

A creditor will not become 'Financial Creditor' under IBC if a corporate debtor has only given security by pledging shares, without undertaking to discharge borrower's liability: Supreme Court

CASE TITLE	Phoenix ARC Pvt.Ltd.Vs.KetulbhaiRamubhai Patel ¹
CASE CITATION	CIVIL APPEAL NO.5146 of 2019
DATE OF ORDER	03.02.2021
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>Anuj Jain, Interim Resolution Professional for JaypeeInfraTech Limited vs. Axis Bank Limited and others</i> <i>Swiss Ribbons (P) Ltd. v. Union of India</i>
SECTION/REGULATION REFERRED	Section 60(5), 5(7), 5(8) of the Code

Brief of the case:

The question to be considered in this appeal was whether the appellant is a financial creditor within the meaning of Section 5(8) of the Code on the strength of pledge agreement and Deed of Undertaking entered into with L&T Infrastructure (Corporate Debtor).

Decision:

Hon'ble Supreme Court stated that their observations made in this judgment are only for deciding the claim of the appellant as the financial creditor Code and shall have no bearing on any other proceedings undertaken by the appellant to establish any of its right. The appeal was dismissed and it was held that,

"This Court held that a person having only security interest over the assets of corporate debtor, even if falling within the description of 'secured creditor' by virtue of collateral security extended by the corporate debtor, would not be covered by the financial creditors as per definitions contained in sub-section (7) and (8) of Section 5. What has been held by this Court as noted above is fully attracted in the present case where corporate debtor has only extended a security by pledging 40,160 shares of GEL. The appellant at best will be secured debtor qua above security but shall not be a financial creditor within the meaning of Section 5 sub-sections (7) and (8)."



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¹<https://ibbi.gov.in/uploads/order/e5f1be79f7e65a2f7c3dc717c618422a.pdf>