

Supreme Court upholds corporate guarantees as 'financial debt' under the Insolvency and Bankruptcy Code, 2016

A 2 (two) judge bench of the Hon'ble Supreme Court of India ("Supreme Court"), in *State Bank of India and Ors. vs. Doha Bank Q.P.S.C. & Anr.*¹ has held that a corporate guarantee gives rise to a 'financial debt' under Section 5(8)² of the Insolvency and Bankruptcy Code, 2016 ("IBC"), and procedural objections such as non-disclosure of the guarantee in financial statements, late production of the document, or insufficient stamping, cannot defeat a creditor's recognition as a financial creditor.

Brief facts

1. Doha Bank Q.P.S.C. ("**Doha Bank**") had extended a foreign currency loan of USD 250,000,000 (US Dollars two hundred and fifty million) directly to Reliance Infratel Limited ("**CD**"). The State Bank of India consortium of 6 (six) Indian banks ("**Appellants**") had separately extended rupee loans aggregating INR 6,750 crore (Indian Rupees six thousand seven hundred and fifty crore) to the CD's group entities, Reliance Communications Limited ("**RCOM**") and Reliance Telecom Limited ("**RTL**"). To secure these group loans, the CD executed a corporate guarantee in favour of the Appellants on March 3, 2017. The accounts of RCOM, RTL and the CD were first classified as Non-Performing Assets ("**NPA**") on August 26, 2016, and were restructured thereafter. On December 22, 2017, the CD's account was again declared NPA with retrospective effect from August 26, 2016.
2. On May 15, 2018, the National Company Law Tribunal, Mumbai ("**NCLT**") admitted the CD into the Corporate Insolvency Resolution Process ("**CIRP**"). The security trustee for loans to RTL and RCOM (Axis Trustee Services Ltd.) invoked the corporate guarantee. Accordingly, the Appellants submitted a claim of INR 3,628.67 crore (Indian Rupees three thousand six hundred and twenty-eight crore sixty-seven lakh) in their Form C. Doha Bank objected to the corporate guarantees alleging that they were preferential, undervalued and fraudulent under Sections 43³, 45⁴ and 66⁵ of the IBC, and were not properly disclosed, verified or stamped.
3. By order dated March 2, 2021, the NCLT held that the Appellants were not financial creditors and directed reconstitution of the Committee of Creditors ("**CoC**"). The National Company Law Appellate Tribunal ("**NCLAT**"),

¹ Civil Appeal No. 8527 of 2022 (decided on April 28, 2026)

² Section 5(8) of the IBC defines 'financial debt' as money borrowed or raised against the time value of money, including loans, debentures, guarantees, lease liabilities, and other similar borrowing arrangements.

³ Section 43 of the IBC deals with 'preferential transactions' entered into by the corporate debtor to unfairly benefit certain creditors during or before the commencement of the insolvency.

⁴ Section 45 of the IBC provides recourse to avoid 'undervalued transactions' where assets are transferred for significantly less than their true value.

⁵ Section 66 of the IBC provides for liability in cases of 'fraudulent trading' or 'wrongful trading' carried on with intent to defraud creditors or without due diligence.

by its order dated October 14, 2022, affirmed the NCLT's decision, additionally holding that the timing of execution was suspicious. The guarantees were not reflected in the CD's financial statements for financial year 2016-17 and financial year 2017-18, and that they were inadequately stamped under the Maharashtra Stamp Act, 1958. The Appellants approached the Supreme Court under Section 62⁶ of the IBC.

Issues

1. Whether the corporate guarantees executed by the CD constitute 'financial debt' within the meaning of Section 5(8) of the IBC?
2. Whether the claims of the Appellants could be rejected on grounds of alleged non-disclosure, improper verification, late production, or insufficient stamping?

Analysis and findings

1. **On corporate guarantee creating a 'financial debt':** The Supreme Court held that the essential ingredient of a 'financial debt' under Section 5(8) of the IBC is disbursement against consideration for the time value of money, and that liability under a guarantee for money borrowed against payment of interest squarely falls within this definition. Following *Anuj Jain vs. Bank Limited*⁷ and *China Development Bank vs. Doha Bank Q.P.S.C.*⁸, the Court reaffirmed that a guarantor incurs a coextensive liability with the principal borrower.
2. **On the timing of execution and non-disclosure of the corporate guarantee:** An objection was raised on the timing of the execution of the corporate guarantees. It was contended that the guarantees were executed after the CD had already been declared an NPA on August 26, 2016 and was already in default. In this regard, the Supreme Court highlighted that the corporate guarantees were executed after the CD's account was restructured and was operating as a 'restructured asset'. The Supreme Court also clarified that it was declared NPA with effect from August 26, 2016 solely due to the operation of the RBI Master Circular dated July 1, 2015⁹. Therefore, addressing the alleged suspicious timing, the Supreme Court held that the corporate guarantee had, in fact, been executed prior to the relevant (and subsequent) NPA declaration. On a more technical objection regarding non-disclosure of the guarantee in the CD's financial statements, the Supreme Court held that such omission cannot deprive the Appellants of their right to claim. This, at most, constitutes a default on the part of the CD and does not invalidate the underlying guarantee.
3. **On verification of guarantees and production at the appellate stage:** The Supreme Court dismissed the objections on the manner of verification of the guarantees stating that the Resolution Professional had inspected the executed and stamped guarantees at the office of the security trustee in New Delhi as stated in the security trustee's letter dated March 6, 2019. The Supreme Court held that the NCLAT's finding that there was no pleading on record establishing such verification was perverse. Further, applying the settled principle that an appeal is a continuation of the original proceeding, the Supreme Court held that the corporate guarantees produced before the NCLAT could not be disregarded merely because they were not produced before the NCLT.
4. **On insufficient stamping is a curable defect:** Regarding the objection on insufficient stamping of the corporate guarantees under the Maharashtra Stamp Duty Act, 1958, the Supreme Court held that the guarantees were executed in New Delhi on payment of stamp duty at applicable Delhi rates, and the Maharashtra Stamp Act, 1958 was not attracted. In any event, the Supreme Court relied on the judgements in *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act*¹⁰ and *Hindustan Steel Ltd. vs. Dilip*

⁶ Section 62 of the IBC provides for an appeal to the Supreme Court against an order of the NCLAT on a question of law.

⁷ (2020) 8 SCC 401

⁸ (2025) 7 SCC 729

⁹ Under Clause 17.2.6 of the RBI Master Circular dated July 1, 2015, a restructured asset relapses to its original NPA classification with retrospective effect i.e., from the date when it was first declared NPA.

¹⁰ 1899 (2024) 6 SCC 1

*Construction Company*¹¹, to reiterate that non-stamping or improper stamping does not render an instrument void or unenforceable. The Maharashtra Stamp Act, 1958 is a fiscal measure and cannot be used as a weapon to defeat the cause of the opponent. Accordingly, the Supreme Court set aside the orders of the NCLT and NCLAT, recognised the Appellants as financial creditors, and directed reconstitution of the CoC.

Conclusion

The judgment reinforces the position that corporate guarantees are squarely within the definition of ‘financial debt’ under Section 5(8) of the IBC, and that guarantor liability is enforceable on a coextensive basis with that of the principal borrower. It is a reaffirmation of the rights of secured lenders during CIRP, particularly where intra-group guarantees form the basis for the claim. The Supreme Court has categorically held that technical and curable objections, often raised by competing creditors to dilute another lender’s share in the CoC, will not succeed where the substantive instrument is genuine and enforceable. This decision is a welcome step towards ensuring that the resolution process under the IBC remains free from hyper-technical objections making it more creditor friendly.

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¹¹ (1969) 1 SCC 597



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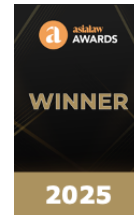
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