



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

(IB)-461(ND)/2022

IN THE MATTER OF:

Aadi Buildwell 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

Focus Realcon 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: 14.09.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

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

PRESENT:

For the Applicant : PCA AbhishekNahtaa/w 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)

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

2. The Corporate Debtor namely, M/s. Focus Realcon Private Limited is a Company incorporated on 29.10.2010, under the provisions of the erstwhile Companies Act, 1956 with CIN U70101DL2010 PTC210013, 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 Corporate Debtor Company is Rs. 2,00,000/- and Paid-up Share Capital is Rs. 1,00,000/- as per the master data annexed with the Petition.

3. It is stated by the Applicant that the Respondent had issued and allotted 7,40,000 Debentures with face value of Rs.10/- and Security premium of Rs.990/- per debenture on 31 March 2011 to the Applicant.



The Applicant has placed a copy of the Debenture Certificate dated 13.04.2021 issued and allotted by the Corporate Debtor to the Financial Creditor, which is reproduced below :

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.

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5. The Applicant has claimed Rs.78,27,88,220/- as an unpaid debt and mentioned 14.05.2022 as the date on which the default occurred. The detailed particulars of the debt claimed are provided in the Part IV of the application, which is reproduced below for convenience :

PART IV

PARTICULARS OF FINANCIAL DEBT																	
I. TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>Principal amount of debt extended against Debentures issued by the Corporate Debtor to the Financial Creditor</p> <table border="1"> <thead> <tr> <th>Date</th> <th>Amount (in INR)</th> </tr> </thead> <tbody> <tr> <td>31st March 2011</td> <td>74,00,00,000</td> </tr> </tbody> </table> <p>(Copy of Bank Statements attached as Annexure-2A)</p> <p>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.</p> <p>The due date on which the interest became accrued & due along with the amount of interest is given below:</p> <table border="1"> <thead> <tr> <th>Date</th> <th>Amount (INR)</th> </tr> </thead> <tbody> <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>1st April, 2022</td> <td>1,11,00,000/-</td> </tr> <tr> <td>TOTAL</td> <td>4,27,88,220</td> </tr> </tbody> </table> <p>Further, the Principal Amount became due for repayment on 14.05.2022.</p> <p style="text-align: right;">For Aadi B...</p>	Date	Amount (in INR)	31 st March 2011	74,00,00,000	Date	Amount (INR)	1 st July, 2021	94,88,220/-	1 st Oct, 2021	1,11,00,000/-	1 st Jan, 2022	1,11,00,000/-	1 st April, 2022	1,11,00,000/-	TOTAL	4,27,88,220
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<p>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)</p>	<p>Total amount currently in default amounting to Rs.78,27,88,220/- (Rs. Seventy Eight Crore Twenty Seven Lac Eighty Eight Thousand Two Hundred and Twenty) [Rs.74,00,00,000/- (towards Principal Amount) and Rs.4,27,88,220 (interest due thereon for)]</p> <p>Interest is calculated at coupon rate of 6% p.a. for the period of four Quarters of Financial year 2021-22.</p> <p>The date on which the default in payment of Principal Debt along with interest thereon occurred: 14.05.2022</p> <p>A calculation sheet in tabular form showing the interest due till date thereon is enclosed herewith and annexed as Annexure- 4</p>
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6. The Financial Creditor has relied on the following documents to prove the existence of the financial debt -

- a) Special Resolution with Explanatory Statement passed on 12th April 2021 by the Corporate Debtor/Debenture Issuer.
- b) Copy of Debenture Certificate dated 13.04.2021 issued and allotted by the Corporate Debtor to the Financial Creditor.
- c) Copy of bank statement for FY 2010-11 of the Financial Creditor extending debt to the CD against debentures.
- d) Service of letter dated 21.07.2021 to the CD demanding interest amount due on Debentures for the Quarter 1 of the FY 2021-22.



- e) Receipt of reply dated 26.07.2021 from the Corporate Debtor to the letter dated 21.07.2021.
- f) Service of letter dated 30.07.2021 to the Corporate Debtor granting extension of time to pay interest amount due on Debentures for Quarter 1 for the FY 2021-2022.
- g) Service of letter dated 08.10.2021 to the Corporate Debtor demanding interest amount due on debentures for Quarter 1 & 2 for the FY 2021-2022.
- h) Service of Default Notice dated 29.10.2021 to the Corporate Debtor 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 Corporate Debtor demanding interest amount due from the Corporate Debtor for Quarter 1 & 2 for the FY 2021-22.
- j) Reply dated 03.05.2022 received from the Corporate Debtor 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 submitted that on 21.07.2021 and 08.10.2021, the Applicant sent letters to the Corporate Debtor demanding Interest amount due on debentures but the Respondent failed to make payment and sought time to pay the interest amount. Legal notice was also served upon Respondent on 29.10.2021 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 thereof. 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. 78,27,88,220/- [74,00,00,000 (principal amount) + 4,27,88,220 (interest amount)]. Since the Corporate Debtor has failed to pay the said amount within 7 days, hence, the Applicant through the present application has prayed for initiation of 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. 7,40,000 Debentures were issued & allotted on 31.03.2011 to the Applicant by the Respondent. 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.
- II. As per the agreed terms of the Debentures, the Applicant has two options i.e., either to convert the Debentures along with interest into equity shares or call for repayment of the principal amount after expiry of 1 year but before the Maturity Date of 31.03.2026.



III. The Applicant had earlier filed an application u/s 7 of the IBC, 2016 before the Hon'ble 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 Debenture Certificate.

V. As per the terms agreed earlier, the Respondent in any case 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 Shares, the Applicant has opted to redeem the Debentures.



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

9. The Applicant has filed its Rejoinder on 12.07.2022 and denied each and every allegation and averments made by the Respondent in its reply. It has submitted that :

- I. The application filed earlier by the Applicant under Section 7 for non-payment of interest was dismissed by the Hon'ble NCLT vide order dated 26thMay, 2022, as interest accrued on the principal amount was not due and payable as yet. Whereas the present application is filed by the Applicant on account of default occurred due to the non-payment of principal amount along with interest, since the principal amount became due for repayment on 13thApril, 2022.
- II. The Applicant sent various communications to the Respondent for payment of the outstanding principal and interest amount but the Respondent failed to make the payment.
- III. The Applicant has further submitted that as per the clause 1 of the Terms and Conditions of the 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”.

Since the present debentures were issued on 13th April, 2021, the Applicant became eligible to redeem the debentures since 13th April, 2022.

IV. As per clause 3 of the Terms and Conditions of the Debenture Certificate, which reads as:

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

Accordingly, the Applicant 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 submitted that as per the Provisions of Section 71(8) of the Companies Act, 2013, *“A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue”*. Furthermore, in view of the aforesaid provisions of the CA, 2013 read with rules made thereunder, the Respondent is liable to comply with the terms and conditions of the Debenture Certificate.

10. After hearing submission of both the parties and going through the pleadings and documents on record, this Bench would like to



examine whether the “Debentures” fall within the definition of ‘Financial Debt’ ? Here, we would like to refer to Section 5(8)(c) of IBC, 2016, which reads as below: -

“5. Definitions. -

(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. Clearly, any amount raised pursuant to the special resolution passed by the Respondent/Corporate Debtor dated 12.04.2021 read with Debenture Certificate issued (Annexure-3) by it, makes the applicant fall within the definition of ‘Financial Creditor’ as defined in section 5(7) of IBC, 2016. Furthermore, as evident from the records placed before this Adjudicating Authority, the Corporate Debtor failed to pay not only the interest amount due on debentures but it has also failed to honor the terms and conditions as stipulated in clause 1 of the debenture certificate on their redemption.

12. It is also pertinent to discuss the issue of the earlier petition No.IB-124/2022 being dismissed by this Authority vide order dated 26thMay, 2022. When we go through the relevant record, we find that it was filed 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 Corporate Debtor has not only defaulted in payment of interest due on the debentures issued by it but has also failed to repay the amount on redemption of the debentures as per the terms and conditions thereof as discussed in last paragraph. Hence, the dismissal of earlier application does not bar this Authority to consider the present application with varying facts.

13. Furthermore, the Corporate Debtor, who initially sought extension of time, has expressed its inability to repay the financial debt on account of its cash flows impacted adversely due to Covid-19 pandemic vide its reply letter dated 03.05.2022 addressed to the Applicant. Since, the Financial Creditor has been able to make out its case that the Corporate Debtor has defaulted in repayment of its financial debt due and there is no disciplinary proceeding pending against the IRP proposed, as evident from the form-2 dated 04.02.2022, this Adjudicating Authority is inclined to admit the present Application filed under section 7 IBC, 2016.

14. In the given facts and circumstances, the present Application being complete and having established the default by Respondent in payment of the Financial Debt for the amount being above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC, 2016 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 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.”

15. As proposed by the Financial Creditor, this Bench appoints Mr. Ajay Kumar Siwach IP (Email:siwachajay@gmail.com) having Registration No. IBBI/IPA-002/IP-N00668/2018-19/12214 as IRP of the Corporate Debtor 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 of this Order. This Adjudicating Authority orders that :


“Mr. Ajay Kumar Siwach, IRP (E-mail ID: siwachajay@gmail.com) having Registration No. IBBI/IPA-002/IP-N00668/2018-19/12214 is directed to take charge of the CIRP of the Corporate




Debtor with immediate effect. The IRP is directed to take the steps as mandated under the IBC 2016, specifically under Section 15, 17, 18, 20 and 21 of the Code.

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 Corporate Debtor and the IRP mentioned above by the Registry/Court Officer of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.


(L. N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)