

LEGAL UPDATES

NCLT SAID INTEREST-BEARING SECURITY DEPOSIT, CLASSIFIED AS "A FINANCIAL DEBT"

The National Company Law Tribunal determined that the Financial Creditor's application to begin the insolvency proceedings against the Corporate Debtor, according to Section 7 of the Insolvency and Bankruptcy Code 2016, was sustainable.

The Applicant in the instant case contended that in conformity with the Agreement, by which the Corporate Debtor designated the Applicant as "Consignment & Freight Agent," it had made an interest-bearing deposit of Rs. 70 lakhs, which met the requirements of Sec. 5(8)(f) of the IBC to be considered a "financial debt."

After reviewing the contract between the parties, the Hon'ble Tribunal remarked that the payment was released in conformity with the said agreement dated in the form of a security deposit and that it was interest bearing, meaning it was carrying consideration of the time value of money and had the commercial effect of a borrowing; as a result, the Tribunal concluded that the "debt" claimed is a "Financial Debt".

Further, Hon'ble NCLT New Delhi instructed the applicant to inform the corporate debtor of the reasons why the Corporate Insolvency Resolution Proceedings CIRP should not be brought against it while also emphasising that *"nothing expressed herein shall be construed as an opinion on the merits of the case and shall not come as a barrier for the corporate debtor in raising its defence"*.