

Learning Curve-1038

May 03, 2024

Test to determine whether a debt is a financial debt is the existence of debt along with interest which is disbursed against the consideration for the time value of money.

CASE TITLE	Global Credit Capital Limited & Anr. Vs. Sach Marketing Pvt. Ltd. & Anr
CASE CITATION	Civil Appeal No. 1143 of 2022 with Civil Appeal Nos.6991-6994 of 2022
DATE OF ORDER	April 25, 2024
COURT/ TRIBUNAL	Supreme Court of India

BRIEF FACTS:

The RP rejected the claim of respondent on the grounds that the respondent could not be considered as FC. The respondent moved an application to AA seeking direction to RP to admit the claim. AA rejected the application. Aggrieved by the order respondent preferred an appeal to NCLAT. By impugned order NCLAT held that the first respondent was a financial creditor and not an operational creditor. The NCLAT allowed the appeal which is the subject matter of challenge in this Appeal.

DECISION:

The Hon'ble Supreme Court held that,

“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;

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

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.

For the reasons recorded earlier, we hold that the view taken by the NCLAT under the impugned judgments and orders is correct and will have to be upheld. Therefore, we confirm the impugned judgments and dismiss the appeals”