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

(IB)-465(ND)/2022

IN THE MATTER OF:

Vision Multiplex Private Limited
Registered Office at :
894-A, 893-A
Maruti Plaza Complex,
Shop No. FS-11 & FS-12,
UGF W. No. 8, Mehrauli,
New Delhi – 110030

...Applicant/Financial Creditor

VERSUS

Starlite Builders Private Limited
Registered Office at :
H. No. 4-B, Office No. 25,
1st Floor, Ashirwad Complex,
Behind Shiva Market,
Village - Pitampura
New Delhi-110034

...Respondent/Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 20.09.2022

CORAM:

SHRI DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
SHRI L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : PCA Abhishek Nahta, Adv. Rishabh Sachdeva
For the Respondent : Adv. A.K Singh, Adv. Jeewesh Prakash

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ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present application is filed under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Vision Multiplex Private Limited (for brevity, the **'Applicant/Financial Creditor'**) through its Authorised Representative Mr. Ramnath, with a prayer to initiate the Corporate Insolvency process against M/s. Starlite Builders Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. Starlite Builders Private Limited is a Company incorporated on 21.06.2010, under the provisions of erstwhile Companies Act, 1956 with CIN U70102DL2010PTC204391, having its registered office at H. No. 4-B, Office No. 25, 1st Floor, Ashirwad Complex, Behind Shiva Market, Village Pitampura New Delhi-110034, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 1,00,000/- and Paid-up Share Capital is Rs. 1,00,000/- as per the Master Data annexed.

3. It is submitted by the Applicant that total 4,00,000 Debentures were issued and allotted on 31st March 2011 to the Financial Creditor by the Respondent with face value Rs.10/- and Security premium Rs.990/- total paid-up amounting to Rs.1000/- per Debenture. The Applicant has

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annexed a copy of the Debenture Certificate dated 13.04.2021 issued and allotted by the Respondent, which is reproduced below:

ANNEXURE-3

Issued in lieu of Debenture Certificate No. 4

DEBENTURE CERTIFICATE

STARLITE BUILDERS PRIVATE LIMITED

CIN: U70102DL2010PTC204391

(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):	Vision Multiplex Private Limited	
No. of debentures held:	Four Lakhs (in words)	400000 (in figures)
Distinctive No.(s):	From 3,00,001 to 7,00,000	(Both inclusive)

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

Director Director

For Vision Multiplex Pvt. Ltd.

21/6/22

Authorised Signatory

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

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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 Vision Multiplex Pvt. Ltd.

Authorised Signatory

4. It is further submitted that the terms & conditions of such Debentures were mutually revised to carry an interest/coupon rate of 6% p.a. payable at the end of every quarter starting from 13th April 2021 and having maturity date of 31st March 2026. Further, the terms and

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conditions of the Debenture Certificate also stipulated that the debentures could be redeemed at any time at the option of the issuer and debentures can also be redeemed at the request of the Debenture holders after expiry of 01 year but before 31st March, 2026.

5. The particulars of the financial debt, due dates, defaults and the date of default are mentioned in the Part IV of the application, which is reproduced below for the sake of convenience :

PART IV

<table>
<tr><th colspan="3">PARTICULARS OF FINANCIAL DEBT</th></tr>
<tr>
<td>1.</td>
<td>TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT</td>
<td>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>40,00,00,000</td></tr>
</table>
(Copy of Bank Statements attached as Annexure-2A)

The amount of debt is in the nature of principal amount paid to the Corporate Debtor against Debentures along with interest due on said 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 (INR)</th></tr>
<tr><td>1st July, 2021</td><td>51,28,768/-</td></tr>
<tr><td>1st Oct, 2021</td><td>60,00,000/-</td></tr>
<tr><td>1st Jan, 2022</td><td>60,00,000/-</td></tr>
<tr><td>1st April, 2022</td><td>60,00,000/-</td></tr>
<tr><td>TOTAL</td><td>2,31,28,768</td></tr>
</table>
Further, the Principal Amount became due for repayment on 14.05.2022.

For Vision Multiplex P
Authorised Sig</td>
</tr>
</table>

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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 amount currently in default amounting to **INR 42,31,28,768/- (Indian Rupees Forty Two Crore Thirty One Lac Twenty Eight Thousand Seven Hundred and Sixty Eight Only)** [Rs. 40,00,00,000/- (towards Principal Amount) + Rs.2,31,28,768 (interest due thereon) Interest is calculated at coupon rate of 6% p.a. for the period of four Quarters. **The date on which the default in payment of Principal Debt along with interest thereon occurred: 14.05.2022** A calculation sheet in tabular form showing the interest due till date thereon is enclosed herewith and annexed as **Annexure- 4**

6. The Financial Creditor has relied on the following documents to substantiate its claim towards existence of the financial debt :

a) Special Resolution with explanatory statement passed on 12th April 2021 by the Respondent/ Debenture Issuer

b) Copy of Debenture Certificate issued by the Respondent to the Financial Creditor dated 13.04.2021.

c) Copy of Bank Statement for FY 2010-11 of the Financial Creditor extending debt to the Respondent against the Debentures

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d) On 21.07.2021, Service of Letter to the Respondent demanding interest amount due on Debentures for Quarter 1 for the FY 2021-22.

e) Receipt of reply dated 26.07.2021 from the Respondent to the letter dated 21.07.2021.

f) Service of Letter dated 30.07.2021 to the Respondent granting extension of time to pay interest amount due on Debentures for Quarter 1 for the FY 2021-22.

g) Service of Letter dated 08.10.2021, to the Respondent demanding interest amount due on debentures for Quarter 1 & 2 for the FY 2021-22.

h) Service of Default Notice dated 29.10.2021 to the Respondent demanding interest amount due on Debentures for Quarters 1 & 2 for the FY 2021-22.

i) Service of Legal Notice dated 22.11.2021 to the Respondent demanding interest amount due from the Respondent for Quarter 1 & 2 for the FY 2021-22.

j) Reply dated 03.05.2022, received from the Respondent in response to the Letter dated 15.04.2022.

k) Final letter dated 07.05.2022 sent by the Financial Creditor seeking redemption of Debentures issued on 13.04.2021.

7. It is stated that on 21.07.2021 and 08.10.2021, the Applicant issued letters to the Respondent demanding payment of interest amount due on debentures but the Respondent failed to make payment and sought time to pay. Legal Notice was also served upon the Respondent

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on 22.11.2021 demanding payment of interest due. On 30.04.2022, the Applicant sent a letter requesting for redemption of debentures issued vide Debenture no.6 dated 13.04.2021 as per the terms and conditions thereto. In reply dated 03.05.2022, the Respondent stated its inability to pay the principal amount and suggested the Financial Creditor to convert the said debentures into equity shares in terms of clause 4 and 5 of the Debenture Certificate no.6. However, vide letter dated 07.05.2022, the Financial Creditor rejected the proposal and requested the Respondent to pay an amount of Rs. 42,31,28,768/- (40,00,00,000/- (principal amount) + 2,31,28,768/- (interest amount). Since the Respondent did not pay the said amount within 7 days, the Applicant, by filing the present application, has prayed for initiation of the Corporate Insolvency Resolution Process against the Respondent.

8. On issuance of notice, the Respondent has filed its reply on 30.06.2022 stating that:

I. Total 4,00,000 Debentures were issued and allotted on 31st March, 2011 to the Financial Creditor by the Respondent. Further, vide Debenture Certificate No. 6 dated 13.04.2021, the terms of such Debentures were mutually revised to carry an interest /coupon rate @ 6% p.a. payable at the end of each quarter starting from 13.04.2021 and having maturity date of 31.03.2026.

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II. As per the agreed terms of the Debentures, the Financial Creditor had two options i.e., either the Debentures along with interest could be converted into equity shares or the principal amount could be called for the repayment after expiry of 1 year but before 31.03.2026 (i.e; the Maturity Date).

III. Earlier the Applicant, with *mala fide* intention, had filed an application u/s 7 of the IBC, 2016 before the NCLT on the interest accrued on the principal amount which was not due and payable as yet in order to initiate CIRP against the Respondent. The NCLT did not find any merits in the case and vide its order dated 26.05.2022, dismissed the said Application stating that:

> *"the application filed only on the interest accrued on principal amount which is not due and payable as yet, therefore, the present petition filed under Section 7 of the IBC is not maintainable."*

IV. On 30.04.2022, the Applicant requested the Respondent for the redemption of the Debentures as per 'Clause-3' of the Debenture Certificate No. 6 and in reply of which the Respondent vide its letter dated 03.05.2022 requested the Applicant to convert the Debentures into Equity shares. However, the Applicant denied the said request vide its letter dated 07.05.2022 and opted to redeem the Debentures as per the terms of the terms of the Debenture Certificate.

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V. As per the terms agreed earlier, the Respondent shall not be liable to pay the principal amount along with interest as it was mutually/orally agreed between the parties that the Debenture Certificate were issued to the Applicant primarily to invest in future projects of Respondent. However, despite request made to the Applicant to convert the Debentures into Equity Share, the Financial Creditor opted to redeem the Debentures.

VI. The Respondent vide its letter dated 26.07.2021 sought time from the Financial Creditor to allow/extend 3 months' time to pay the interest due as the cash flow of the Respondent was affected because of the prevailing COVID-19 situation.

9. The Applicant has filed its rejoinder on 12.07.2022 and denied the averments made by the Respondent. It has stated that :

I. The application filed by the Applicant under Section 7 of IBC, 2016 for the non-payment of interest before the NCLT was dismissed vide order dated 26th May, 2022 on account of only interest being accrued on principle amount which was not due and payable as yet. It is pertinent to note herein that the present application is filed by the Petitioner on account of default of the Respondent for the non-payment of principal along with interest, since the principal amount became due for the repayment on 13th April, 2022.

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II. The Applicant had sent various communications to the Respondent for payment of the outstanding principal and interest amount but the Respondent failed to make the payment.

III. Further, the Applicant has submitted that as per the Clause 1 of the Terms and Conditions of Debenture Certificate :

> *"Debentures can be redeemed at any time at option of the issuer. Debenture can also be redeemed at the request of the debenture holders after the expiry of one (1) year but before 31st March, 2026."*

As the present debentures were issued on 13th April, 2021, the Applicant became eligible to redeem the debentures after the expiry of one year i.e., w.e.f. 13th April, 2022.

IV. As per Clause 3 of the Terms and Conditions of the Debenture Certificate reading as :

> *"Debentures (if opted for redemption) shall be redeemed at face value plus security premium and accrued interest till* ***the*** *date of redemption."*

The Petitioner accordingly, has exercised its rights as conferred upon it by the virtue of the said Debenture Certificate and requested the Respondent to redeem the Debentures.

V. It is further stated that as per the Provisions of Section 71(8) of the Companies Act, 2013, *"A company shall pay interest and*

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redeem the debentures in accordance with the terms and conditions of their issue". Furthermore, in view of the aforesaid provisions of the Companies Act, 2013 read with rules made thereunder, the Respondent is liable to comply with the terms and conditions of aforementioned Debenture Certificate.

10. After going through the pleadings and documents placed on record and hearing submission made by the parties, we would first like to examine whether the "Debentures" fall within the definition of 'Financial Debt'? For this purpose, we refer to Section 5(8)(c) of IBC, 2016, which reads as below: -

5. Definition. -

> *(8) "Financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*
>
> ....
>
> *(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument*
>
> ....

(Emphasis Placed)

11. Apparently, any amount raised in pursuance to the special resolution passed by the Respondent dated 12.04.2021 read with terms and conditions of the Debenture Certificate issued by it, makes the applicant fall within the definition of 'Financial Creditor' as defined in section 5(7) of IBC, 2016. Moreover, the Respondent has failed to pay not only the interest amount due on debentures but it has also failed,

on redemption, to honor the terms and conditions of the debenture certificate as specified in clause 1 of the debenture certificate.

12. Now, we discuss the issue regarding the earlier petition No. IB-123/ND/2022 being dismissed by this Authority vide order dated 26th May, 2022. When we peruse the relevant file, we find that the said application was preferred only for non-payment of interest accrued on the principal amount, which was not due and payable yet. Per Contra, facts in the present application are different, as the Respondent has not only defaulted in payment of interest due on the debentures issued by it but also failed to repay the amount on redemption of the debentures as per the terms and conditions thereof as discussed in previous paragraph. Hence, the dismissal of earlier application does not prevent this Authority to consider the present application with varying facts.

13. Moreover, the Respondent, who initially sought extension of time, subsequently expressed its inability to repay the financial debt on account of its cash flows being impacted adversely due to Covid-19 pandemic vide its reply dated 03.05.2022 addressed to the Applicant. Thus, the Financial Creditor has been able to make out its case that the Respondent has made a default in repayment. It is a settled position of law that once the Financial Creditor is able to establish that the Respondent has defaulted in repayment of financial debt and there is no disciplinary proceeding pending against the proposed IRP, as evident from the form-2 dated 04.02.2022, this Adjudicating Authority is bound to admit the application under section 7 IBC, 2016.

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14. In the facts and circumstances given as above, the present Application being complete and the Financial Creditor having established the default on the part of Respondent in payment of its Financial Debt being above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

> "(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."

15. As proposed by the Financial Creditor, this Bench appoints Mr. Ajay Kumar Siwach as IRP having Registration No. IBBI/IPA-002/IP-

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N00668/2018-19/12214 (Email: siwachajay@gmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that :

> "Mr. Ajay Kumar Siwach, IRP (E-mail ID: siwachajay@gmail.com) having Registration No. IBBI/IPA-002/IPN00668/2018-19/12214, is directed to take charge of the CIRP of the Respondent with immediate effect. Further, the IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016."

16. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. A copy of this Order shall be communicated to the Financial Creditor, the Respondent and the IRP mentioned above by the Court Officer/Registry of this Tribunal.

18. In addition, a copy of the order shall also be forwarded by the Court Officer/Registry to the IBBI for their record.

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(L. N. GUPTA)
MEMBER (T)

(DHARMINDER SINGH)
MEMBER (J)