

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-V  
COMPANY PETITION IB NO. 342/ND/2024**

*(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:**

**CREATIVE CAPITAL SERVICES LIMITED**

(CIN: U74899DL1994PLC060479)

Registered Office:

Office No 107D, 1/64, Shakarpur, Vikas Marg,  
New Delhi - 110092

**...Applicant/Financial Creditor**

***Versus***

**EMM BEE FINCAP PRIVATE LIMITED**

(CIN: U67120DL1999PTC245648)

Registered Office:

A/56, G/F, Parwana Road, Jitar Nagar,  
Delhi, New Delhi 110051

**...Respondent/Corporate Guarantor**

**Order Delivered on: 16.05.2025**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (J)**

**SHRI SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**Appearances:**

**For the Applicant** : Mr. Nakul Gandhi, Mr. Mujeeb, Ms. Tanish  
Guptam, Advs.

**For the Respondent** : Ms. Eshna Kumar, Mr. Harpreet Singh  
Malhotra, Advs.

**ORDER**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. This is a Company Petition 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 CREATIVE CAPITAL SERVICES LIMITED (hereinafter referred to as 'Financial Creditor'), represented by Mr. Hitender Singh, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against EMM BEE FINCAP PRIVATE LIMITED ("Corporate Debtor"). The Financial Creditor was incorporated on 26.07.1994, having Identification No. U74899DL1994PLC060479.

2. The Corporate Guarantor was incorporated on 10.03.1999, having CIN: U67120DL1999PTC245648 under the Companies Act, 1956. Its registered office is A/56, G/F, Parwana Road, Jitar Nagar, Delhi, New Delhi 110051. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is INR 2,00,00,000 (Two Crores Only). The Paid-Up Capital of the Corporate Debtor is INR 26,72,000 (Twenty-Six Lakhs Seventy-Two Thousands).
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of INR 8,48,29,275/- (Rupees Eight Crores Forty-Eight Lakhs Twenty-Nine Thousand Two Hundred and Seventy-Five Only) on 15.03.2024 (date of default).
4. **Submissions of Learned Counsel appearing for the Applicant are as under:**
  - 4.1. In the month of January–February 2012, the Financial Creditor, being the owner of 18,85,095 equity shares of M/s Emsons Organic Limited (Principal Borrower), was approached by the Corporate Debtor with an offer to purchase the said shares for a total consideration of INR 8,48,29,275/- (Rupees Eight Crores Forty-Eight Lakhs Twenty-Nine Thousand Two Hundred Seventy-Five Only). Relying upon the express assurance of immediate payment, the Financial Creditor transferred the said shares to the Corporate Debtor. However, despite repeated follow-ups, the Corporate Debtor failed to remit the agreed consideration.

- 4.2. Demand Promissory Note cum Corporate Loan Agreement has been executed on 12.03.2012, wherein the said transaction was re-characterized as a loan. This Agreement was duly executed by the Corporate Debtor and supported by an irrevocable and unconditional Personal Guarantee Deed executed by Mr. Rajiv Goyal and Ms. Alka Goyal, who stood as Personal Guarantors for the due repayment of the loan amount.
- 4.3. The Corporate Debtor continued to default. After two years of non-payment, the Financial Creditor issued a final demand notice in 2014. On Request of the Corporate Debtor, the outstanding amount was converted into a mortgage loan with a structured repayment plan and executed a fresh Loan Agreement dated 18.12.2014 along with an agreed repayment schedule.
- 4.4. Pursuant to the execution of the Loan Agreement dated 18.12.2014, a Deed of Corporate Guarantee was executed by and between the Financial Creditor, the Corporate Debtor, and four corporate guarantors, securing the repayment obligations under the said agreement.
- 4.5. As per the agreed repayment schedule, monthly installments were to started from 01.04.2015 and continue until 01.03.2020. The Corporate Debtor further failed to remit even a single installment, resulting in continuous and willful default.
- 4.6. On 18.12.2014, the Corporate Debtor also executed a declaration affirming ownership of a certain property and confirming that original title deeds had been deposited with the Financial Creditor as security for the loan. Despite these assurances, the default persisted without any remission of the loan amount.
- 4.7. The Corporate Debtor, through acknowledgment letters dated 31.03.2017 to 31.03.2023, confirmed the outstanding liability in its books of account, thereby acknowledging the debt.

- 4.8. Owing to the continued default, the Financial Creditor invoked the Arbitration Clause of the Agreement 2014 via Notice dated 16.09.2020. Though the Corporate Debtor disputed the content, it consented to arbitration. The Hon'ble Arbitral Tribunal, vide Award dated 20.07.2021, held the Corporate Debtor liable for breach of contract and passed an award in favour of the Financial Creditor. The award has been final and binding. To enforce the Arbitral Award, the Financial Creditor filed Execution Petition No. 483 of 2021 titled "Creative Capital Service Limited vs Akshaj Hi-Tech Infrastructure Private Ltd." before the Chandigarh District Court, which is currently pending.
- 4.9. Subsequently, the Financial Creditor issued a Notice of Invocation of the Deed of Corporate Guarantee on 07.03.2024 to recover the outstanding dues from the Corporate Guarantor.
- 4.10. As of 25.03.2024, the total outstanding amount, inclusive of principal, interest, and other charges, stands at INR 10,17,53,150/- (Rupees Ten Crores Seventeen Lakhs Fifty-Three Thousand One Hundred Fifty Only). Thus, in view of the willful default committed by the Principal Borrower and the Corporate Debtor, the Corporate Insolvency Resolution Process (CIRP) against the Corporate Guarantor under the Insolvency and Bankruptcy Code, 2016 is required to be initiated.

**5. Submissions made on behalf of the Corporate Debtor/Guarantor in reply to the present Petition are as under:**

- 5.1. In reply to the present Section 7 Petition filed by the Financial Creditor, the Corporate Guarantor in compliance of order dated 09.08.2024, has filed an affidavit dated 24.08.2024 wherein, without demur, the Corporate Guarantor has admitted the debt of INR 8.50 Crores including interest calculated at the rate of 6% and the default committed by it.
- 5.2. Also, the Section 7 Petition was also filed against the Principal Borrower being CP IB No. 408 of 2024 which was withdrawn by the Financial Creditor vide order dated 16.10.2024. In Compliance of order dated

18.11.2024, the Corporate Guarantor has filed an affidavit dated 04.01.2025 wherein it was categorically stated by the Corporate Guarantor that there is no collusion between the Financial Creditor and the Corporate Guarantor and the admission of debt and default was made bonafide. The relevant extract of the affidavit dated 04.01.2025 is reproduced below:

*“However, in compliance of the Order dated 18.11.2024 we are filing the present affidavit stating that there is no collusion on our part in the present matter, and that the admission of debt and default is not in pursuance of any collusion between the Financial Creditor and the Corporate Guarantor. The admission of debt and default for initiation of corporate insolvency process is bonafide.”*

### **Analysis and Findings**

6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Guarantor and perused the averments made in the petition and the reply affidavit filed by the Corporate Debtor. No written submissions presented by the either parties. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
8. In the present petition, the Financial Creditor has transferred 18,85,095 equity shares of M/s Emsons Organic Limited to the Principal Borrower for a total consideration of INR 8,48,29,275/-. To secure repayment of the said amount, the Financial Creditor executed a Demand Promissory Note-cum-Corporate Loan Agreement dated 12.03.2012. This agreement was subsequently supplemented by another agreement dated 18.12.2014, which was structured as a mortgage loan arrangement. Additionally, a Corporate Guarantee Agreement was also executed in the year 2014. Pursuant to the agreements

dated 12.03.2012 and 18.12.2014, as well as the Deed of Guarantee, the liability of the Corporate Guarantor stands clearly established. In accordance with Section 128 of the Indian Contract Act, 1872, the liability of the guarantor is co-extensive with that of the Principal Borrower. Therefore, in the instant case, the Corporate Guarantor is equally liable for the outstanding debt owed by the Principal Borrower. The aforesaid agreements along with the Deed of Guarantee are placed on record.

9. Furthermore, it is observed that the Financial Creditor has placed reliance on multiple acknowledgment letters issued by the Principal Borrower, M/s Akshaj Hi-Tech Infrastructure Limited, on various occasions. Also, acknowledgment letters dated 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022, and 31.03.2023 have been submitted on record. Further, in accordance with the Corporate Guarantee Agreement dated 18.12.2014, the Financial Creditor issued a Corporate Guarantee Invocation Notice on 07.03.2024. In light of the facts and documents placed on record as narrated above, it is the considered view of this Tribunal that the financial debt is not barred by limitation. Accordingly, the debt claimed by the Financial Creditor is well within the period of limitation as per the provisions of the Limitation Act, 1963.
10. This Adjudicating Authority vide its order dated 18.11.2024 directed the Applicant Financial Creditor to provide clarification and justify the initiation of proceedings against the Corporate Guarantor if they are in settlement talks with the Principal Borrower and also, to explain that the present petition is not collusive petition. The Relevant extract of the aforesaid order dated 18.11.2024 is reproduced hereunder as:

“....

*However, Ld. Counsel submitted that the matter in respect of Principal Borrower has been withdrawn by the Financial Creditor and the withdrawal was allowed vide order dated 16.10.2024. Withdrawal was allowed on account of statements made by the parties that they are in talks to arrive the settlement regarding the defaulted amount of debt.*

*We fail to understand when the FC was to settle the matter with Principal Borrower, however, intend to initiate CIRP against the Corporate Guarantor only. Interestingly, the CD has also filed an affidavit admitting the default. The FC is directed to explain as to when they are in talks with the Principal Borrower and on that account they have withdrawn the petition against the Principal Borrower, what is their justification for proceeding against the CD at the same time. Affidavit from the FC clearly explaining that this petition is not a collusive petition should also be filed. The CD is also directed to file an affidavit regarding explaining that this is not a collusive reply. List this matter on 06.01.2025.”*

11. In compliance with the order dated 18.11.2024, the Financial Creditor has filed an affidavit dated 22.01.2025, wherein it has been stated that the Section 7 petition filed against the Principal Borrower, i.e., M/s Akshaj Hi-Tech Infrastructure Limited, was withdrawn pursuant to the order dated 16.10.2024 in C.P. (IB) No. 408 of 2024. The withdrawal was made on account of an arbitral award having been passed in favour of the Financial Creditor. It is further submitted that an execution petition for enforcement of the said arbitral award is currently pending before the appropriate forum. A copy of the Arbitral Award dated 20.07.2021 has been placed on record. The relevant extract of the aforesaid affidavit filed by the Financial Creditor is extracted below:

*“3. It is submitted that the prime reason for withdrawal of the application under Section 7 of the Code against the principal borrower, i.e., Akshaj Hitech Infrastructure Limited is that an arbitral award has been rendered in favor of Akshaj Hitech and an execution proceedings is pending. A copy of the -arbitral award, dated 20/07/2021 is appended herein as Annexure A. Further, a copy of the order of execution of the arbitral award, dated 27.09.2021 is appended herein as Annexure B.*

*4. Further, on filing an application under Section 7 of the Code against the Principal Borrower parties commenced discussions to close all proceedings initiated by the creditor against the Principal Borrower. The same withdrawn on 16/10/2024 with liberty to revive/file afresh. A copy of the order, dated 16/10/2024 is appended herein as Annexure C.*

*5. It is relevant to place on record that the settlement between the creditor and the principal borrower have not seen the light of the day and the creditor may invoke its right to revive the application under Section 7 of the Code and/or continue with execution, as the case maybe.*

*6. The continuance of proceedings against the Corporate Guarantor and not against the principal borrower is that the creditor is secured by way of an arbitral award against the principal.”*

In view of aforesaid discussion, it is evident that the Principal Borrower has failed to discharge the outstanding debt, despite the arbitral award having been passed in favor of the Financial Creditor. Furthermore, as per this Adjudicating Authority, the existence of an arbitral award does not pose any impediment to the maintainability or adjudication of the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, on its merits.

12. Further, the Corporate Guarantor vide its affidavit dated 24.08.2024 and 04.01.2025 unequivocally admitted the existence of debt and default committed by the Principal Borrower/Corporate Guarantor, which leave no doubt as to the existence ‘debt’ and ‘default’ in terms of Insolvency and Bankruptcy Code, 2016. However, the same can also be substantiated with the documents placed before us. From the perusal of aforesaid facts, it is clear that the applicant is a Financial Creditors and the debt owed by the Corporate Guarantor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

*Section 3(12) of IBC defines Default. “Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”*

*Section 5(7) of IBC defines Financial Creditor: “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.”*

*Section 5(8) of IBC defines Financial Debt. “Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

- (a) Money borrowed against the payment of interest;*
- (b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*



- (d) *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) *Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) *Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) *Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) *Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) *The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*

13. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Guarantor 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. We are of the view that since this Petition was filed on 10.04.2024, and even admittedly the debt owed to the Financial Creditor is an amount of INR 8,48,29,275/- which meets the threshold of Rs. 1 Crore.

14. Hon’ble Supreme Court in the matter of **Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407**, held as follows:

*“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The*

*moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

**30.** *On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

Further, the Hon’ble Supreme Court in **Suresh Kumar Reddy v. Canara Bank** in **Civil Appeal No. 7121 of 2022** categorically laid down that the view taken in Innovative Industries still holds good, which lays down that the Adjudicating Authority has only to ascertain the existence of ‘debt’ and ‘default’ for admission of an application under Section 7 of the Code.

15. 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)/342(ND) 2024** filed by Creative Capital Services 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 Emm Bee Fincap Private Limited, the Corporate Debtor, stands admitted.
16. That the petitioner in Part-III of the petition has proposed the name of **Ms. Taruna Goel**, as Interim Resolution Professional, having Registration Number IBBI/IPA-002/IP-N00314/2017-2018/10902 and E-mail ID tarunagoelcs4@gmail.com, 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 the IRP has a valid AFA.
17. 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.*

18. 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.

19. 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.

20. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Ms. Taruna Goel 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.
21. 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.
22. 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.
23. 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.
24. 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.

25. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B. 342 (ND)/2024** stands admitted.

26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-  
**(SUBRATA KUMAR DASH)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**