



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 24.04.2025 at 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition (IB)/102/7/HDB/2024
NAME OF THE COMPANY	Fourth Generation Information Systems Ltd
NAME OF THE PETITIONER(S)	CRC Infratech & Services LLP
NAME OF THE RESPONDENT(S)	Fourth Generation Information Systems Ltd
UNDER SECTION	7 OF IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, COURT-II**

C.P (IB) No.102/7/HDB/2024

[U/s 7 r/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

Between:

M/s. CRC Infratech & Services LLP,
501, 5th Floor, C Wing, Twin Arcade,
Military Road, Marol, Andheri (East),
Mumbai, Maharashtra- 400059.

...Financial Creditor

And

**M/s. Fourth Generation Information
Systems Limited**
Flat No. 301, Sai Priya Apartment,
H. No. 6-3-668/7/6/301, Jaffer Ali Bagh,
Somajiguda, Hyderabad, Telangana-500072

...Corporate Debtor

Date of Order: 24.04.2025

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

Counsels Present

For the Petitioner : Mr. Harsh Chowdary, Advocate
For the Respondent : Ms. G. Sumati, Advocate



[PER: RAJEEV BHARDWAJ, MEMBER (JUDICIAL)]

ORDER

I. The instant Petition has been filed by M/s. CRC Infratech & Services LLP, the Financial Creditor (**FC**) under Section 7 of the Insolvency and Bankruptcy Code (**IBC**) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate the Corporate Insolvency Resolution Process (**CIRP**) against M/s. Fourth Generation Information Systems Limited, the Corporate Debtor (**CD**).

II. **Petition**

1. The FC was incorporated on 22.11.2022 and is in the business of Storage and Warehousing. The CD was incorporated on 21.08.1998 and operates in the fields of Hardware & Software Product Development, publishing, consultancy, technology services and supply.
2. The CD availed financial assistance of Rs.1,00,00,000/- from the FC pursuant to a Loan Agreement dated 23.05.2023. The loan was agreed to be repaid at an annual interest rate of 15% over a period of 40 months, commencing from 31.07.2023.
3. The CD has defaulted on its obligations under the Loan Agreement, failing to make payments from 31.07.2023 to 31.03.2024, i.e. for a period of 9 months. The total due as on 31.03.2024 is Rs.1,32,67,534/- while the total unpaid loan amount along with 9 monthly instalments is Rs.1,22,50,000/- and interest due is Rs.10,17,534/-.



4. The Record of Default (**RoD**) was filed by the FC on 21.03.2024, and the Information Utility, M/s.National E-Governance Services Limited (**NeSL**) authenticated a total outstanding amount of Rs.1,25,67,295/- and a default amount of Rs.25,67,295/- as on 04.04.2024.
5. It is submitted that the FC issued a Demand Notice to the CD on 14.02.2024, demanding a sum of Rs.25,67,295/- alongwith the Principal Amount of Rs.1,00,00,000/-. Despite the demand notice, the CD failed to remit the required payment. Consequently, the FC filed the present Petition on 29.04.2024.

III. Counter

1. The present Petition is filed with the intent to recover the dues, however, it is devoid of merit due to pre-existing disputes between the FC and the CD.
2. The FC is a Limited Liability Partnership (**LLP**) involved in storage and warehousing activities. The loan, however, was provided in contravention of the objects clause of the FC, rendering it void ab initio.
3. The Demand Notice issued by the FC was not received by the CD, and the FC has failed to provide postal receipts or acknowledgments to support service of the Notice.
4. The FC also failed to submit the necessary bank statements, which are required for filing a Section 7 Petition under the Insolvency and Bankruptcy Code (IBC), 2016, to substantiate the debt. The CD relies on the judgment of the Hon'ble Supreme Court in *Vidarbha Industries Power*



Ltd. v. Axis Bank Ltd. [(2022) 8 SCC 352] to argue that this Adjudicating Authority has the discretion to reject the Petition as incomplete.

5. The CD started its business by availing credit facilities from various sources. Revenue generation by the CD is evident from its profit and loss account for the financial year 2023-24.
6. Therefore, the present Petition is liable to be dismissed with exemplary costs imposed.

IV. Written Submissions by the Petitioner/FC

1. The FC reiterated the averments made in the Petition and relied upon the judgment of the Hon'ble Supreme Court in *Innovative Industries vs. ICICI Bank Limited* to emphasize that the Adjudicating Authority's role is to ascertain whether a debt exists and whether a default has occurred.
2. The FC also placed reliance on the Order of this Tribunal in *M/s. Aventine Software Private Ltd. vs. Baron Infotech Ltd. [C.P (IB) No. 164 of 2023]*, asserting that similar facts were present in that case.

V. Written Submissions by the Respondent/CD

The CD reiterated its contentions from the counter-affidavit and relied on the Order of the Hon'ble NCLAT in *D.S Kulkarni And Company vs. Mr. Manoj Kumar Agarwal & Ors. (2024)*, asserting that MOU and ledger extracts alone are insufficient to substantiate a financial debt claim.



VI. Findings

1. It is an admitted position that the FC and the CD entered into a Loan Agreement dated 23.05.2023 for a sum of Rs. 1,00,00,000/- repayable over a period of 40 months at the agreed rate of interest.
2. The loan amount of Rs.1,00,00,000/-, being repayable with interest in 40 instalments, constitutes a financial debt within the meaning of Section 5(8) of the IBC. The records show that the money was borrowed against the payment of interest, thereby fulfilling the element of consideration for time value of money. However, for initiating proceedings under Section 7 of the Code, the amount of default must exceed the minimum threshold specified under Section 4.
3. As per the case of the Petitioner, the CD defaulted on the first instalment due on 31.07.2023, which is claimed as the date of default. As per the Financial Creditor's own admission in the Petition, the total amount in default as on 31.03.2024 is Rs.1,32,67,534/-, comprising principal of Rs.1,22,50,000/- and accrued interest of Rs.10,17,534/-.
4. However, the authenticated RoD filed with the NeSL on 21.03.2024 reflects the defaulted amount as Rs.25,67,295/- and the total outstanding as Rs.1,25,67,295/- as on 31.07.2023. This reveals a material discrepancy between the default amount recorded in the NeSL filing and the amount claimed in the Section 7 Petition.



5. Under Section 7(3)(a) of the IBC, a Financial Creditor is required to furnish a Record of Default from the Information Utility. In *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. [(2019) 4 SCC 17]*, the Hon'ble Supreme Court held that such record is only *prima facie* evidence of default, albeit rebuttable. Therefore, it was incumbent upon the Applicant to reconcile this inconsistency and substantiate the actual amount in default through cogent and corroborative evidence.
6. If the record of NeSL is to be taken as the basis for determining the default, the defaulted amount of Rs.25,67,295/- is significantly below the threshold limit of Rs.1,00,00,000/- as mandated under Section 4 of the IBC.
7. The Petitioner seeks to overcome this discrepancy by relying on Clause 6 of the Loan Agreement (**Annexure-1**), which contains an acceleration clause. The relevant clause reads:

Default

“6. Notwithstanding anything to the contrary in this Agreement, if the Borrower defaults in the performance of any obligation under this Agreement, then the Lender may declare the principal amount owing and interest due under this Agreement at that time to be immediately due and payable.”

8. In *Koncentric Investments Limited & Anr. vs. Standard Chartered Bank & Anr., Company Appeal (AT) (Insolvency) No. 911 of 2021*, decided on 27.01.2022, the Hon'ble NCLAT held that although a Financial Creditor is entitled to file a Petition under Section 7 upon default, it is neither mandatory nor necessary to do so on the first instance of default. The statutory requirement is that the default must have occurred within three years prior to the filing of the Petition.



9. It is settled law that the existence of an acceleration clause gives the lender the discretion to declare the entire outstanding loan amount as immediately due upon default of any obligation. However, the presence of such a clause does not imply that the entire amount becomes automatically due upon a single default. The language used in Clause 6—specifically the word "*may declare*"—indicates that the clause requires affirmative action on the part of the lender to invoke it.
10. Therefore, in the absence of a proper and proven invocation of the acceleration clause, only the defaulted instalment(s) can be treated as a 'default' under Section 3(12) of the IBC for the purposes of satisfying the threshold under Section 4.
11. Accordingly, the validity of the Petitioner's claim to treat the entire outstanding loan amount as defaulted hinges on whether the acceleration clause was duly and effectively invoked in accordance with the terms of the Agreement. Such invocation must be supported by clear, cogent evidence of communication to the Corporate Debtor.
12. The notice dated 14.02.2024 (**Annexure-4**), purportedly issued under the acceleration clause, states that due to non-payment of seven instalments of Rs.2,50,000/- each along with accrued interest of Rs.8,17,295/- (aggregating to Rs.25,67,295/- as of 31.01.2024), the entire loan amount along with interest would become due and payable. However, the Corporate Debtor has denied receipt of the said notice. The burden of proving the invocation of the acceleration clause—by way of evidence demonstrating that the demand notice was duly communicated—lies on the Applicant. In the absence of such proof, it cannot be held that the entire



loan amount became due and payable. Consequently, the default, for the purposes of Section 7, remains confined to the instalments actually unpaid and duly established as defaulted.

13. Given the discrepancies in the default amount and the lack of proof regarding service of the notice (**Annexure-4**), we are of the view that the present Petition appears to be filed primarily for the purpose of recovery, rather than for triggering Insolvency Resolution under the Code.

14. Therefore, based on the above observations, this petition is hereby dismissed.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)