NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)
IN
(IB)-149/ND/2025

IN THE MATTER OF:

Glorify Advisors Private Limited
Having registered office at :
B-1/451, Nand Nagri, North East Delhi
Delhi-110093 **... Applicant/Financial Creditor**

VERSUS

Microgreen Electronics Private Limited
Having registered office at :
Office Unit No. 2/3 Basement,
DDA Building No. 11, Nehru Place,
South Delhi, New Delhi - 110019 **... Respondent/Corporate Debtor**

Section: 7 of the IBC, 2016

Order Delivered on: 12.09.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Vishawjeet Singh Rathore, Adv.
For the Respondent : Ms. Aishwarya Nabh, Adv

ORDER

PER: MS. REENA SINHA PURI, MEMBER (T)

This Petition has been filed by M/s Glorify Advisors Private Limited (hereinafter referred to as the Financial Creditor or **FC/Petitioner**) against Microgreen Electronics Private Limited (hereinafter referred to as the Corporate Debtor or **CD/Respondent**), seeking initiation of CIRP[1] under section 7 of IBC[2]. The Petitioner claims that the Respondent has committed a default in the repayment of financial debt amounting to Rs 4,48,69,120, along with penal interest per annum until realization[3].

Application

2. The FC claims that it had subscribed to 41,240 Compulsorily Convertible Debentures (CCDs) issued by the CD vide Debenture Certificate[4] for a consideration of Rs 4.12 Crores on 30.03.2016. On 08.04.2024, the FC requested the CD to convert the CCDs as held by the FC into Optionally Convertible Debentures (OCDs). Pursuant to the FC's request, the CCDs were converted[5] into OCDs of an equivalent amount on 03.05.2024.

3. It is further stated that as per the agreement, the OCDs were redeemable at the option of the holder, with 30 days' notice and also carried penal interest at 18% per annum in case of default. The FC issued a demand

[1] Corporate Insolvency Resolution Process
[2] Insolvency and Bankruptcy Code, 2016
[3] Page 4 of the Additional Affidavit
[4] Page 25-26 of the Application
[5] Page 28-32 of the Application

notice for redemption[6] on 05.06.2024. The CD vide letter[7] dated 12.07.2024 acknowledged its liability of Rs 4,12,40,000 and sought three months' time to pay the FC. However, the FC failed to redeem the OCDs even after the issuance of the final demand notice[8] dated 18.10.2024, resulting in a default. As on 31.12.2024, the total outstanding debt including interest was Rs 4,48,69,120.

4. The present Petition was filed on 24.02.2025. Proof of disbursement and acknowledgment of debt is evidenced by the bank statements, the OCDs agreement, and NESL record[9], all of which are annexed to this Petition.

Counter

5. The CD in its reply of 30.04.2025, has questioned the maintainability of the Petition, contending that it arises from a commercial transaction structured through CCDs, which were subsequently, at the request of the FC, converted into OCDs. The OCDs in question are redeemable or convertible at the option of the holder within 10 years, with a 30-day notice requirement. The first demand was made on 05.06.2024, and the purported default date is cited as 05.07.2024. It is submitted that this is a case of premature invocation of default within a short timeline, despite the CD's clear acknowledgment of liability and willingness to repay.

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[6] Page 35-36 of the Application
[7] Page no. 37 of the Application
[8] Page no. 38 of the Application
[9] Page no. 39-40 of the Application

6. The CD has also objected to this petition on the ground that a 'contractual investment dispute' has been made into an insolvency proceeding. It is claimed that the OCDs are not "financial debt" as per Section 5(8) of the IBC, since they carry zero interest at issuance and lack time value of money. Reliance is placed on the order of Hon'ble NCLAT in *Dr. B. V.S. Lakshmi v. Geoniatrix Laser Solutions Pvt. Ltd.*[10]

7. Furthermore, the CD has submitted that the provisions of the IBC cannot be turned into a debt recovery mechanism, as the main intent of the legislature behind bringing in this Act is to revive the Corporate Debtor. The CD has placed its reliance on *Sesh Nath Singh & Anr. v. Baidyabati Sheoraphuli Cooperative Bank Limited & Anr.*[11] , *Invest Asset Securitisation & Reconstruction Private Limited v. M/s. Girnar Fibres Limited*[12] and *Transmission Corporation of Andhra Pradesh Ltd. v. Equipment Conductors and Cables Ltd*[13], to support its contention.

Rejoinder

8. The FC has refuted the CD's contention that the OCDs do not qualify as 'financial debt' under Section 5(8) of the IBC, terming such arguments as baseless and contrary to both facts and law. It is submitted that the OCDs were issued pursuant to the OCD Agreement dated 03.05.2024 and represent a debt disbursed by the FC in consideration of the time value of money, as

[10] C.A.(AT)(INS.) No. 38 of 2017
[11] 2021 7 SCC 313
[12] Civil Appeal No. 3033/2022
[13] (2019) 12 SCC 697

evidenced by the stipulated interest rate of 18% per annum payable upon default. In support of this position, reliance is placed on the decisions in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*[14], *Aqua Electronics & Solutions Pvt. Ltd. v. Legend Power Pvt. Ltd.*[15], *and Budhpur Buildcon Pvt. Ltd. v. Abhay Narayan Manudhane*[16] which affirm that instruments such as OCDs, bearing interest and involving repayment obligations, constitute 'financial debt' within the meaning of Section 5(8) of the IBC.

9. It is stated that the CD's contention that the invocation of default is 'premature' is without merit. It is submitted that the Financial Creditor issued multiple demand notices, including those dated 05.06.2024, 08.07.2024, and a final notice dated 18.10.2024, seeking redemption of the OCDs. Notably, the CD, in its reply dated 12.07.2024, acknowledged its liability to the extent of Rs 4,12,40,000. In accordance with the terms of the OCD Agreement, which stipulates redemption upon a 30-day notice, the date of default is rightly computed as 05.07.2024—being 30 days from the first demand notice dated 05.06.2024.

10. Further, CD's contention that the present petition is merely an attempt at debt recovery is entirely misconceived, misplaced, and contrary to the established legal framework and judicial precedents. The reliance placed by the CD on the decisions in *Sesh Nath Singh v Baidyabati Sheoraphuli Co-operative Bank Ltd* (supra), and *Invest Asset Securitisation & Reconstruction*

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[14] Writ Petition (Civil) No. 43 of 2019
[15] CP(IB) No. 138 of 2024
[16] CA(AT)(INS.) No. 589 of 2021

Pvt. Ltd v Girnar Fibres Ltd (supra) is wholly misplaced and inapplicable to the facts and context of the present case.

Decision

11. The submissions of the parties were heard, and the records carefully examined. With respect to the contention that the OCDs do not qualify as 'financial debt' under section 5(8) of the IBC, it is observed that the CD initially received investment funding from the FC in the form of CCDs. However, at the request of the FC, these were subsequently converted into OCDs pursuant to the OCD Agreement dated 03.05.2024. It is not in dispute that the OCDs issued under this Agreement represent a debt disbursed by the FC against the consideration of time value of money, as evidenced by the agreed penal interest rate of 18% per annum in the event of default. In this context, it is pertinent to refer to the definition of 'financial debt' under section 5(8) of the IBC:

> *"(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 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 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;

[2]*[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;"

12. At this stage, it will also be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Pioneer Urban Land and Infrastructure Ltd. v. Union of India (supra)* where it was noted:

"61. The definition of "financial debt" in Section 5(8) then goes on to state that a "debt" must be "disbursed" against the consideration for time value of money. "Disbursement" is defined in Black's Law Dictionary (10th ed.) to mean:

"1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose."

In the present context, it is clear that the expression "disburse" would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression "disbursed" refers to money which has been paid against consideration for the "time value of money". In short, the "disbursal" must be money and must be against consideration for the "time value of money", meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money […]."

66. Sub-clause (f) Section 5(8) thus read would subsume within it amounts raised under transactions which are not necessarily loan transactions, so long as they have the commercial effect of a borrowing [………..]"

13. Further, in the case at hand, we are satisfied that that the CD's acknowledgment of debt is clearly evidenced by the letter dated 12.07.2024, the bank statements, the OCD Agreement, and the record available with the NESL record[17] annexed to the petition. Reference is again made to the *Innoventive Industries Limited vs ICICI Bank Ltd*,[18], where it was held:

"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

[17] page no. 39-40 of the Application
[18] [(2018) 1 SCC 407]

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.*** *"*

*(*Emphasis Supplied*)*

14. Furthermore, the Hon'ble Supreme Court in the case of *M. Suresh Kumar Reddy v Canara Bank*[19], held that once the Adjudicating Authority is satisfied that the default has occurred, there is hardly a discretion left with it to refuse the admission of the application under Section 7 of the Code. The relevant extract of the aforesaid judgement reads:

"11. Thus, 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. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

"3. Definitions. In this Code, unless the context otherwise requires-

……..

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable

[19] [(2023) 8 SCC 387]

and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

15. In support of its stand, the FC has relied on several judgments – *Pioneer Urban Land and Infrastructure Ltd. v. Union of India (supra), Aqua Electronics & Solutions Pvt. Ltd. v. Legend Power Pvt. Ltd. (supra), and Budhpur Buildcon Pvt. Ltd. v. Abhay Narayan Manudhane.* (supra).

16. As regards the contention of the CD that the present petition is a disguised attempt at debt recovery, we find no merit in such an argument. We are satisfied that the FC has lawfully invoked section 7 of the IBC, supported by clear and cogent evidence of default. The judicial precedents relied upon by the CD to support its contention are found to be misplaced and inapplicable to the facts of the present case.

17. Therefore, we have no hesitation in admitting the present application under section 7 of the IBC. In view of the admitted debt and established default, the application is hereby allowed with the following directions:

ORDER

18. The Application is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

19. The Applicant has proposed the name of Mr. Bihari Lal Chakravarti as the Interim Resolution Professional (hereinafter referred to as the 'IRP'). The declaration under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by way of Form 2 indicates that no disciplinary proceedings are pending against her and she is eligible to be appointed as IRP qua the CD[20]. Accordingly, this Adjudicating Authority appoints Mr. Bihari Lal Chakravarti, Registration Number: IBBI/IPA-002/IP-N00863/2019-2020/12776, whose Authorization for Assignment is valid up to 31.12.2025 as per the IBBI IPs Registered List on the website. The IRP is directed to file Authorization for Assignment within three days from the date of this order.

20. The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claims in the manner as prescribed.

21. Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the IBC.

[20] Page 21-24 of the Application

22. It is hereby ordered that all of the following are prohibited:

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 or 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 rights 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 (54 of 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.

23. Notwithstanding anything contained in any other law for the time being in force, a 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

24. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any 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.

25. Furthermore, the provisions of Sub-section (1) of Section 14 of the IBC shall not apply to 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; and to a surety in a contract of guarantee to a corporate debtor.

26. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the IBC. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 of the IBC for discharging her functions under Section 20 of the IBC.

27. The Corporate Debtor as well as the Registry is directed to send the copy of this Order to the IRP, to enable her to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the IBC.

28. The Registry is directed to communicate this Order to the Corporate Applicant.

29. The Registry shall also communicate this Order to the Registrar of Companies, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

Accordingly, this Company Petition is allowed.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

PER: ASHOK KUMBAR BHARDWAJ, MEMBER (J)

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A perusal of OCD agreement dated 03.05.2024 reveals that the registered office of both the FC and CD is common (a copy of agreement is at Annexure-P8 to the petition). Besides once, the CD had issued CCDs to the FC, way back in the year 2016, it is not understood that how suddenly after 8 years, the CCDs could be converted into OCDs. Besides it is also difficult to appreciate that how without rescinding the CCD agreement, the parties could convert the CCDs into OCDs. It is clear from clause 2 of the OCD agreement that the CCDs were to be converted into OCDs subject to fulfilment of certain conditions. It is not clear from the deed that when were the statutory requirement satisfied. When the agreement is dated 03.05.2024, the certificate of OCD is also of same date. It is difficult to understand that how without meeting the condition including the statutory requirement of approval by the members by way of special resolution in a general meeting, the CCDs would be converted into OCDs and the certificate could be issued on the same date. As per procedure, for conversion of OCD into CCD, a board meeting of the company is required to be held and thereafter as per procedure, the EGM need to be held. The company must then file form MGT-14 with the RoC. It is then, the company issues a letter of offer to debenture holder.

2. It is also surprising that when the tenure of OCDs was 10 years, how shortly after 03.05.2024, the FC sought to redeem the OCDs by giving notice of redemption only on 05.06.2024. The conversion of CCD into OCD is in a way, act of capital/debt restructuring and the same should have the approval in EGM. From the totality of the facts and circumstances. It seems quite weird that a company would create liability after ten years to invite debt against it. The mutual conversion of CCD into OCD with request of the SC would only strengthen the semblance of collusion. Besides, as has been noted hereinabove, after the agreement, the process for conversion was required to be followed. Had the conversion been not allowed, the CCD could not have created any liability qua the CD. The different addresses of the FC and CD in MCA record would further strengthen the semblance of collusion, for the simple reason that when in agreement the address mention is same, how in MCA record the addresses are different. In the wake of, timing of conversion and then raising the demand soon thereafter by the FC, it appears that ground is created for filing the present petition. As has been noted in the order authored by Technical Member, the CD clearly acknowledged its liability and expressed willingness to pay.

3. In the wake of the above, I am of the considered view that the present petition is collusive and the initiation of the CIRP is stage managed, thus the application need to be rejected.

Sd/-
ASHOK KUMAR BHARDWAJ
MEMBER (J)

There is difference of opinion between the Members of the Bench. Following are the points of issue for reference to the Hon'ble President, NCLT under Section 419(5) of the Companies Act, 2013.

1. Whether the conversion of Compulsorily Convertible Debentures (CCDs) into Optionally Convertible Debentures (OCDs) was valid and in order, inasmuch as:

   i. The conversion was effected with the mutual agreement of the FC and the CD;

   ii. The redemption of the OCDs by the FC was in accordance with the OCD Agreement dated 03.05.2024, which permitted redemption upon thirty days' prior notice to the CD;

   iii. The CD had full knowledge of the FC's request for conversion of CCDs into OCDs with a view to facilitate redemption, as was specifically conveyed in the FC's letter dated 08.04.2024; and

   iv. The Conditions Precedent stipulated in Clause 2 of the OCD Agreement were intended only to ensure legal compliance by the CD and to safeguard the FC's right to verification of such compliance.

2. Whether the appearance of a common address on the OCD Certificate for the FC and the CD, by itself, can lead to an inference of collusion, when the record discloses that the registered addresses of the parties have changed over time and their current registered offices, as reflected on the MCA portal, are not the same?

Sd/-

REENA SINHA PURI
MEMBER (T)

As the members of the bench are equally divided, the following point on which they have differed is referred to Hon'ble President under Section 419(5) of Companies Act, 2013:-

i. When from 13.03.2016 to 03.05.2024 (for more than 8 years), the Applicant had held CCDs qua the Respondent, whether sudden execution of OCDA for conversion of CCD into OCD on 03.05.2024 and issuance of OCD Certificate on same date, issuance of demand notice by the Applicant to Respondent, just a month thereafter, acceptance of the liability by the Respondent instantly and address of the Applicant and Respondent mentioned in the agreement being same, though in MCA record these are different, are not sufficient evidence to establish that the OCDA was drafted casually and filing of the present application is stage-managed and collusive.

Sd/-
ASHOK KUMAR BHARDWAJ
MEMBER (J)