

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH (COURT-II)

Company Petition No. IB-124/ND/2022

In the matter of:

**APPLICATION UNDER SECTION 7 READ WITH RULE 4 OF THE
INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING
AUTHORITY) RULES, 2016.**

IN THE MATTER OF:

AADI BUILDWELL PRIVATE LIMITED

Registered Office at :

894-A, 893-A,
Marutir Plaza Complex,
Shop No. FS-11, & FS-12,
UGF W. No. 8, Mehrauli,
New Delhi – 110030.

...Applicant/Financial Creditor

Versus

FOCUS REALCON PRIVATE LIMITED

Registered Office at :

H. No. 4-B, Office No. 25,
1st Floor, Ashirwad Complex,
Behind Shiva Marked,
Vill Pitampura,
New Delhi – 110034.

...Respondent/Corporate Debtor

Order Delivered on: 26.05.2022

CORAM :

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)



PRESENT:

For the Applicant : PCA Abhishek Nahta alongwith Adv. Rishabh Sachdeva and Adv. Rohan Bolia
For the Respondent : Adv. Sandeep Agarwal and Adv. Jeewesh Prakash

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

We have heard, the Ld. Counsels for the parties. The main question involved in this matter is that “without adding the principal amount, can CIR Process be initiated only on the defaulted amount of interest?

2. Ld. Counsel for the Applicant, in the course of his argument, fairly admits this fact that the present petition is filed for the interest amount, which is due and payable, on the basis of debenture certificate issued by the Corporate Debtor and the the date of redemption of the debenture certificate is on 31.03.2026.

3. He submitted that as per the terms and conditions of the Debenture Certificate, the Petitioner is entitled to get the interest @ 6% per annum payable on face value plus security premium on quarterly rests.

4. He further submitted that since the interest and the security premium, due and payable on 01.07.2021, 01.10.2021 and 01.01.2022 have not been paid by the Corporate Debtor, therefore, the present application is filed for the default of interest amount for the period of 3 quarters for the Financial Year 2021-22.

5. He further submitted that the interest amount without adding the principal amount can be treated, as a financial debt under Section 5(8) of the IBC, 2016.

6. On the other hand, the Ld. Counsel for the Respondent submitted that the only plea taken by the Respondent by filing the reply is that the debt claimed by the Petitioner is only the interest amount and not the principal



amount. Ld. Counsel for the respondent further contended that the principal amount is not due and so it is not a financial debt.

7. He further contended that as per the Debenture Certificate issued on 13.04.2021, the principal amount became due for the payment, on demand of the debenture holder, after the expiry of one year from the date of issuance of debenture certificate i.e. from 13.04.2022. Therefore, the present application is not maintainable.

8. Before considering the submissions of the parties, at this juncture, we would like to refer to Part- IV of the application and the debenture certificate, and the scanned copy of the same are reproduced below.

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PART IV

PARTICULARS OF FINANCIAL DEBT												
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Principal amount of debt extended against Debentures issued by the Corporate Debtor to the Financial Creditor										
		<table> <tr> <th>Date</th> <th>Amount (in INR)</th> </tr> <tr> <td>31st March 2011</td> <td>74,00,00,000</td> </tr> </table>	Date	Amount (in INR)	31 st March 2011	74,00,00,000						
		Date	Amount (in INR)									
		31 st March 2011	74,00,00,000									
		(Copy of Bank Statement attached as Annexure-2A)										
The amount of debt is in the nature of interest due on Debentures and hence is "receivable" in nature.												
The due date on which the interest became accrued & due along with the amount of interest is given below:												
		<table> <tr> <th>Date</th> <th>Amount (in INR)</th> </tr> <tr> <td>1st July 2021</td> <td>94,88,220</td> </tr> <tr> <td>1st Oct. 2021</td> <td>1,11,00,000</td> </tr> <tr> <td>1st Jan. 2022</td> <td>1,11,00,000</td> </tr> <tr> <td>TOTAL</td> <td>3,16,88,220</td> </tr> </table>	Date	Amount (in INR)	1 st July 2021	94,88,220	1 st Oct. 2021	1,11,00,000	1 st Jan. 2022	1,11,00,000	TOTAL	3,16,88,220
		Date	Amount (in INR)									
		1 st July 2021	94,88,220									
		1 st Oct. 2021	1,11,00,000									
		1 st Jan. 2022	1,11,00,000									
TOTAL	3,16,88,220											
2.	TOTAL AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Total Interest amount currently in default amounting to INR 3,16,88,220 (Indian Rupees Three crore sixteen lakh eighty-eight thousand two hundred and twenty only) being accrued but not received against Debentures of Corporate Debtor calculated at interest/coupon rate of 6% p.a. for the period of Three Quarters for FY 2021-2022 commencing from 13 th April 2021.										

For Aadi Buildwell Pvt. Ltd.
21/11/22

Director

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		The date on which the interest amount default occurred: <u>29th October 2021</u> A calculation sheet in tabular form towards the aforesaid default amount is enclosed herewith and annexed as Annexure- 4
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ANNEXURE-3
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Issued in lieu of Debenture Certificate No.4

DEBENTURE CERTIFICATE

FOCUS REALCON PRIVATE LIMITED
CIN: U70101DL2010PTC210013
(Incorporated under the Companies Act, 1956)

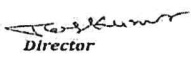
Registered Office: H.No. 4-B, Office No. 25, 1st Floor, Ashirwad Complex, Behind Shiva Market, Vill. Pitampura, New Delhi-110034.

This is to certify that the person(s) named in this Certificate is/are the Registered Holder(s) of the within mentioned debenture(s) bearing the distinctive number(s) herein specified in the above named Company subject to the Memorandum and Articles of Association of the Company and the amount endorsed herein has been paid up on each such debenture.

FACE VALUE (RS.)	10/- EACH
SECURITY PREMIUM (RS.)	990/- EACH
AMOUNT PAID-UP PER DEBENTURE (RS.)	1000/- EACH

Register Folio No: 2	Certificate No: 6
Name(s) of the Holder(s): Aadi Buildwell Private Limited	
No. of debentures held: Seven Lakhs and Forty Thousand (in words)	740000 (in figures)
Distinctive No.(s): From 7,80,001 to 15,20,000	(Both inclusive)

Issued on this 13th day of April, 2021 at New Delhi.


Director
 
Director

For Aadi Buildwell Pvt. Ltd.


Director

**No Transfer of Debenture(s) comprised in the Certificate can be registered unless accompanied by this Certificate.*

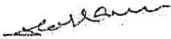
Issued in lieu of Debenture Certificate No.4

MEMORANDUM OF TRANSFERS OF DEBENTURE(S) MENTIONED OVERLEAF

DATE	TRANSFER NO.	REGISTER FOLIO	NAME(S) OF TRANSFEREE(S)	INITIALS	AUTHORISED SIGNATORY

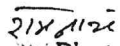
Terms and Conditions of Debentures

1. Debentures can be redeemed at any time at the option of the Issuer. Debentures can also be redeemed at the request of the Debenture holders after expiry of 1 (One) year but before 31st March, 2026 (i.e. the Maturity Date)
2. Debentures shall carry a coupon rate of 6% p.a. payable on face value plus securities premium on quarterly rests.
3. Debentures (if opted for redemption) shall be redeemed at face value plus securities premium and accrued interest till the date of redemption.
4. Debentures can be converted into equity shares at the request of the Debenture holders at any time before 31st March, 2026 (i.e. the Maturity Date)
5. Such conversion of Debentures into equity share shall happen at the FMV as on the date of conversion subject to applicable laws. For the purpose of calculating the conversion ratio, the value of debentures shall include face value plus securities premium and accrued interest.
6. If on or before the Maturity Date i.e. 31st March, 2026, the option for conversion of Debentures into equity share is not exercised by the Debenture holders then such Debentures shall be redeemed compulsorily.


Director


Director

For Aadi Buildwell Pvt. Ltd.


Director

ANNEXURE- 4
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Aadi Buildwell Private Limited

Calculation sheet in tabular form towards interest amount default (all amounts in INR/-)					
Date	Value of Debentures	Quarter	Coupon Rate	Amount of interest	Narration
1 st July 2021	74,00,00,000	Q 1	6% p.a.	94,88,220	Being amount of interest accrued but not received against Debentures of Focus Realcon Private Limited payable at the end of every quarter starting from 13th April 2021
1 st October 2021		Q 2		1,11,00,000	
1 st January 2022		Q 3		1,11,00,000	
Total				3,16,88,220	

For Aadi Buildwell Private Limited

21/10/22 Director

9. On perusal of the terms and conditions of the debenture certificate, we observed that the maturity date of the Debenture Certificate is on 31.03.2026, but as per the terms and conditions No. 1, debentures can be redeemed at any time, at the option of the issuer. Debentures can also be redeemed at the request of the Debenture holder, after the expiry of one year, but before 31.03.2026 (i.e. the Maturity Date). Admittedly, the present Debenture Certificate is issued on 13.04.2021, therefore, as per the terms and conditions No. 1, it can be redeemed after the expiry of one year i.e. from 13.04.2022.

10. We further observe that as per the terms and conditions No. 2, debenture shall carry a coupon rate of 6% per annum payable on face value plus securities premium on quarterly rests and as per terms and conditions No. 3, debenture shall be redeemed at face value plus securities premium and accrued interest till the date of redemption. On conjoint reading of these two clauses, we are of the considered view that since there is a provision for redemption of the debenture after the expiry of one year, therefore, the Applicant is entitled to opt for redemption and get the amount at the face value, plus securities premium and accrued interest till the date of redemption.

[Handwritten signature]

11. As we observed, the Applicant has not claimed the principal amount which is due and payable after the expiry of one year from the date of issuance of the Debenture Certificate.

12. Now, the question is, without adding the principal amount, can CIR Process be initiated only on the defaulted amount of interest?

At this juncture, we would like to refer to definition of debt and financial debt, as defined under Sections 3(11) and 5(8) of the IBC and the same are reproduced below.

Section 3(11)

(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

"Section 5. Definitions. –

(8) "financial debt" means a debt alongwith 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 dematerialised 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 may be 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;

1 [**Explanation.** -For the purposes of this sub-clause, -

- (i) *Any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*
- (ii) *The expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*
- (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. Mere perusal of the definition of debt shows that debt means a liability or obligation in respect of claim, which is due from any person and includes a financial debt and operational debt. Admittedly, the definition of debt is very wide. It includes the liability or obligation in respect of a claim as well as financial debt and operational debt. So far initiation of CIR Process Under Section 7 of the IBC, 2016 is concerned, the application is maintainable only when the debt is a financial debt.

14. On perusal of Section 5(8) of the IBC, it is seen that *a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money comes under the definition of financial debt and includes clause a to i.*

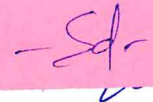


15. In terms of the provision, now we consider the submissions of the petitioner and we are of the considered view that in order to initiate a CIR Process u/s 7 of the IBC, the prime consideration is that there must be existence of debt and only thereafter interest shall be added in the principal debt amount. As we have already observed that the principal amount has not become due and payable as yet, therefore, there is no debt which is due and payable. Accordingly, there is no default in making the payment of the amount. Therefore, only the interest amount claimed by the applicant, in our considered view, does not come under the **definition of financial debt**.

16. Since the present application is filed only on the ground of interest accrued on the principal amount, and the payment of the principal amount is not due and payable as yet, therefore, the present petition filed under Section 7 of the IBC is not maintainable.

17. Accordingly, the application is dismissed.


(L. N. GUPTA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)