IN THE NATIONAL COMPANY LAW TRIBUNAL COURT-VI, NEW DELHI BENCH
COMPANY PETITION IB (IBC) NO. 393/ND/2025

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:

SREI EQUIPMENT FINANCE LIMITED
Having its Registered Address at,
Vishwakarma, 86C,
Topsia Road (South), Kolkata,
West Bengal, India, 700046,
(Represented through
its Authorized Officer)
Mr. Pradeep Singh Faujdar

...Applicant/Financial Creditor

Versus

FNM PROPERTY SERVICES PRIVATE LIMITED
Having its Registered Address at
M-56, 3rd Floor, M-Block Market,
Greater Kailash-2, South Delhi,
New Delhi-110048

...... Respondent/Corporate Debtor

Order Delivered on: 08.07.2026

CORAM

JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)

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

APPEARANCES:

For the Applicant:	Mr. Sanjeev Singh, Ms. Anshita Argal, Adv, Ms. Sandipa Bhattacharjee, Advs.
For the Respondent:	Mr. Anurag Ojha, Mr. Priyatam Bhardwaj, Mr. Vipul Kumar, Advs.

ORDER

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 **SREI Equipment Finance Limited** (hereinafter referred to as the **"Financial Creditor"**), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against **M/s FNM Property Services Private Limited** (hereinafter referred to as the **"Corporate Debtor"**).

2. The Corporate Debtor was incorporated on 30.03.2015 under the provisions of the Companies Act, 2013 and has its registered office at M-56, 3rd Floor, M-Block Market, Greater Kailash-II, South Delhi, New Delhi – 110048. Therefore, this Adjudicating Authority has territorial jurisdiction to entertain and adjudicate the present Petition.

3. The present Petition has been filed by the Financial Creditor seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor on account of default in repayment of the financial facilities extended under the Loan Agreement dated 30.03.2019. It is the case of the Financial Creditor that the Corporate Debtor failed to discharge its repayment obligations in terms of the financing documents and committed default on **30.03.2024**. The Financial Creditor has submitted that the total amount of financial debt due and payable as on **31.05.2025** is **₹41,99,56,525/- (Rupees Forty-One Crore Ninety-Nine Lakh Fifty-Six Thousand Five Hundred Twenty-Five only)**, being the amount claimed in proportion to the loan amount disbursed to the Corporate Debtor under the Loan Agreement. Accordingly, the Financial Creditor has invoked the provisions of Section 7 of the Code seeking initiation of CIRP against the Corporate Debtor.

4. **Submission made by Financial Creditor:**

   i. That the Corporate Debtor approached the Financial Creditor seeking a loan facility for the acquisition and development of a real estate project. Pursuant thereto, the Financial Creditor issued a Sanction Letter dated

13.03.2019 sanctioning a financial facility of Rs. 82,00,00,000/- (Rupees Eighty-Two Crores only) in favour of the Corporate Debtor.

ii. That pursuant to the aforesaid sanction letter, the parties executed a Loan Agreement dated 30.03.2019 **(Annexure P-7)** together with various financing and security documents including a Share Pledge Agreement. The Financial Creditor contends that the facility was extended on agreed terms and conditions and carried an obligation to pay interest together with repayment of principal in accordance with the financing documents.

iii. That pursuant to the Loan Agreement, the Financial Creditor disbursed an aggregate amount of ₹15.60 Crores (Rupees Fifteen Crores and Sixty Lakhs Only) to the Corporate Debtor in three tranches. It is submitted that the said disbursements were made against consideration for the time value of money and therefore constitute a financial debt within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016.

iv. That as per the repayment structure agreed between the parties, the facility was repayable through a bullet repayment after expiry of 60 months from the date of initial disbursement. According to the Financial Creditor, the initial disbursement was made on 30.03.2019 and consequently the repayment obligation matured on 30.03.2024.

v. That the Financial Creditor further submitted that in terms of **clause 2.6** of the Loan Agreement, the Corporate Debtor was required to make quarterly interest payments, each falling due on the last working day of every quarter commencing from the date of first disbursement. It is submitted that the loan facility carried an interest rate of 15% per annum, being at a spread of 0.50% per annum above the Lender's SPLR of 14.50% per annum, with monthly rests and subject to reset in accordance with the terms of the Loan Agreement. It is contended that the Corporate Debtor repeatedly failed to adhere to the agreed payment schedule and either delayed or partially serviced the interest obligations, thereby committing breaches of the financing documents.

vi. That despite repeated demands and reminders, the Corporate Debtor failed to repay the debt amount as per the terms of agreement. The Corporate Debtor failed to repay the outstanding amount upon maturity of the facility, thereby committing default within the meaning of Section 3(12) of the Code.

vii. That the Financial Creditor has placed on record the Sanction Letter, Loan Agreement, statements of account, record of default and other supporting documents evidencing the existence of financial debt and occurrence of default, have been placed on record.

viii. The Financial Creditor has opposed the plea of limitation raised by the Corporate Debtor and submitted that the date of default is 30.03.2024 as mentioned in the Form 1 Part IV, being the contractual maturity date of the facility. It is argued that the Corporate Debtor has incorrectly relied upon earlier instances of delayed payment of interest to contend that limitation commenced in the years 2019 and 2020. According to the Financial Creditor, mere delay in servicing interest cannot be treated as the date on which the entire debt became due and payable when the facility continued to subsist and was contractually repayable after 60 months.

ix. The Financial Creditor has denied the allegations of suppression of material facts and submitted that the objection raised by the Corporate Debtor regarding the alleged inflation of the outstanding debt is misconceived and unsustainable. It is contended that, at the stage of admission of an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, the scope of enquiry by the Adjudicating Authority is confined to determining the existence of a financial debt and the occurrence of default, provided the amount in default exceeds the threshold prescribed under Section 4 of the Code.

x. On the aforesaid grounds, the Financial Creditor has prayed for admission of the present Petition and initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

5. <u>Submission made by Corporate Creditor:</u>

i. Learned Counsel appearing for the Corporate Debtor opposed the present Petition and submitted that the same is misconceived, not maintainable and liable to be dismissed.

ii. At the outset, the Corporate Debtor has raised an objection with regard to limitation. Referring to the definitions of "Default", "Due Date" and "Event of Default" contained in the Loan Agreement dated 30.03.2019, particularly Article VIII thereof, Learned Counsel submitted that non-payment of interest, repayment instalments and other dues constituted Events of Default under the financing documents. It is contended that defaults in servicing interest had commenced during the years 2019 and 2020 itself and therefore limitation commenced from such dates. Consequently, it is argued that the present Petition filed in the year 2025 is barred by limitation.

iii. The Corporate Debtor has further contended that the Financial Creditor has suppressed material facts and concealed the true nature of the transaction from this Adjudicating Authority. According to the Corporate Debtor, the transaction formed part of a larger commercial arrangement involving the Financial Creditor, the Corporate Debtor and Unitech Limited. Reliance has been placed upon (**Annexure A-2)** annexed with the Reply Affidavit, including email correspondence dated 10.09.2019, to contend that the Corporate Debtor was merely acting as an intermediary in relation to acquisition of inventory in the Bhubaneswar One Project.

iv. That the project in question belonged to Unitech Limited and that the funds advanced by the Financial Creditor were intended to serve liabilities associated with Unitech Limited. It is therefore argued that the transaction cannot be viewed as a standalone lending transaction and that the Financial Creditor has deliberately omitted material documents and surrounding circumstances from the present proceedings.

v. The Corporate Debtor has also challenged the characterization of the transaction as a "financial debt" under Section 5(8) of the Code. It is submitted that the transaction was not a simpliciter loan transaction but formed part of a composite commercial arrangement concerning acquisition and transfer of project inventory. According to the Corporate Debtor, the monies disbursed by the Financial Creditor were immediately routed towards liabilities connected with Unitech Limited and therefore the transaction falls outside the ambit of Section 5(8) of the Code.

vi. The Corporate Debtor contends that although a facility of Rs. 82,00,00,000/- (Rupees Eighty-Two Crores only) was sanctioned, only ₹15.60 Crores (Rupees Fifteen Crores and Sixty Lakhs Only) was actually disbursed by the Financial Creditor. According to the Corporate Debtor, delayed and incomplete disbursements materially affected the viability of the project and rendered the repayment structure commercially unworkable.

vii. The Corporate Debtor has also relied upon the arbitration clause contained in the financing documents and submitted that disputes arising out of the agreements ought to be adjudicated through arbitration in accordance with the contractual mechanism agreed between the parties.

viii. Lastly, the Corporate Debtor has contended that the present Petition is, in substance, a recovery proceeding disguised as an insolvency action. It is submitted that the Financial Creditor already possesses substantial security interests, including pledge rights over the shareholding of the Corporate Debtor and other contractual remedies available under the financing documents. According to the Corporate Debtor, instead of enforcing such remedies, the Financial Creditor has invoked the provisions of the Code merely as a coercive mechanism for recovery of its alleged dues.

ix. On the aforesaid grounds, the Corporate Debtor has prayed for dismissal of the present Petition.

Analysis and Findings

6. We have heard the Learned Counsel appearing for the parties and perused the material available on record.

7. The primary questions which arise for consideration are: (i) Whether the amount claimed by the Financial Creditor qualifies as a financial debt within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016; and whether the Corporate Debtor has committed default in repayment of financial debt. (ii) whether the present Application is within limitation.

8. The record reveals that the Financial Creditor sanctioned a financial facility of ₹82,00,00,000/- in favour of the Corporate Debtor vide Sanction Letter dated

13.03.2019. Pursuant thereto, a Loan Agreement dated 30.03.2019 came to be executed between the parties governing the terms of the facility, repayment obligations, security structure and other conditions thereto. It is further borne out from the record that an aggregate amount of ₹15,60,00,000/- (Rupees Fifteen Crores and Sixty Lakhs Only) was disbursed by the Financial Creditor to the Corporate Debtor in three tranches, namely ₹8,00,00,000/- on 30.03.2019, ₹4,60,00,000/- on 12.09.2019 and ₹3,00,00,000/- on 01.01.2020.

9. The Loan Agreement further provided for payment of interest on the amounts disbursed and repayment of the principal amount in accordance with the agreed contractual terms. The disbursement of monies coupled with the obligation to pay interest clearly reflects consideration for the time value of money, which is one of the essential attributes of a financial debt under Section 5(8) of the Code. The financing documents placed on record establish the existence of a lender-borrower relationship between the parties and the corresponding repayment obligations undertaken by the Corporate Debtor and the same has been observed by the Supreme Court in ***Anuj Jain Vs. Axis Bank Limited and Ors., (2020) 8 SCC 401*** **:** *"In other words, any of the transactions stated in the said Sub-clauses (a) to (i) of Section 5(8) would be falling within the ambit of 'financial debt' only if it carries the essential elements stated in the principal Clause or at least has the features which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money."*

10. Considerable emphasis has been placed by the Corporate Debtor on the contention that the transaction formed part of a larger commercial arrangement involving Unitech Limited and the Bhubaneswar One Project. The material placed on record indicates that the facility was sanctioned to the Corporate Debtor and the Loan Agreement was executed between the Financial

Creditor and the Corporate Debtor. The disbursements were made pursuant to the said contractual arrangement and the repayment obligations were undertaken by the Corporate Debtor itself. The utilisation of funds or the commercial objective underlying the transaction does not alter the legal character of the facility extended under the financing documents. The debt, therefore, continues to retain the characteristics of a financial debt within the meaning of Section 5(8) of the Code.

11. The next issue pertains to limitation. The Corporate Debtor has relied upon the provisions relating to Events of Default under the Loan Agreement and has submitted that defaults in servicing quarterly interest payments had commenced during the years 2019 and 2020. According to the Corporate Debtor, limitation ought to be reckoned from the dates on which such interest payments allegedly became overdue.

11.1 A perusal of the Loan Agreement shows that the repayment of the principal amount was governed by **Clause 2.10**, which states repayment through a single bullet payment upon expiry of 60 months from the date of the initial disbursement. The initial disbursement having been made on 30.03.2019, the contractual maturity date of the facility fell on 30.03.2024.

11.2 The material available on record further indicates that notwithstanding the delays and default in repayment of interest, the financing arrangement continued to remain operative. No document has been brought on record evidencing acceleration of the facility or recall of the loan prior to the contractual maturity date. The repayment obligation in respect of the principal amount, therefore, continued to be governed by the repayment mechanism agreed between the parties under **Clause 2.10** of the Loan Agreement.

12. The Financial Creditor has consistently treated 30.03.2024 as the date of default and the same finds mention in Part IV of the present Application. Upon expiry of the stipulated tenure, the Corporate Debtor became liable to repay the outstanding loan amount through the agreed bullet repayment mechanism.

The repayment obligation having matured on 30.03.2024 and remaining unsatisfied thereafter, the occurrence of default stands established from the record. The present Application, having been instituted within three years thereof, falls within the period prescribed under law.

13. The Corporate Debtor has also referred to certain email communications and documents to contend that the Financial Creditor failed to disclose the larger commercial understanding involving Unitech Limited. The scope under Section 7 of the Code is confined to examining whether a financial debt exists and whether default has occurred. The financing documents, disbursement records and repayment obligations placed before this Adjudicating Authority sufficiently demonstrate the existence of a financial relationship between the parties. The materials relied upon by the Corporate Debtor do not displace the contractual obligations undertaken under the Loan Agreement.

14. It has further been argued that only a portion of the sanctioned facility, namely ₹15.60 Crores out of ₹82 Crores, was ultimately disbursed and that delayed or incomplete disbursement affected the commercial viability of the transaction. The record nevertheless reflects that the amounts actually disbursed were received by the Corporate Debtor and were subject to repayment obligations under the financing documents. Questions concerning the adequacy of disbursement, commercial expectations of the parties or alleged breaches of contractual obligations do not detract from the existence of the debt arising from the amounts admittedly disbursed.

15. The Corporate Debtor has also referred to the arbitration clause contained in the financing documents. The jurisdiction exercised by this Adjudicating Authority under Section 7 of the Code is confined to determining the existence of a financial debt and the occurrence of default. The existence of an arbitration or any other contractual dispute resolution mechanism does not operate as a bar to the exercise of jurisdiction by this Adjudicating Authority under Section 7 of the Code, once the existence of a financial debt and occurrence of default stand established from the material on record. The presence of a contractual dispute resolution mechanism does not dilute the statutory remedy available under the Code once the foundational requirements contemplated under

Section 7 stand established. The statutory framework does not require a Financial Creditor to first exhaust such remedies before invoking Section 7.

16. In view of the aforesaid discussion and the material placed on record, this Adjudicating Authority is satisfied that the amounts disbursed by the Financial Creditor constitute a financial debt within the meaning of Section 5(8) of the Code; that the repayment obligation matured on 30.03.2024 in terms of **Clause 2.10** of the Loan Agreement; that the Corporate Debtor committed default in repayment thereof; and that the present Application has been instituted within the prescribed period of limitation. The requirements contemplated under Section 7 of the Insolvency and Bankruptcy Code, 2016 accordingly stand fulfilled.

17. The **Hon'ble Supreme Court** in the judgement of ***Innoventive Industries Limited v. ICICI Bank and Another*, *(2018) 1 SCC 407*** has held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the Application under Section 7 of I & B Code, 2016. The relevant extract of the said judgment is reproduced hereunder as: *"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."*

18. 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)/393 (ND) 2025** filed by **SREI Equipment Finance 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 **FNM Property Services Private Limited**, the Corporate Debtor, stands admitted and CIRP of AF Enterprises Limited is initiated.

19. That the petitioner in part-III of the petition has proposed the name of **Mr. Manish Agarwal**, as Interim Resolution Professional, having Registration Number **IBBI/IPA-002/IP-N-00223/2017-2018/10904** and E-mail Id- **vrregisteredvaluer@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 IRP has a valid AFA.

20. 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.

21. 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.

22. 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.

23. We direct the applicant Financial Creditor to deposit a sum of **Rs. 2 Lakhs** (Two Lakh Rupees) with the Interim Resolution Professional namely **Mr. Manish Agarwal** 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **C.P. I.B./393 (ND)/2025** stands admitted.

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

Sd/-	**Sd/-**
(ANU JAGMOHAN SINGH) **MEMBER (TECHNICAL)**	**(JYOTSNA SHARMA)** **MEMBER (JUDICIAL)**