

March 2026

National Company Law Appellate Tribunal clarifies financial creditor status in third-party mortgage transactions under the Insolvency and Bankruptcy Code, 2016

The National Company Law Appellate Tribunal, Principal Bench, New Delhi (“NCLAT”), In the case of *Vistra ITCL (India) Limited vs. Vithal Madhukar Dahake and Ors.*¹, has considered whether a third-party mortgagor, which created security over its assets for the debt of another entity, could be treated as giving rise to a ‘financial debt’ under the Insolvency and Bankruptcy Code, 2016 (“IBC”). The appeal arose from an order of the National Company Law Tribunal, Mumbai (“NCLT”). NCLT had upheld the resolution professional’s decision to classify Vistra ITCL (India) Limited (“Vistra”), acting as debenture trustee, only as an ‘other secured creditor’ rather than as a secured financial creditor of Radius Estate Projects Private Limited (“Corporate Debtor”).

Brief facts

The underlying borrowing had been availed by Aaditri Constructions Private Limited (“ACPL”) through issuance of secured optionally convertible debentures. The funds were admittedly disbursed to ACPL and not to the Corporate Debtor. However, the Corporate Debtor subsequently executed supplemental indentures of mortgage in favor of Vistra and mortgaged its immovable properties. These documents did not merely create security but also contained an express covenant to pay the secured obligations. Further, Vistra submitted its claim in the corporate insolvency resolution process of the Corporate Debtor as a secured financial creditor for approximately INR 8,74,03,00,000 (Indian Rupees eight hundred seventy-four crore three lakh). The resolution professional rejected that classification, and the NCLT affirmed that view, resulting in the appeal.

Findings and analysis

The NCLAT set aside the NCLT’s order and held that the claim could not be treated merely as that of an ‘other secured creditor’. The NCLAT examined both the debenture trust deed and the supplemental mortgage documents executed by the Corporate Debtor and found that the transaction structure extended beyond a mere creation of third-party security. The debenture trust deed broadly defined the term ‘security interest’. It included within its scope, not only mortgages but also guarantees and other arrangements securing the debenture obligations. It also contemplated that security providers could be jointly and severally liable.

The NCLAT placed particular emphasis on the language of the supplemental indentures of mortgage. It found that the Corporate Debtor had not merely provided property as collateral, but had expressly undertaken a ‘covenant to pay’

¹ Comp. App. (AT) (Ins) No. 1110 of 2024, decided on February 24, 2026

the secured obligations under the transaction documents. The NCLAT held that this covenant could not be reduced to a mere incident of the mortgage. Instead, it amounted to an undertaking to discharge the liability of the principal borrower in the event of default, thereby partaking the character of a ‘contract of guarantee’ under Section 126² of the Indian Contract Act, 1872. On this basis, it concluded that the liability assumed by the Corporate Debtor constituted a financial debt under Section 5(8)³ of the IBC.

NCLAT also rejected the argument that the claim could not qualify as a financial debt merely because no money was directly disbursed to the Corporate Debtor. It held that while disbursement remains an important element of Section 5(8) of the IBC, direct disbursement to the Corporate Debtor is not an inflexible requirement in every case. In doing so, the NCLAT relied upon *Rajeev Kumar Jain vs. Uno Minda Limited*⁴, and observed that the commercial substance and legal effect of the transaction must be examined as a whole.

Treatment of earlier precedents

A significant feature of the judgment is the manner in which the NCLAT aligned its reasoning with the decision of the Supreme Court of India (“**Supreme Court**”) in *China Development Bank vs. Doha Bank Q.P.S.C. and Ors.*⁵. In the aforesaid case, the Supreme Court held that a clause contained in a deed of hypothecation, though not styled as a guarantee, in substance amounted to a contract of guarantee because it required the chargor to discharge the liability of third parties upon default and shortfall. The Supreme Court thus reaffirmed that the true nature of the obligation must be determined from the substance of the document and not merely its nomenclature. The NCLAT expressly drew support from this principle and applied it to the mortgage documents before it. In substance, the NCLAT treated the covenant to pay in the supplemental mortgage deeds as functionally equivalent to the guarantee obligation recognised in *China Development Bank* judgment (supra).

Importantly, the NCLAT did not depart from *Anuj Jain vs. Axis Bank Limited*⁶, but distinguished it on facts. In *Anuj Jain* judgment (supra), the Supreme Court held that a mere third-party mortgage created by a corporate debtor for another entity’s borrowing, without any separate obligation in the nature of a guarantee, would not make the lender a financial creditor of that corporate debtor. The NCLAT accepted that principle but held that it did not apply here, as the present case involved more than a bare third-party mortgage. The decisive feature, according to the NCLAT, was the existence of an express covenant to pay the secured obligations. The judgment therefore draws a clear distinction between: (a) a mere third-party security arrangement; and (b) a security arrangement coupled with an express undertaking to discharge the underlying debt. Only in the latter case, the NCLAT held, that the claim may assume the character of financial debt.

Conclusion

The judgment is likely to be of considerable practical significance in insolvency cases involving structured finance and debenture transactions. It reinforces the position that the classification of a creditor’s claim under the IBC will depend not merely on the form of the security document, but on the precise nature of the obligations undertaken by the security provider. Where a third-party mortgagor has expressly undertaken to discharge the borrower’s obligations, such a covenant may be treated as creating a guarantee, and therefore a financial debt, even if the corporate debtor itself did not receive the original disbursement.

² Section 126 of the Indian Contract Act, 1872 defines a contract of guarantee as an agreement to perform the promise or discharge the liability of a third person in case of their default. It identifies the three key parties involved: the principal debtor, the creditor, and the surety, and lays the foundational scope for guarantee obligations under the Act.

³ Section 5(8) of the Insolvency and Bankruptcy Code, 2016 defines “financial debt” as a debt, along with interest (if any), which is disbursed against the consideration for the time value of money. It provides an inclusive list of transactions, such as loans, debentures, and lease arrangements, that qualify as financial debt

⁴ CA (AT) (Ins) No. 947 of 2022 before the National Company Law Appellate Tribunal, decided on January 2, 2024

⁵ 2024 SCC OnLine SC 3829, decided on December 20, 2024

⁶ (2020) 8 SCC 401, decided on February 26, 2020

Therefore, the ruling should not be read as equating all third-party security with financial debt. The NCLAT's reasoning remains closely tied to the express language of the documents before it, particularly the covenant to pay and the broader contractual framework of the debenture trust deed. The decision is consistent with the ruling in *China Development Bank* (supra) and the principle laid down in *Anuj Jain* (supra). It clarifies that a security document may, in a given case, amount to a guarantee depending on its substantive terms. From a transactional perspective, this judgment is likely to influence future drafting of mortgage, hypothecation and security documents, particularly where creditors may later seek recognition as financial creditors in the insolvency of a third-party security provider.

Insolvency and Debt Restructuring Practice

JSA is recognised as one of the market leaders in India in the field of insolvency and debt restructuring. Our practice comprises legal professionals from the banking & finance, corporate and dispute resolution practices serving clients pan India on insolvency and debt restructuring assignments. We advise both lenders and borrowers in restructuring and refinancing their debt including through an out-of-court restructuring as per the guidelines issued by the Reserve Bank of India, asset reconstruction, one-time settlements as well as other modes of restructuring. We also regularly advise creditors, bidders (resolution applicants), resolution professionals as well as promoters in connection with corporate insolvencies and liquidation under the IBC. We have been involved in some of the largest insolvency and debt restructuring assignments in the country. Our scope of work includes formulating a strategy for debt restructuring, evaluating various options available to different stakeholders, preparing and reviewing restructuring agreements and resolution plans, advising on implementation of resolution plans and representing diverse stakeholders before various courts and tribunals. JSA's immense experience in capital markets & securities, M&A, projects & infrastructure and real estate law, combined with the requisite sectoral expertise, enables the firm to provide seamless service and in-depth legal advice and solutions on complex insolvency and restructuring matters.

This Prism has been prepared by:



Dheeraj Nair
Partner



Padmaja Kaul
Partner



Kushagra Sah
Principal Associate



Vansh Bhutani
Associate



19 Practices and
40 Ranked Lawyers



8 Ranked Practices,
22 Ranked Lawyers



15 Practices and
20 Ranked Lawyers



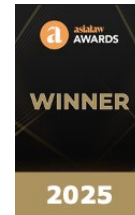
13 Practices and
49 Ranked Lawyers



20 Practices and
24 Ranked Lawyers



8 Practices and
10 Ranked Lawyers
Highly Recommended in 5 Cities



**Regional Legal Expertise Awards
(APAC) of the Year**
Energy Firm Competition/
Antitrust Firm



Among Best Overall
Law Firms in India and
14 Ranked Practices

9 winning Deals in
IBLJ Deals of the Year

15 A List Lawyers in
IBLJ A-List – 2026



Recognised in World's 100 best
competition practices of 2026



Ranked Among Top 5 Law Firms in
India for ESG Practice



Asia M&A Ranking
2025 – Tier 1

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This Prism is not an advertisement or any form of solicitation and should not be construed as such. This Prism has been prepared for general information purposes only. Nothing in this Prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this Prism disclaim all and any liability to any person who takes any decision based on this publication.

Copyright © 2026 JSA | all rights reserved