties was such that in the event of failure to refund the Security Deposit within stipulated period, the deposit was to be returned with interest of 18% and no lease rent would be required to be paid by the Appellant till the time the deposit would be returned. Hence, it was implicit that the Security Deposit was to be treated as payment towards lease rent and never disbursed or deposited against consideration for time value of money. The basic ingredients of financial debt of there being disbursement against consideration for time value of money and commercial effect of borrowing was missing. It was further contended that the Adjudicating Authority was right in holding that the transaction was not even an operational debt since the Appellant had not rendered any services or provided any goods for which it was entitled to claim any amount. It was further submitted by the RP that once CIRP is initiated, for any creditor to seek money from the Corporate Debtor, it is required to lodge claim before the RP. As per Section 3(6) of the IBC, claim includes right to remedy for breach of contract if any such breach gives rise to a right to payment. In the instant case, the Appellant has sought refund of Security Deposit on account of breach of a contract. Thus, it is a claim for payment which has arisen out of breach of contract by the Corporate Debtor due to non-refund of the Security Deposit after termination of the lease deed. However, as the sums so involved in the Security Deposit being neither in the nature of financial debt nor an operational debt, as per the provisions of the IBC, RP had no option but to place the Appellant in the category of “Other

Creditors”. Return of the said amount of Security Deposit amount along with the 18% interest per annum directly to the Appellant outside the resolution framework as claimed by the Appellant was not possible as it would be against provisions of moratorium under Section 14 of IBC and tantamount to preferential treatment which is impermissible in law.

6. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

7. The short point for consideration is whether the RP’s treatment of the claim made by the Appellant in respect of the Security Deposit made in pursuance of the Lease Deed in the category of ‘Other Creditor’ is justifiable in the facts of the present case.

8. Before we dwell upon the issue which we have outlined for our examination and analysis, it will be useful to go through the relevant terms of the Lease Deed which are as reproduced below:

“Article 3

3.4 Security Deposit

*(a) That the Lessee has deposited with Lessor towards Security Deposit as details mentioned in Annexure A and in Receipt Clause i.e. an amount equivalent to 4 months the Lease Rent, which the Lessor hereby acknowledges & a receipt thereof will also be separately given to the Lessee. The Lessor are entitled to retain it with them the said security deposit without any liability to pay interest on it and the said amount will be paid back to the Lessee within 7 days, after handing over the vacant and peaceful possession of the Leased Premises at the end of the Lease agreement or sooner determination thereof, after deducing any undisputed amount mutually agreed between the parties payable to the Lessor on account of Lease Rent, CAM charges, power bill outstanding and cost of any major damage to the property*

*expect normal wear and tear. The Lessee has also provided a Bank Guarantee to the Lessor for an amount equivalent to 2 months Lease Rent i.e. and amount of Rs. 45,67,152/- (Rupees Forty Five Lakhs Sixty Seven Thousands One Hundred Fifty Two Only) to be released in the event of the Lessor committing default in payment of monthly Lease Rent in respect of the Leased Premises.*

#### ARTICLE 6

##### FAILURE TO REFUND SECURITY DEPOSIT

*In case the Lessor fails to refund the security deposit paid by the Lessee to the Lessor under this Lease, upon the expiry of the Lease Period or earlier determination of the Lease hereby granted then, in that event PROVIDED HOWEVER that the Lessee is ready and willing to hand over peaceful possession of the Leased Premises to the Lessor, the following consequences will follow.*

*(a) The Lessee shall be entitled and is hereby authorized to continue to occupy and use the Leased Premises without being liable to pay any outgoings, cess, taxes and levies etc.*

*(b) In addition, the Lessor will be liable to pay to the Lessee interest at the rate of 18% per annum on the amount of the deposit from the date such refund is due upto the date of actual payment/ realization. The Lessee will have the right to continue using the Leased Premises without having to pay any direct Lease Rent till the time the Security Deposit with interest at the rate of 18% per annum is returned to the Lessee by way of cheque/DD/RTGS.*

*(c) Notwithstanding whatsoever stated hereinbefore, the Lessee shall be liable to pay electricity charges/ water charges at actuals, for such period till it uses and occupies the Leased Premises.*

#### ARTICLE 8

##### 8.2 CONSEQUENCES OF TERMINATION

*(a)....*

*(b) On the expiry or earlier termination of this Lease, the Lessee shall, within not more than Thirty (30) days of such expiry or termination, remove all his belongings, furniture, fixtures, chattels, articles and things which is movable and can be removed or dismantled without causing any damages to the Leased Premises but not limited to the flooring, and simultaneously against the Lessor refunding the Security Deposit paid by the Lessee, vacate and hand over quiet and peaceful possession of the Leased Premises to the Lessor in the good*



*order and condition in which they were at the time when the Lessee entered into the Lease Premises save and except normal wear and tear.”*

*(Emphasis supplied)*

9. Now that we have seen the above provisions of the lease deed, we now proceed to notice the sequence of events averred by Appellant. It is submitted by the Appellant that when the Corporate Debtor failed to handover possession of the leased premises to the Appellant in time, written communications were sent by them to the Corporate Debtor on their failure to handover leased premises. Further a meeting was held by them with the Corporate Debtor on 10.02.2022 in this regard. Following this meeting, the Corporate Debtor by their e-mail dated 22.02.2022 acknowledged the delay in handing over possession of the leased premises and that in view of their poor financial condition, they were not in position to grant the Appellant the benefit of 1278 days rent-free period. An alternative proposal was also made by the Corporate Debtor to the Appellant to pay balance consideration costs to the tune of Rs 3.45 Cr. directly to another entity to complete construction of the leased premises for enabling its handover to them. It was also clarified that in lieu of payment of Rs 3.45 Cr., the Appellant would be eligible to get rent-free period of 15 to 16 months. This proposal was not acceded to by the Appellant since there was no definite and time-bound commitment of handing over of the leased premises. Eventually, on 12.08.2022 the Appellant issued a Termination Notice to the Corporate Debtor in terms of the lease deed. Following issue of Termination Notice, a meeting was held between the Appellant and the Corporate Debtor on 07.12.2022 in which the the Corporate

Debtor agreed to return the Security Deposit and BG but failed to do so. The Minutes of the Meeting held on 07.12.2022 which was addressed by the Appellant to the Corporate Debtor in their e-mail dated 23.12.2022 is placed at page 268-271 of Appeal Paper Book (“**APB**” in short).

**10.** Given this backdrop of chronology of events, it is the case of the Appellant that the Corporate Debtor had categorically acknowledged during the meeting held on 07.12.2022 that the lease deed had been terminated and that they undertook to return the Security Deposit. The termination of the lease deed was never contested by the Corporate Debtor. Moreover, the liability to return the BG as well as the Security Deposit had been specifically admitted by the Corporate Debtor. Upon termination of lease deed, no rights survived in favour of the Corporate Debtor. Since the Security Deposit was a sum held by the Corporate Debtor in trust/contractual agreement for the benefit of the Appellant at the time of commencement of CIRP, the Corporate Debtor was obligated to return the deposit of the Appellant. The Security Deposit did not form part of the estate of the Corporate Debtor and hence the RP had no right to retain the same. Instead, the Security Deposit amount was an asset of the Appellant and could not be retained by the Corporate Debtor. Section 18 of IBC does not allow the RP to take control of assets owned by third parties even if held in the possession of the Corporate Debtor under trust or under contractual agreements.

**11.** It is further their contention that though in terms of lease deed, the Security Deposit was to be adjusted towards rent for 4 months but since the

Corporate Debtor had not handed over the possession of the leased premises to the Appellant, the question of adjustment of the Security Deposit towards rent did not arise. Further, failure on the part of the Corporate Debtor to comply to the lease deed leading to termination thereof rendered the Security Deposit to be subjected to the payment of interest at the rate of 18% per annum. Thus, the Appellant was entitled to refund of the Security Deposit along with the interest from 19.09.2022 till the date of filing of the application. It was contended that upon the failure on the part of the Corporate Debtor to perform its obligations under the lease deed, the Security Deposit became refundable with interest in terms of Article 6 of the lease deed and hence took the form of a financial debt.

**12.** It has also been vehemently contended that the Adjudicating Authority failed to ascertain the real nature of Security Deposit transaction under the lease deed which was made with the purpose to finance the construction of leased premises. This is substantiated by the fact that lease deed was entered 10 months prior to the date of handing over possession of the lease premises. Further, the alternative proposal made by the Corporate Debtor for the Appellant to pay in advance Rs 3.45 Cr. Buttressed the fact that the Security Deposit was also intended to be utilized for completing construction of the leased premises. Hence, the deposit was in the nature of a financial debt availed by the Corporate Debtor for financing the consideration of the leased premises. The deposit was thus an amount disbursed by the Appellant to the Corporate Debtor against time value of money which constituted a financial

debt. Hence, this was a case similar to home buyers who are recognized as financial creditor. Hence, the Appellant could not have been classified as “other creditor” and therefore on this ground the impugned order was assailed.

**13.** Per contra, it is the contention of the RP that Article 6 of the lease deed does not set out anywhere that the Security Deposit was in the form of a loan. The amount of Security Deposit under Article 3 (Clause 3.4) was equivalent to 4 months of lease rent. Moreover, the Security Deposit was to be retained by the Corporate Debtor without any liability to pay interest on it. The Corporate Debtor was required to keep the deposit amount without any liability to pay interest on it and only on the event of failure to refund the same at the stipulated point of time that interest was chargeable under Article 6. Thus, from the records and documents, the intention of the party was that the Security Deposit lacked the element of commercial borrowing and disbursal against consideration for time value of money. Thus, the Security Deposit amount lacked an element of commercial effect of borrowing. Further, it was contended that in the balance sheet of the Corporate Debtor, the amount of Security Deposit was shown as “non-current liabilities” and not treated as long-term loan and advance. Hence, the claim amount made by the Appellant was accepted and the Appellant added in the category of “Other Creditors”.

**14.** At this stage, we may see how the Adjudicating Authority has treated the issue at hand. The relevant excerpts of the impugned order is as placed below:

*“1. The main contention of the Applicant is that since the Security Deposit, although given on the basis of a Lease Agreement, is supposedly used for carrying out construction work in the Leased*

*Premises, given the fact that it was demanded 10 months prior to the date of commencement of lease, it deserves to be treated as a Financial Debt. The Bench is however of the considered opinion that this is not akin to a case of an underlying Sale Agreement which confers the status of a Financial Creditor on the Home Buyer. Moreover, interest@ 18% p.a. payable on the amount of Deposit is to be charged from the date the refund is due up to the date of actual payment/realisation and not earlier. Thus it is evident that the time value of money and commercial effect of borrowing both of which are essential ingredients to constitute a Financial Debt is lacking in the present case. Therefore, the Applicant cannot be classified as a Financial Creditor.*

*2. The next question to be answered by this Bench is whether the Applicant is fit to be classified as an Operational Creditor. In order, to answer this reliance is placed on the case of *Jindal Steel & Power Ltd. v. DCM International Ltd.* (2017 SCC OnLine NCLAT 441) wherein it was held that tenants do not come within the meaning of "operational creditor" as defined under Sections 5(20) and (21), IB Code. In this case, the tenant sought to recover the security deposit on account of the termination of the lease agreement with the landlord. The NCLAT upheld the order of the NCLT rejecting the application filed under Section 9 by the tenant holding that the tenant does not come within the meaning of the term "operational creditor" Thus, in light of the above cited case law it is clearly established that the Applicant is not fit to be classified as an Operational Creditor.*

*3. In light of the facts and circumstances of the present case and the settled law it is established that the Applicant is neither fit to be classified as a Financial Creditor nor as Operational Creditor. Respondent No.1, therefore, has rightly classified the claim under the heading "Other Creditors".*

(Emphasis supplied)

**15.** Before we proceed to go into the merits of the arguments adduced by the Appellant and the RP, we may now go through some of the relevant definition clauses which finds place in Sections 3 and 5 under Part II Chapter I Preliminary of the IBC would be constructive:

**3(6)** “claim” means –

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

**3(10)** “creditor” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;

**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;

**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;

**3(33)** “transaction” includes a agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;

**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;

**5(8)** “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(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 “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of 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 in respect 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-clause (a) to (h) of this clause;

**5(20)** “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

**5(21)** “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

**16.** We have noticed the termination of the Lease Deed which is an undisputed fact. When the Appellant terminated the Lease Deed, the claim for breach of contract clearly arose. We have already noticed above the definition of claim under Section 3(6)(b) according to which the claim of the Appellant against the Corporate Debtor arises due to breach of contract which is claim within the meaning of IBC. The Security Deposit claimed by the Appellant is

clearly a claim within the meaning of IBC. Now that we have noted the statutory construct of IBC and the provisions of the Lease Deed, we would like to examine the contention of the Appellant that they deserve to be treated as Financial Creditor and their claim of Security Deposit to be treated as financial debt qua the Corporate Debtor.

**17.** The essential elements of financial debt in the context of Section 5(8) of IBC is inclusive of debt alongwith interest which disbursal must be against consideration for time value of money and also includes anything which is equivalent to the money that has been loaned as long as commercial effect of borrowing or profit is discernible. It is a well settled proposition of law as laid down by the Hon'ble Apex Court in **Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416** that any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money. In the matter of **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited & Ors. (2020) 8 SCC 401**, the Hon'ble Supreme Court has also held that the essential condition of financial debt is disbursement against the consideration for time value of money. Further in the most recent judgment of Hon'ble Supreme Court in **Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd. (2023) 3 SCC 753**, it has been clearly held that financial debt also includes an interest free loan.

**18.** We find that the Adjudicating Authority has returned the finding that the Appellant did not fall in the category of a "financial creditor" nor the alleged



transaction of Security Deposit fell within the ambit of “financial debt” in terms of the statutory provisions enshrined in Section 5(7) and 5(8) of the IBC. The above findings of the Adjudicating Authority have been predicated on the terms of Lease Deed entered between the Appellant and the Corporate Debtor. At this stage we may proceed to examine to determine the real nature of the underlying transaction of Security Deposit in the background of Lease Deed in order to determine whether it qualifies as a financial debt or not for the purposes of the IBC. When we look at the Lease Deed, we notice that the amount of Security Deposit under Clause 3.4 was equivalent to 4 months of lease rent and this sum was to be retained by the Corporate Debtor without any liability to pay interest on it. Thus, the Security Deposit had been advanced as interest free Security Deposit. Thus, from the records and documents, the intent of the two parties was that the Security Deposit was a corpus amount of four months of lease rent kept on hold with Corporate Debtor which would be refundable to the Appellant without interest on termination of lease and after deducting dues arising on account of unpaid lease rent, utility charges and damages caused to property, if any, other than normal wear and tear. It is clear, therefore, that Security Deposit was never disbursed or deposited against consideration for time value of money. Only in the event of failure to refund the Security Deposit from the date such refund was due that the deposit was to be returned with interest of 18%. It was bereft of all elements of commercial borrowing. The essential elements in the principal clause of Section 5(8) of the IBC pertaining to financial debt was therefore not satisfied. Clearly therefore, the present transaction was not

disbursement for time value of money and does not fall within the canvas of financial debt as defined under Section 5(8) of the IBC.

**19.** This now brings us to the question whether the Appellant fell in the category of Operational Creditor and that an operational debt was owed to him. We have already noticed that the Lease Deed provided for security deposit as a security against a promise of a future handing over of leased premises. Lease deed outlined certain terms and conditions parties agreed between the two parties subject to which the leased property would be handed over to the Appellant by the Corporate Debtor one of which included payment of security deposit.

**20.** Section 5(20) of the IBC lays down that, unless the context otherwise requires, “operational creditor” means a person to whom an operational debt is owed and Section 5(21) provides that “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

**21.** From a plain reading of the above definition of “operational debt”, it is clear that it must relate to a claim which is confined to either of the four categories viz. provision of goods, services, employment and Government dues. It may be pertinent to add here that the expression “services” has not been defined in the IBC and has to be interpreted in a broad and purposive manner. The sum of Security Deposit made in the facts of the present case which was given in the

form of advance by the Appellant to the Corporate Debtor for prospective occupation of the leased premises on rent, this deposit was in the nature of advance for use of the premises. For a debt to be classified as an 'operational debt', it must bear some nexus with the provision of goods or services, without specifying who is to be the supplier or the receiver of such goods or services as has been held by the Hon'ble Supreme Court in ***M/s Consolidated Construction Consortium Ltd. Vs M/s Hitro Energy Solutions Pvt. Ltd. in Civil Appeal No. 2839 of 2020***. Hence the payment of Security Deposit as advance for use of the Leased premises is clearly included in the "provision of services" and therefore falls within the purview of operational debt. We are therefore of the considered opinion that impugned order in not treating the Appellant as an Operational Creditor suffers from legal infirmity and the same cannot be supported.

**22.** Section 18 enjoins upon the RP to collect all information relating to the assets, finances and operations of the Corporate Debtor as well as take over control and custody of assets excluding assets owned by a third party in possession of the Corporate Debtor held under trust or under contractual arrangements. It is incumbent upon the RP under Section 18 of IBC to embark upon necessary steps to take control and custody of the assets of the Corporate Debtor and under Section 20 of IBC to protect and preserve the value of the property of the Corporate Debtor. That being the case there are no grounds to find faults or illegality on the part of the RP in including the Security Deposit in the pool of assets of the Corporate Debtor under CIRP and in inviting claims for payment in terms of resolution plan. We have already noted that the Appellant

has already exercised its liberty in filing their claim with RP in Form-C as financial creditor. However, the RP having examined the claim of the Appellant placed the Appellant in the category of 'Other Creditors'. For the reasons explained above, we have already held that the Security Deposit was in the nature of operational debt. We therefore cannot agree with the categorisation followed by the RP by placing the Appellant in the category of 'Other Creditors'. Since the ingredients of operational debt stands satisfies, and includes all those provide or receive operational services from the Corporate Debtor. We are therefore of the considered view that the Appellant in the present factual matrix should be accorded the status of an operational creditor.

**23.** For the foregoing reasons, we direct the RP to admit the claim of the Appellant as an Operational Creditor and Appellant be allowed to substitute Form-C as already filled up with Form-B. Paragraphs 3 and 4 of the impugned order is modified accordingly. The Appeal is disposed of with the above observations. No costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**Place: New Delhi**

**Date: 08.11.2024**

Abdul/Harleen