



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-VI, NEW DELHI BENCH
COMPANY PETITION IB (IBC) NO. 537/ND/2023**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

FINDOC FINVEST PRIVATE LIMITED

Having its Registered Address

**at, SCO No. 210-211, Sector 34-A,
Chandigarh-160022.**

...Applicant/Financial Creditor

Versus

AF ENTERPRISES LIMITED

Having its Registered Address at

**15/18 Basement B Portion
West Patel Nagar
West New Delhi
Central Delhi DL 110008.**

...Respondent/Corporate Debtor

Order Delivered on: 25.04.2025.

CORAM:

**JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)**

**MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant:

Adv. Abhinav Agnihotri, Adv. Gitesh Chopra,
Adv. Prabhav Gang

For the Respondent:

Adv. Satvik Bansal, Adv. Amitabh Tewari



ORDER

1. This is a Company Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Findoc Finvest Private Limited (hereinafter referred to as ‘Financial Creditor’), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against AF Enterprises Limited (“Corporate Debtor”).
2. The present application was filed on 30.08.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 2,44,19,528/- (Rupees Two Crore Forty-Four Lakh Nineteen Thousand Five Hundred Twenty-Eight) as on 01.05.2022 (alleged date of default). The Financial Creditor has filed the “record of default” dated 01.05.2022 as generated by the NeSL, showing the status of default of the Corporate Debtor under the Loan Agreement as “deemed to be authenticated.

3. Submission made by Financial Creditor:

- i. The Corporate Debtor issued a letter to the Applicant requesting grant of a loan facility up to Rs 5,00,00,000/- (Rupees Five Crores only) for a period of 12 (Twelve) months at the rate of 12% per annum. The Applicant agreed to the same and extended a loan facility of Rs 5,00,00,000/- (Rupees Five Crores only) for a period of 12 (Twelve) months and entered into a loan agreement dated 14.03.2022.
- ii. The Corporate Debtor has till date remitted only a total amount of Rs. 20,50,292/- (Rupees Twenty Lakhs Fifty Thousand Two Hundred Ninety-Two only) to the Applicant. It has repeatedly defaulted in paying the monthly interest rate as per Article 2 of the Loan Agreement, therefore, it is liable to also pay the penal charges as per Article 2.2 of the Loan Agreement.



- iii. Further, the Corporate Debtor failed to repay the entire principal amount by 30.04.2023 which it was supposed to pay as per the Loan Agreement.
- iv. The Corporate Debtor defaulted for the first time in making payment towards the monthly interest due for the month of April, 2022. As a result of which the first date of default occurred on 01.05.2022. Thereafter, the Corporate Debtor continued to default on various other occasions till the term of the Loan Agreement.
- v. Consequently, the Applicant issued a Demand Notice dated 07.07.2023 as per Article 7 of the Loan Agreement calling upon the Corporate Debtor to make payment towards the entire principal amount, balance amount towards accrued interest, balance penal charges receivable, and dishonor charges.
- vi. In terms of the Loan Agreement the Corporate Debtor as on date is liable to pay an amount of Rs. 2,44,19,528/- (Rupees Two Crores Forty-Four Lakhs Nineteen Thousand Five Hundred Twenty-Eight Rupees Only).
- vii. The Financial Creditor has complied with all the terms and conditions of the Loan Agreement; however, the Corporate Debtor has miserably failed to fulfil its obligations under the same nor has it responded to the Demand Notice dated 07.07.2023 issued by the Financial Creditor.

4. Submissions made by the Corporate Debtor:

- i. It is submitted that there is no debt due or default under Section 7 of the Code. The ingredients of Section 7 of the Code have not been satisfied and the Applicant is not eligible to invoke the provisions of the Code. A Loan Agreement dated 14.03.2022 was entered into between the Applicant and the Respondent for availing loan credit facility up to Rs. 5,00,00,000/- (Rupees Five Crores Only). Out of the said principal amount, an amount of Rs. 2,30,00,000/- was disbursed. However, it is submitted that debt is not due and there has been no default in the present case.



- ii. As per the Applicant, the Loan Agreement has been terminated on account of Article 6(a) of the Agreement which states that the Lender may cancel the Agreement without prior notice on failure to pay the interest due. It is submitted that thereafter the Applicant directed the Respondent to pay the loan amount within seven days.
- iii. It is submitted that the termination of the Agreement is in contravention to the provisions of the Loan Agreement. As per Article 5.2, the Loan Agreement shall be renewed unless terminated by giving a thirty days' notice prior to the end of the term of the Agreement, notwithstanding Article 6. This leads to an undeniable inference that the provisions of Article 5.2 qua the mandatory notice before termination take precedence over Article 6 of the Agreement. A harmonious reading of Article 5.2 and Article 6 shows that termination can only be done by giving a thirty days' notice which was not done in the present case. A further reading of the provisions shows that debt, if any, will only be due and payable after receipt of the notice in compliance with the mandate of Article 5.2.
- iv. The demand notice/ termination notice dated 07.07.2023 (Annexure I-F) of the Applicant has given the Respondent a mere seven days to repay the alleged amount. Assuming without admitting that the respondent owes the alleged debt, its recovery/ repayment can only be made in strict terms as laid down in the Agreement, failing which the debt would not be due or payable. Consequentially, there is no debt existing for which there would be any default and thus the provisions of the Code cannot be to be invoked by the Applicant.
- v. It is submitted that the Application is not maintainable because the Applicant does not satisfy the test of financial creditor under the Code as held in various judgments of the Supreme Court. As per Section 5(7) of the Code, a financial creditor is defined as:

"... (7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to,"



- vi. It is submitted that there is no prior case filed by the Applicant against the Respondent for recovery of the alleged dues either before DRT or under SARFAESI or before Civil Court or before an Arbitrator or as a willful defaulter. This clearly demonstrates that the Respondent has never been in default, lest the alleged default, and the present Application under Section 7 of the Code by the Applicant is misconceived.

Analysis and Findings

5. Heard the Learned Counsel and perused the material on record.
6. As per the records, the Financial Creditor and Corporate Debtor entered into a loan agreement dated 14.03.2022 for a loan facility of 12 months @ 12% interest per annum. The Financial Creditor also filed the “record of default” dated 01.05.2022 as generated by the NeSL and showing the status of default of the Corporate Debtor under the Loan Agreement as “deemed to be authenticated” The Financial Creditor/ Applicant has till date disbursed Rs. 2,30,00,000/ (Rupees Two Crore Thirty Lakhs only) to the Corporate Debtor in terms of the Loan Agreement. The Corporate Debtor has defaulted in making the payments in terms of the Loan Agreement and the total amount outstanding as on the date of the petition is Rs.2,44,19,528/- (Two Crores Forty-Four Lakhs Nineteen Thousand Five Hundred Twenty-Eight only).
7. The Applicant qualifies as a financial creditor as the loan was granted against the time value of money since it stipulated an interest rate of 12% per annum. Hence satisfying the definition laid down under Section 5(8) of IBC, 2016.
8. There is no denial of the fact that loan agreement was entered into and the Corporate Debtor obtained the loan. The contention of the Corporate Debtor is that the debt is not due because the Financial Creditor has wrongly terminated the agreement by resorting to Article 5 of the Loan Agreement. Another Argument of the Corporate Debtor is that in view of the terms and conditions enumerated in Article -5 of the Agreement, it take precedence over Article -6. In these circumstances, we deem it fit to reproduce the relevant Articles of the said Loan Agreement-:



“Article 5 – Duration

5.1 *“The Loan/Call Money is available to the Borrower on the call of Lender and for 12 months from the date of agreement.*

5.2 *It shall be renewed for consecutive periods of **12 Months** unless terminated by either Party by providing to the other Party such notice of termination **One** month (Thirty Days) prior to the end of the first or prior to the end of any consecutive periods, effective at the end of that period, notwithstanding article 6 hereunder.”*

“Article 6 – Termination

The Lender may cancel the Loan/Call Money forthwith and without any prior written notice in case of any of the following events, which constitute default by the Borrower:

- (a) Failure by the Borrower to pay to the Lender any interest due.*
- (b) Failure by the Borrower to comply with any other term or condition of this Agreement, and if such failure is capable of being remedied, the failure remains not remedied for more than thirty days after the Lender gives notice thereof to the Borrower.*
- (c) The appointment of a receiver over any material part of the assets or undertakings of the Borrower, which results in a suspension of payments, or an attachment ("uitvoerend beslag/saisie exécutoire") being made on a material part of the Borrower's assets or undertakings, or any bankruptcy, insolvency or similar legal action instituted by or against the Borrower.*
- (d) The occurrence of any other event which in the reasonable opinion of the Lender would have a materially adverse effect on the Borrower's ability to comply with any of its obligations under this Agreement; or*
- (e) The transfer of the Borrower's business (or any part thereof) to a third party outside the group of companies the Lender and the Borrower originally are part of.”*



9. We are of the considered view that **Article -5** titled as **("Duration")** of the Loan Agreement actually deals with the extension of period beyond the stipulated period of 12 months whereas **Article -6** titled as **("Termination")** of the loan agreement actually deals with the Termination of the Loan Agreement without any prior notice. The **clause (a) of Article -6** of the Loan Agreement provides for termination of Loan Agreement without prior notice in the event of failure to pay any interest due.
10. We have perused the loan accounts at (Page No. 83-151) of the petition which reflects default of interest payment due for the month of April, 2022 by the Corporate Debtor. Hence the event of default as per clause (a) of Article 6 terminating the loan agreement without any prior notice is established.
11. In our view the contention with respect to non-initiation of action for recovery of the alleged dues either before DRT or under SARFAESI or before Civil Court or before an Arbitrator is misconceived as the Applicant has liberty to choose the legal forum for appropriate remedies.
12. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner has established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. This Petition was filed on 30.08.2023, and the debt owed to the Financial Creditor on the date of filing of the petition is an amount of Rs. 2,44,19,528/- (Rupees Two Crore Forty-Four Lakh Nineteen Thousand Five Hundred Twenty-Eight) which meets the threshold of Rs. One Crore as laid down under Section 4 of the Code.
13. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/537 (ND) 2023** filed by Findoc Finvest Private Limited, the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **AF Enterprises Limited**, the Corporate Debtor, stands admitted and CIRP of AF Enterprises Limited is initiated.



14. That the petitioner in part-III of the petition has proposed the name of **Mr. Sumit Sharma**, as Interim Resolution Professional, having Registration Number **IBBI/IPA-001/IP-P-02323/2020-2021/13513** and E-mail Id- **mail@sumitsharma.in**, is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that IRP has a valid AFA.
15. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
 - (e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.



16. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
17. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
18. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely **Mr. Sumit Sharma** to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
19. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
20. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-



management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

21. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
22. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
23. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **C.P. I.B./537 (ND)/2023** stands admitted.
24. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

-SD/-
(JYOTSNA SHARMA)
MEMBER (JUDICIAL)