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(2024-1)213 PLR 644 (SC) (SN)

SUPREME COURT OF INDIA

Present : Justice Abhay S. Oka and Justice Pankaj Mithal.

GLOBAL CREDIT CAPITAL LIMITED & Anr. - Appellants

Versus

SACH MARKETING PVT. LTD. & Anr. - Respondents

Civil Appeal No. 1143 of 2022 with Civil Appeal Nos.6991-6994 of 2022.

(i) Insolvency and Banking Code, 2016 Section 5(7) - Security Deposits - Amounts covered by security deposits under the agreements constitute financial debt - As it is a financial debt owed by the first respondent, sub-section (7) of Section 5 of the IBC makes the first respondent a financial creditor.
[Para 18]

Held, As there is no clause regarding forfeiture of the security deposit or part thereof, the corporate debtor was liable to refund the security deposit after the period specified therein was over with interest @21% per annum. Since the security deposit payment had no correlation with any other clause under the agreements, as held by the NCLAT, the security deposit amounts represent debts covered by subsection (11) of Section 3 of the IBC. The reason is that the right of the first respondent to seek a refund of the security deposit with interest is a claim within the meaning of subsection (6) of Section 3 of the IBC as the first respondent is seeking a right to payment of the deposit amount with interest. Therefore, there is no manner of doubt that there is a debt in the form of a security deposit mentioned in the said two agreements.

[Para 14]

(ii) Insolvency and Banking Code, 2016 , Section 5 - Debt - Claim - Financial Debt and Operational Debt - Test - a. There cannot be a debt within the meaning of subsection (11) of section 5 of the IB Code unless there is a claim within the meaning of sub-section (6) of section 5 of thereof; b. The test to determine whether a debt is a financial debt within the meaning of sub-section (8) of section 5 is the existence of a debt along with interest, if any, which is disbursed against the consideration for the time value of money. The cases covered by categories (a) to (i) of sub-section (8) must satisfy the said test laid down by the earlier part of sub-section (8) of section 5; c. While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and d. Where one party owes a debt to another and when the creditor is claiming under a written agreement/ arrangement providing for rendering 'service', the debt is an operational debt only if the claim subject matter of the debt has some connection or correlation with the 'service' subject matter of the transaction.

[Para 20]

Judgment

Abhay S. Oka, J. - (25.04.2024) -

Full text reported as 2024 PLRonline 0002 (SC), 2024 INSC 340 SS