

**One Page #9 - In matter of M/s Solar Semiconductor Energy Systems (I) P Ltd
Challenging the admission of Section 7 Application-Financial Lease v Operational Lease
Court: NCLT, Hyderabad; NCLAT, Chennai. (AT#2 Dt 19.04.2021)**

1. Facts of the Case:

- a. Appellant is suspended Director of CD, Respondents are CD & Sec7 Applicant (Orix)
- b. Appellant challenged the admission of Section 7 application **u/s 5(8)(d)** stating NCLT erred in admitting the order without satisfying its averments u/s 5(7)-Financial Creditor), 5(8)(d)-Financial Debt, 5(20)-Operational Creditor & 5(21)-Operational Debt of the IB Code and the accounting standards. Averments by both parties are:

S	By Appellant (CD)	By Respondent (Orix)
1	Lease is an operational lease & not a financial lease.	CD on numerous occasions in its pleadings before NCLT confirmed that the lease is financial lease.
2	Demand notice issued by Orix reaffirms that the lease is an operational lease	Orix issued regular legal notices to CD & guarantors and they are not in the such form or manner prescribed under I&B code
3	Orix has not pleaded that the lease agreement is a financial lease or capital lease under Indian Accounting Standards (IAS) as required u/s 5(8)(d)	As per IAS lease is classified as financial lease if it transfers substantially all risks & rewards incidental to ownership of the underlying asset, and Orix had done such transfer.
4	There is no time value of money	Orix invested 1.08Cr under financial lease contract with a repayment schedule as lease rentals in 36 months & at the end CD will buy back the asset at its residual value.
5	Orix has not pleaded on how & why debt falls within definition of Financial debt.	Orix followed the format given under Rule 4 of IBBI (Application to Adjudicating Authority) Rules & filled all the details.

2. Discussions & Findings by NCLAT:

- a. As per black law dictionary, time value of money is associated with length of time that an investor must wait until investment matures or related income is earned. FC invested Rs.1.08 Cr under lease agreement with a repayment schedule of 36 months. Also, CD vide letter dt 28.11.2017 confirmed to buyback the asset at 21.65 lakhs after lease period, which was already received by the CD as security deposit; an inevitable conclusion that disbursal of amount to supplier comes within times value of money
- b. In part IV of the Application, Particulars of Financial Debt, Orix mentioned that it entered into lease agreement with CD to avail financial assistance of Rs,1.08 crore and further mentioned that Rs.1.17 Crores is not paid by the CD as per computation statement enclosed & thus it cannot be said that Orix has not pleaded in its application.

- c. Orix had not issued the demand notice (u/s Sec 8) in such form & manner as prescribed by I&B Code
- d. **In the teeth of the lease agreement, Orix had offered to provide financial lease and NCLAT without any haziness holds that the lease is a financial lease.**

3. Judgement: Appeal 02/2021 is dismissed without costs.

-MS Mano Ranjani

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