

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1480 of 2019

IN THE MATTER OF:

Mr. Vipin Agarwal

...Appellant

Versus

Mr. Satyaprakash Aggarwal & Ors.

...Respondents

Present:

**For Appellant: Mr. Soumik Ghosal, Mr. Devender Singh and
Mr. Gaurav Singh, Advocates.**

For Respondents:

ORDER

06.01.2020 The Respondent – Satyaprakash Agarwal (‘Financial Creditor’) filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short the ‘I&B Code’) against Vistar Metal Industries Pvt. Ltd., which was admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 14th October, 2019.

2. Learned Counsel appearing on behalf of the Appellant, Director submits that there is no interest payable and therefore, the debt does not come within the meaning of ‘Financial Debt as defined under Section 5(8) of the I&B Code.

3. From the record, we find that with regard to three ‘Financial Creditors’, the cheques issued by the ‘Corporate Debtor’ were dishonoured, which constituted default as noticed by the Adjudicating Authority as follows: -

“7. The Corporate Debtor had failed to honour its undertaking under Letters dated 15.12.2015 to make payments as per the schedule proposed and defaulted when the cheques were dishonoured.

Copies of the Cheques and the Disnonour memos are annexed establishing the dates of default. The dates of default as per part IV of the Application for each applicant is provided below.

<i>Financial Creditor</i>	<i>Default Amount</i>	<i>Date of Default</i>
<i>Financial Creditor 1</i>	<i>Rs. 1,31,00,000/-</i>	<i>15.05.2016</i>
<i>Financial Creditor 2</i>	<i>Rs. 40,00,000/-</i>	<i>15.03.2017</i>
<i>Financial Creditor 3</i>	<i>Rs. 30,00,000/-</i>	<i>15.05.2017”</i>

4. Learned Counsel for the ‘Corporate Debtor’ in reply submitted that the excess amount was paid and therefore, the same is refundable. However, the record shows that ‘Corporate Debtor’ has taken a loan, which was disbursed by Respondents (‘Financial Creditors’) for time value of money and utilized the same for its use. The Appellant (‘Corporate Debtor’) was also paying the TDS on interest of the amounts disbursed. Therefore, we hold that the Respondents come within the meaning of ‘Financial Creditors’ as defined under Section 5(7) and (8) of the I&B Code.

5. In absence of any merit, the Appeal is dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Ash/GC