

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL
COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 10.03.2026 AT
10.30 A.M. THROUGH VIDEO CONFERENCING:**

**PRESENT: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)**

APPLICATION NUMBER : --
PETITION NUMBER : CP(IBC)/74/CHE/2024
NAME OF THE PETITIONER : Asset Reconstruction Company (India) Ltd
NAME OF THE RESPONDENT(S) : Positive Housing Pvt Ltd
UNDER SECTION : Sec 7 Rule 4 of IBC, 2016

ORDER

Vide separate order pronounced in open court, **CP(IBC)/74/CHE/2024** is

Allowed.

**Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)**

**Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP (IBC) / 74 (CHE) / 2024

*(Filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, R/w, Rule 4 of
the Insolvency and Bankruptcy Rules, 2016)*

In the matter of Positive Housing Private Limited

Indiabulls Housing Finance Limited,

Represented by Mr. Devbrat Mitra

5th Floor, Building No. 27,

KG Marg Connaught Place,

New Delhi – 110 001.

... Petitioner / Financial Creditor

-Vs-

Positive Housing Private Limited,

New No. 63, GN Chetty Road,

Chennai, Tamil Nadu – 600 017.

... Respondent / Corporate Debtor

Order Pronounced on 10th March 2026

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Petitioners:- Prashant Kumar, Angad Varma, P. Balasubramaniam, Advocates

For Respondent:- Chandramouli Prabhakar, M.S.Shyamsundar, Advocates

ORDER

(Heard Through Hybrid Mode)

1. This Petition has been filed under Section 7 of the Insolvency and Bankruptcy code, 2016 (“IBC”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by

Indiabulls Housing Finance Limited, (hereinafter referred to as '*Financial Creditor*') seeking to initiate Corporate Insolvency Resolution Process against **Positive Housing Private Limited** (hereinafter referred to as '*Corporate Debtor*').

2. Part-I of the Petition sets out of the details of the Financial Creditor. It is averred that the Indiabulls Housing Finance Limited, incorporated on 10.05.2005, is engaged in various financial services businesses. It provides both wholesale and retail funding across sectors, which is represented by Mr. Devbrat Mitra with its office situated at 5th Floor, Building No. 27, KG Marg, Connaught place, New Delhi –110 001.

3. Part-II of the Petition sets out the details of the Corporate Debtor, Positive Housing Private Limited, with Identification No. U70101TN2005PTC131430, incorporated on 22.07.2005, with an Nominal Share Capital of Rs. 17,50,00,000/- and the Paid-up Share Capital of Rs. 17,43,63,610/- having its registered office at the then New No. 63, GN Chetty Road, Chennai, Tamil Nadu – 600 017.

4. In Part-III of the Petition the Financial Creditor has proposed Mr. Amit Agarwal, bearing Registration No. IBBI/IPA002/IPN00185/2017-18/10456 to act as Interim Resolution Professional and therefore, prayed the Tribunal to make a reference to the board for appointment of Interim Resolution professional.

5. Part-IV of the Petition states that the total outstanding Debt is Rs. 77,94,34,430/- (Rupees Seventy Seven Crore Ninety Four Lakhs Thirty Four Thousand Four Hundred and Thirty Only) is payable as on 11.12.2023 towards the Loan disbursed to extend financial assistance pursuant to a Loan Agreement dated 29.03.2019. The Date of Default is 14.11.2023

6. Part-V of the Petition describes the particulars of the Financial Debt, documents, records and evidence of the default as below:

- NeSL report for default by Corporate Debtor submitted to National E-Governance Services Limited, annexed as Annexure -A/11.
- Sanction Letter dated March 28, 2019, annexed as Annexure -A/4
- Loan Agreement dated March 29, 2019, annexed as Annexure -A/5
- True copy of the statement of account of the Financial Creditor, annexed as Annexure-A/12.

7. FINANCIAL CREDITORS SUBMISSIONS:

7.1 It is submitted that the India bulls Housing Finance Limited was incorporated on 10.05.2005 and is engaged in various financial services businesses and provides both wholesale and retail funding across sectors. It is further submitted that the Corporate Debtor is engaged in the business of real estate construction and development.

7.2 It is submitted that the Financial Creditor had extended financial assistance in the form of a loan to the Corporate Debtor and Sathiyamoorthy Sai Prasad for an amount of Rs. 105,00,00,000 (Rupees One Hundred Five

Crores Only) which was disbursed pursuant to a Sanction Letter dated 28.03.2019 and Loan Agreement dated 29.03.2019, which was executed between the Financial Creditor, Corporate Debtor and Sathyamoorthy Sai Prasad.

7.3 It is further submitted that, pursuant to the Loan Agreement, the manner of repayment was clearly stipulated, with the tenure of the loan being 60 months from the date of first disbursement. The repayment of interest and principal was agreed to be made in the following manner:

- i. Interest paid monthly with effect from 05.04.2019 till 05.04.2024 at a floating rate of interest of 14.3% p.a.
- ii. Principal Amount repayment commences from 05.06.2019 ending on 05.04.2024.

7.4 It is submitted that Clause 4 of the Loan Agreement, read with the Schedule thereto, provides that in the event of any default in repayment of the amounts due, default interest at the rate of 2% per annum over and above the applicable documented interest rate shall be levied from the due date until the date of actual payment.

7.5 It is further submitted that the loan facility extended by the Financial Creditor was secured by various securities provided by the Corporate Debtor.

7.6 It is also submitted that Clauses 12 and 12.2 of the Loan Agreement stipulate that upon the occurrence of any of the events specified under the

Events of Default, the loan shall become immediately due and payable by the Corporate Debtor/Borrower, and the Applicant/Lender shall be entitled to enforce the securities created in its favour.

7.7 It is further submitted that the Financial Creditor issued a notice dated 09.11.2023 to the Corporate Debtor calling upon it to repay the outstanding dues within five (5) days from the date of receipt of the notice. However, the Corporate Debtor failed to comply with the said demand and did not repay the outstanding amount.

7.8 It is submitted that the CD is liable to pay an amount of Rs. 77,94,34,430/- (Rupees Seventy Seven Crore Ninety Four Lakhs Thirty Four Thousand Four Hundred and Thirty Only) is payable as on 11.12.2023. The total outstanding due payable by the CD is shown as follows:

Particulars	Amount (Rs.)
Principal	11,36,74,180
Interest outstanding	72,13,830
Accrued Interest	2,33,124
Default interest	7,31,36,606
Other Charges	54,55,15,375
TDS Pending	3,96,61,315
Total	77,94,34,430

8. RESPONDENT'S SUBMISSIONS:

8.1 The Respondent has filed a **reply** dated 05.10.2024, wherein it has been stated that the Corporate Debtor is a company incorporated in the year

2005 and was initially a part of the Indiabulls Group. However, in 2018, the Company was forced to be taken over by Ozone Group. The Corporate Debtor is stated to be engaged in the business of real estate development work.

8.2 It is submitted that the Subject Loan Agreement relied upon by the Applicant is merely a paper document and does not reflect the actual understanding between the parties. It is further submitted that the said Loan Agreement categorically provides that the loan amount shall not be utilised for any purpose other than the intended purpose specified therein without the prior written consent of the Applicant.

8.3 It is further submitted that Corporate Debtor and its sister Concerns ("Ozone Group") were lured into obtaining loans under paper agreements which were neither intended to be acted upon nor properly read by the signatories at the time of execution. It is also stated that the Ozone Group was assured of a continuous flow of funds from one or more entities belonging to the Indiabulls Group of Companies.

8.4 It is further submitted that the agreements entered into with India bulls Group, including the Subject Loan Agreement and other ancillary documents were not exchanged for perusal and also stated that no copies were provided to the Corporate Debtor or its signatories and were only to be signed merely for documentary purposes.

8.5 It is additionally submitted that these loans were advanced to primarily re-pay the earlier loans advanced by other India bulls Group companies and further stated that only a meagre amount was left to be utilized for their designated purpose under respective loan agreements. It is also stated that it was agreed that a credit line would be maintained until the completion of various real estate projects.

8.6 It is submitted that by way of the notice dated 09.11.2023, the Applicant had called upon the Corporate Debtor to pay the total outstanding Loan amount(s) along with the interest thereon aggregating to Rs.76,55,77,054/- along with pending TDS for an amount of Rs. 3,96,61,315/- (Rupees Three Crore Ninety-Six Lakh Sixty One Thousand Three Hundred Fifteen Only) due as on 02.11.2023. It is further submitted that it is to be noted that while a sum of Rs. 76,55,77,054/- was claimed as on 09.11.2023, the record of default was submitted with the information utility only on 29.11.2023.

8.7 It is further submitted that Banks in India are restricted by the RBI from providing funding for buying of land. Moreover, it is stated that since 2018, lending by public sector banks to real estate sector reduced and private sector banks started focusing on giving loans to retail customers. Consequently, the funding requirements could only be provided by NBFCs such as Indiabulls Group. It is further submitted that the failure by

Indiabulls Group to fund working capital requirements in the initial phase between 2015 and 2020 resulted in a cash crunch for the Ozone Group.

8.8 It is submitted that none of the initial lending was required to be utilized for making any payments to the Indiabulls Group. The entire amount was therefore utilized for the projects of the Ozone Group.

8.9 It is further submitted that the Applicant had provided various credit facilities to the Corporate Debtor including the following:

- A loan of Rs. 125 Crores to repay existing loans and for operational expenses
- Lending of Rs. 76.1 Crores was proposed to be disbursed in ten tranches
- Another loan of Rs. 1,26,30,00,000/- was utilized towards payment of existing loan of a third party on 02.07.2016.

8.10 It is submitted that the Applicant disbursed a loan of Rs. 105,00,00,000/- (Rupees One Hundred and Five Crores Only) to the Corporate Debtor under the Subject Loan Agreement dated 29.03.2019. It is further submitted that the disbursed amount was entirely utilised to settle the loan disbursed by Indiabulls Commercial Credit Limited to Ozone Projects Private Limited on 18.11.2017.

ANNEXURE - 47
Positive Housings Private Limited
 E-Mail : Sundara@ozonegroup.com
HDFC Bank A/c - 00030340067006 Book

1255

1-Mar-19 to 31-Mar-19

						Page 1
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
1-Mar-19	To Opening Balance			2,41,177.00		
2-Mar-19	By Bank Charges	Payment	33		708.00	
19-Mar-19	By Sumit Mohit & Company	Payment	34		1,08,000.00	
30-Mar-19	By Rounding Off	Payment	36		0.01	
	By Rounding Off	Payment	37		0.01	
	To (as per details)	Receipt	13	0.02		
	Rounding Off			0.01 Cr		
	Rounding Off			0.01 Cr		
31-Mar-19	By Indiabulls Housing Finance Ltd	Payment	38		48,34,782.00	
	By Indiabulls Housing Finance Ltd	Payment	39		59,18,897.00	
	By Indiabulls Housing Finance Ltd	Payment	40		1,00,62,378.00	
	To Indiabulls Control Account	Receipt	14	2,08,16,057.00		
	By Bank Charges	Payment	41		161.47	
	To Indiabulls Housing Finance Ltd	Receipt	15	1,05,00,00,000.00		
	Cheque/DD 000752		31-3-2019	1,05,00,00,000.00 Dr		
	<i>Being Disbursement from Indiabulls loan</i>					
	By Ozone Projects Private Limited	Payment	35		1,05,00,00,000.00	
	Cheque 000138		29-3-2019	1,05,00,00,000.00 Cr		
	<i>Being Paid to IFFL vide ch No 000138 dated 29/03/2019 on behalf of Ozone Projects Pvt Ltd</i>					
	By Closing Balance			1,07,10,57,234.02	1,07,09,24,926.49	
				1,07,10,57,234.02	1,32,307.53	
				1,07,10,57,234.02	1,07,10,57,234.02	

8.11 It is submitted that Mr. Vasudevan, by way of his letter dated 13.10.2023, filed a complaint against Indiabulls Real Estate Fund, Indiabulls Asset Management Limited, Indiabulls Housing Finance Limited and Indiabulls Real Estate Limited setting out the fraud played by them onto the Corporate Debtor.

8.12 It is further submitted that on 03.11.2023, Mr. Vasudevan issued a legal notice to Mr. Ambar Maheshwari, stated to be the CEO/CFO of Indiabulls AMC, as well as to other directors of the Indiabulls Group, wherein allegations of evergreening of loans and money laundering were raised against the said entities. In the said notice, it was further alleged that all agreements executed between the Ozone Group and the Indiabulls Group constituted illegal contracts and were therefore void. The notice also called

upon the Indiabulls Group to repay the interest amount of Rs. 1124,86,90,770/- alleged to have been earned by the Indiabulls Group pursuant to such illegal loan agreements.

8.13 It is however submitted that the claim calculation given by the Applicant, which forms the entire basis of the present Application, is inconsistent. It is stated that the Applicant in the application mentions that the Principal amount due is Rs. 11,36,74,180/-. However, in the claim calculation table annexed at Annexure A-10, the Applicant mentions the Principal amount as Rs. 4,78,20,652/-whereas a sum of Rs. 6,58,53,528/- has been mentioned as "Future POS".

8.14 Furthermore, it is submitted that as per Clause 3.1.3 of the Loan Agreement, Corporate Debtor is liable to pay applicable taxes, except for income tax deducted at source (TDS). Yet, the Applicant has included a component of TDS in its computation of the alleged default amount.

8.15 It is further submitted that as per Clause 5 of the Subject Loan Agreement, in the event of loan recall, either wholly or in part, no pre-payment/penalty shall be payable by the Borrower (Corporate Debtor) pursuant to the loan recall. Also, it is stated that a significant portion of the purported default amount of Rs. 54,55,15,375/- has been mentioned under the head "Other Charges" which has not been explained properly in the claim calculation at Annexure A-10.

FINDINGS OF THE TRIBUNAL

9. We have heard the learned Counsels for both the parties and perused the documents on record.

10. It is noted that the date of default in the present case is 14.11.2023. The present petition has been filed on 14.03.2024. Accordingly, it is evident that the petition has been filed within a period of three years from the date of default and is therefore well within the period of limitation.

11. It is further observed from the petition that the total debt amount claimed is Rs. 77,94,34,430/- (Rupees Seventy Seven Crore Ninety Four Lakhs Thirty Four Thousand Four Hundred and Thirty Only), which is above the minimum threshold limit of Rs. 1 Crore as stipulated under the Insolvency and Bankruptcy Code, 2016.

12. The primary contention raised by the Respondent is that the loan documents executed between the parties were created merely for documentary purposes and therefore cannot be relied upon for the purpose of initiating or maintaining the present proceedings. The Respondent has further submitted that the amount in question was utilized by it for the purpose of repaying a loan disbursed by its subsidiary company.

13. Additionally, the Respondent has stated that it has lodged a complaint alleging evergreening of loans and money laundering in relation to the said transaction.

14. However, the aforesaid contentions do not constitute a valid or sustainable dispute within the meaning and scope of the provisions of the Insolvency and Bankruptcy Code, 2016. The proceedings under the Code are limited to determining the existence of a financial debt and the occurrence of default. In the present case, the material placed on record clearly establishes the existence of a financial debt within the meaning of the Code, supported by duly executed loan documentation and the corresponding disbursement of funds.

15. Further, the records demonstrate that the Respondent has defaulted in repayment of the said financial debt, and the claim made in the present Application falls well within the prescribed period of limitation. Significantly, the reply filed by the Respondent itself contains an admission that the amount was indeed availed and subsequently utilized for repayment of another loan. Such an admission unequivocally acknowledges the receipt and utilization of the funds, thereby affirming the existence of the underlying financial liability.

16. The mere allegation that the documents were executed for documentary purposes, or the assertion regarding the filing of a complaint alleging evergreening or money laundering, does not negate the existence of the debt nor does it extinguish the Respondent's admitted liability. These allegations, even if raised, do not detract from the fact that a financial debt was disbursed and remains unpaid.

17. In the case of *Innoventive Industries Ltd. v. ICICI Bank & Anr.*, the Court held that at the stage of admission of an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, *“the Adjudicating Authority is only required to ascertain the existence of a financial debt and the occurrence of default. Once these two conditions are satisfied from the records and evidence placed before it, the Adjudicating Authority is bound to admit the application.”*

18. In light of the above facts, the documentary evidence on record, and the clear admission of liability by the Respondent, it is evident that the requirements under the Insolvency and Bankruptcy Code, 2016 for admission of the present Application stand satisfied, namely the existence of a financial debt and the occurrence of default.

19. Accordingly, in view of the facts and circumstances of the present case, the Application deserves to be admitted.

20. For the foregoing reasons, this Tribunal holds that the present Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 is admissible. The application is therefore allowed, and the Corporate Insolvency Resolution Process is ordered to be initiated against the Corporate Debtor, Positive Housing Private Limited Solutions Private Limited, in accordance with the provisions of the Code.

21. In view of the facts as stated supra and also in view of the ‘financial debt’ which is proved by the Financial Creditor and the ‘default’ being committed on the part of the Corporate Debtor, this Tribunal admits the present petition and

initiates the Corporate Insolvency Resolution Process in relation to the Corporate Debtor and appoint the proposed Interim Resolution Professional to take charge of the affairs of the Corporate Debtor in accordance with law.

22. In the present case, the Financial Creditor has named Mr. Amit Agarwal as the Insolvency Resolution Professional in Part – III of the Application. Hence, we appoint Mr. Amit Agarwal, with Registration No: IBBI/IPA-002/IP-N00185/2017-18/10456 (email id: amitagcs@gmail.com) who is having Authorization for Assignment till 30-06-2027 as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15, 17, 18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

23. As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

“(1) Subject to provisions of subsections (2) and (3) on the insolvency commencement date the Adjudicating Authority shall by order declare prohibiting all of the following namely:

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.*

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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 or a similar grant or right during moratorium period;

24. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(2A) *Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.*

(3) *The provisions of sub-section (1) shall not apply to*

- (a) *such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*
- (b) *a surety in a contract of guarantee to a corporate debtor.*

25. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process: Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be."

26. The Financial Creditor is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. Based on the above terms, the CP (IB) / 74 (CHE) / 2023 stands admitted in terms of Section 7 of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the

initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

28. Accordingly, Company Petition CP (IB) / 74 (CHE) / 2023 stands admitted and disposed of.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)