

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 115/PB/2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

CFM Asset Reconstruction Private Limited

Registered Office at:

A/3, 5th Floor, safal Profitaire,
Near Prahlad Nagar Garden,
Ahmedabad – 380015

Also at

1st Floor, Wakefield House,
Sprott Road, Ballard Estate,
Mumbai - 400038

...Applicant/Financial Creditor

Versus

M.G. Finvest Private Limited

Registered Office at:

98, Shahzada Bagh, Industrial Area,
Old Rohtak Road, Delhi - 110035

...Respondent/Corporate Debtor

Order Delivered on: 24.01.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (J)

DR. SANJEEV RANJAN, HON'BLE MEMBER (T)

Appearances:

For the Applicant: Mr. P. Nagesh, Sr. Adv. with Mr. Arijit
Mazumdar, Ms. Akanksha Kaushik, Mr.
Akshay Sharma, Advs.

For the Respondent: Ms. Udit Singh, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The instant Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by M/s. CFM Asset Reconstruction Private Limited (“applicant”), a company incorporated under the Companies Act, 2013 and registered with Reserve Bank of India as a Securitization and Asset Reconstruction Company pursuant to Section 3 of SARFAESI Act, 2002 (hereinafter referred to as ‘Financial Creditor’), represented by Shri Kartik Dhir, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s M.G. Finvest Private Limited (“Corporate Debtor”).
2. The Corporate Debtor was incorporated on 24.07.2007, having CIN: U65923DL2007PTC166212 under the Companies Act, 1956. Its registered office is at 98, Shahzada Bagh, Industrial Area, Old Rohtak Road, Delhi - 110035. Since, the registered office of the Corporate Debtor is situated at Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent Corporate Debtor under sub-section (1) of Section 60 of the Code. The Authorised Share Capital of the Corporate Debtor is Rs. 2,00,00,000 (Two Crores). The Paid-Up Capital of the Corporate Debtor is Rs. 2,00,00,000 (Two Crores).
3. The present petition was filed on 25.09.2021 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of Rs. 1025,53,60,198.71/- (Rupees One Thousand Twenty-Five Crore Fifty-Three Lakh Sixty Thousand One Hundred Ninety-Eight and Seventy-One Paise only).

The averments made by the applicant in the application and argued by the Ld. Counsel for the applicant are summarized hereunder: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) The M/s. Action Ispat & Power Pvt. Ltd. (“Principal Borrower”) had availed various credit facilities from the consortium of banks including State Bank of India (“SBI”) and other banks from 5 February 2007 to 2012. MG Finvest Pvt. Ltd. (“Corporate Debtor”) is one of the guarantors of the financial facilities availed by the Borrower. The Petitioner is the assignee of SBI.
 - b) Around 2013, the Principal Borrower was unable to repay its debts and owing to the request of the Borrower, a Master Restructuring Agreement was entered on 30 September 2013. The applicant further submits that a Deed of Guarantee was executed by Corporate Debtor in favour of the Borrower. Corporate Debtor being a Guarantor had executed a Deed of Guarantee in favour of SBICAP Trustee Company Limited being the security trustee for the benefit of all the lenders.
 - c) On 12.06.2015, a Second Supplemental and Amendatory Master Restructuring Agreement was executed between the Borrower and the Lenders including Supplemental and Amendatory Deed of Guarantee for guaranting the due repayment of the restructured loans to the Banks, A Supplemental and Amendatory agreement for Pledge of shares in favour of SBICAP Trustee Company Limited and A Share Pledge Power of Attorney was executed with Corporate Debtor as the ‘Pledgor’ in relation to 2,35,00,000 shares of Rs. 10/- each of Borrower.
 - d) The Principal Borrower continued to default on its obligations to repay the outstanding amount and SBI classified the account of the Borrower as doubtful category 2 and the debt of the Borrower was classified Non-Performing Assets with effect from 31 March 2013, in accordance with the directives/guidelines relating to asset classifications issued by the RBI

consequent to the default committed by Borrower and its Guarantors (which Included Corporate Debtor) in repayment of principal debt and interest thereto.

- e) SBI had issued demand notice upon borrower and its guarantors (including Corporate Debtor) calling upon them to repay the outstanding amount of Rs. 672,04,53,823.33/- as on 31 July 2017 and no reply to the said notice was received either on behalf of the Borrower or its guarantors.
- f) The SBI and the Applicant had executed an Assignment Agreement dated 18 January 2021 (“Assignment Agreement”), by virtue of which SBI had assigned its rights, title and interest in the financing documents, all agreements, deed and documents related thereto and all collateral and underlying Security interest and/or pledges created to secure, and/or guarantees issued in respect of the repayment of the Loans extended to the Borrower, to the Applicant (M/s. CFM Asset Reconstruction Private Limited) and the charge was modified and registered in favour of the applicant on 16.04.2021 to that effect.
- g) As default continued a Section 7 Petition C.P. (IB) No. 1096/2018 was filed by SBI against the Principal Borrower and the same was admitted by the Hon’ble Principal Bench of this Hon’ble Tribunal on 23 March 2022. Section 7 petitions were also filed against other guarantors of Action Ispat & Power Pvt. Ltd. (Principal Borrower) i.e., Micro Stock Holding Pvt. Ltd. and Nikhil Footwear Pvt. Ltd. The Section 7 petition against Micro Stock Holding Pvt. Ltd. was admitted by the Adjudicating Authority on 11 May 2022 and against Nikhil Footwear Pvt. Ltd. was admitted by the Ld. Adjudicating Authority on 28 February 2023.
- h) The Applicant for the purpose of proving the existence of debt, consequential default, acknowledgement of debt, have annexed the following document with the instant application: -

- i. Copy of Master Restructuring Agreement executed between the Borrower and the Lenders dated 30 September 2013.

- ii. Copy of Inter Se Agreement executed between SBI, Lenders and SBICAP Trustee Company Limited dated 30 September 2013.
- iii. Copy of Term Loan Agreement dated 30 September 2013.
- iv. Copy of Security Trustee Agreement dated 30 September 2013.
- v. Copy of Letter of Authority in favour of State Bank of India dated 30 September 2013.
- vi. Copy of Confirmation by Borrower to Inter Se Agreement dated 30 September 2013.
- vii. Copy of Deed of Hypothecation executed by the Borrower dated 30 September 2013.
- viii. Copy of Undertaking by Borrower in favour of lenders dated 30 September 2013.
- ix. Copy of Deed of Guarantee executed by Corporate Debtor dated 30 September 2013.
- x. Copy of Undertaking by Promoters of Borrower (including Corporate Debtor) in favour of Lenders dated 30 September 2013.
- xi. Copy of Agreement for Pledge of shares dated 23 November 2013.
- xii. Copy of Share Pledge Power of Attorney executed by Corporate Debtor dated 23 November 2013.
- xiii. Copy of Deed of Guarantee dated 1 October 2014 executed by Corporate Debtor.
- xiv. Copy of Second Supplemental and Amendatory Master Restructuring Agreement dated 12 June 2015.
- xv. Copy of Second Supplemental and Amendatory Agreement to Inter Se Agreement dated 12 June 2015.
- xvi. Copy of Confirmation by the Borrower to the Supplemental and Amendatory Agreement to Inter Se Agreement dated 12 June 2015.
- xvii. Copy of Letter of Authority by the Lenders in favour of SBI as the Lead Bank dated 12 June 2015.
- xviii. Copy of Supplemental and Amendatory Trust and Retention Account Agreement dated 12 June 2015.
- xix. Copy of Supplemental and Amendatory Security Trustee Agreement dated 12 June 2015.
- xx. Copy of Supplemental and Amendatory Deed of Guarantee to Deed of Guarantee.
- xxi. Copy of Supplemental and Amendatory Agreement for Pledge of Shares dated 12 June 2015.
- xxii. Copy of Share Pledge Power of Attorney executed by Corporate Debtor dated 12 June 2015.

The defence placed by the Corporate Debtor in its reply and submissions made and argued by the Learned Counsel of the Corporate Debtor are summarized hereunder: -

5. The details of the submissions made by the Corporate Debtor are as follows:
 - a) The applicant does not fall under the ambit of 'Financial Creditor' under Section 5(7) of the Code, 2016 as the Assignment Agreement/Deed dated 18.01.2021, executed between State Bank of India (SBI) and the Applicant is not enforceable on the pretext that the same is not registered under Section 17 of the Registration Act, 1908 and become futile as per Section 49 of the Registration Act, 1908. Therefore, the alleged Assignment Deed relied by the Financial Creditor does not legally assign the Debt to the Financial Creditor, and hence, the Financial Creditor is not a 'Financial creditor'.
 - b) There exists no Privity of Contract between the Applicant and the Corporate Debtor since the deed of guarantee dated 30.09.2013 was executed in favour of SBICAP Trustee Company and can be enforced only by the Security Trustee, only after consultation with all the lenders. The Corporate Debtor adds that since there is no privity of contract between the Applicant and the Corporate Debtor, no action can be taken by the Applicant against the Respondent as the Deed of Guarantee was issued in favour of SBICAP Trustee.
 - c) The Financial Creditor/Applicant has made Mala-fide Attempt to file duplicate claims with respect to same debt, on same facts and for the same default. It is pertinent to note that vide order dated 22.03.2022 in C.P. (IB)/1096/PB/2018, the CIRP was commenced against the Principal Borrower (M/s. Action Ispat Limited) and claim for the amount of default claimed in the instant application has been duly admitted in the ongoing CIRP of M/s. Action Ispat Limited, principal borrower.

d) The Corporate Debtor submits that in terms of Section 7 of the Code, 2016, the Applicant has failed to mention the “Date of Default” in Part-IV of Form I which is essential not only to ascertain the quantum of debt but also for the purposes of Limitation. The applicant merely referred to the outstanding debt as on the date of filing of the application and in terms of Section 215 the applicant further failed to furnish the said record of default.

Rejoinder by the Applicant/Financial Creditor: -

6. The Applicant had filed rejoinder to the reply submitted by the Corporate Debtor. The submissions of the Applicant in the rejoinder and argued by the Learned Counsel of the Applicant are summarized hereunder: -

a) The Assignment Agreement dated 18 January 2021 executed between the Petitioner and the State Bank of India (SBI) is valid and legally enforceable as per the Law and it cannot be negated merely on the pretext of non-registration of the Document. It is asserted that Section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI”) particularly exempts from stamp duty as per Section 8F of the Indian Stamps Act, 1899. Therefore, the Assignment Agreement dated 18 January 2021 is legally enforceable and petitioner is Financial Creditor in terms of Section 5(7) of the Code, 2016. Further, the Adjudicating Authority in C.P. (IB) No. 1096/2018 and C.P. (IB) No. 108/2022 have also admitted the same Assignment Agreement against the Principal Borrower and the other Guarantor.

b) The existence of debt and default committed by the Corporate debtor is already been established by the Principal Bench in Insolvency Petition C.P. (IB) No. 1096/2018 filed against the Principal Borrower. Therefore, in terms of Regulation 2A(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for the Corporate Debtor) Regulations, 2016, the Default of the Corporate Debtor is liable to be admitted.

- c) The SBI has absolutely assigned and transferred all of its rights in the credit facilities extended to the Borrower along with all underlying security interests to the Applicant vide Assignment Agreement dated 18.01.2021. The Applicant adds that by virtue of the Assignment Agreement, the Applicant has stepped into the shoes of the erstwhile Financial Creditor (SBI) and can enforce such Security Interests, Pledges and/or Guarantees and appropriate the amounts realized towards the Debt.
- d) Section 128 of the Indian Contract Act, 1872 stipulates that the liability of the guarantor/surety is co-extensive with that of Principal Debtor. Therefore, the Petitioner can rightfully enforce its rights against the Corporate Debtor. The liability of the Corporate Debtor cannot be extinguished or ignored merely because CIR Proceedings has already been initiated against the Principal Borrower.
- e) The date of default is 29.08.2017 i.e., date on which the demand notice upon the Borrower and its guarantor (including Corporate Debtor) calling upon to repay the outstanding amount was issued, however, the Principal Borrower as well as the Corporate Debtor had failed to repay the amount. As per the provisions of the Code, 2016, the limitation would be over on 29.08.2020, however, the period from 15.03.2020 to 28.02.2022 is excluded in view of the Hon'ble Supreme Court order dated 10.02.2022 in *Suo Moto W.P.(C) No. 3 of 2022*.

Analysis and Findings

7. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.

8. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and “default” with respect to such debt as envisaged under Section 3 of the Code, 2016 and whether the Financial Creditor is qualified to initiate Section 7 Application against the corporate Debtor.
9. In the present case, it is observed that the Corporate Debtor has raised an objection on the status of the Applicant as “Financial Creditor” under Section 5(7) of the Code, 2016 on the ground that the Assignment Agreement dated 18.01.2021 executed between the SBI (original borrower) and Applicant is not legally enforceable and there exist no privity of contract between the Applicant and the Corporate Debtor.
10. We are of the considered view that the assignment of debt essentially being a transaction between the Creditor and the Assignee and assignment being recognized by the Code, 2016 as a valid mode of transfer of rights across the ambit of Section 5(7) of the Code, therefore, the entity who received the said assignment of debt falls within the fold of “Financial Creditor”. Further, Hon’ble NCLAT in **Lalan Kumar Singh v. Phoenix ARC (P) Ltd., [2018 SCC OnLine NCLAT 835]** observed that the declaration of Assignment Agreement is essentially a civil proceeding. The relevant extract is reproduced below:

“19. In the present case we find that the appellant has sought declaration that the assignment made by HSBC to ‘Phoenix’ as illegal, which can be raised only in a civil suit. The appellant is trying to convert the proceedings under the ‘I&B Code’ as civil proceedings akin to a trial which is not the legislative intent”

11. The Corporate Debtor has relied upon **Palm Products Pvt. Ltd. Vs T.V.L. Narsimha Rao & Anr. C.A. (AT)(INS) No. 809 of 2020** to submit that if an assignment deed is not registered, it cannot fall within the ambit of claim and consequently, will not fall within the ambit of debt under the Code. On a perusal of given citation, the issue is with regard to admission of claim by the Resolution Professional not for admission of an application filed under Sec 7 of the Code, 2016.

12. As regards to the Corporate Debtor's contention that the Assignment Agreement dated 18.01.2021 lacks legal enforceability due to non-registration under Section 17 of the Registration Act, 1908, whereas on the other hand the Applicant contended that the Applicant being an Asset Reconstruction Company is exempted from Stamp Duty Payment under Section 5(1A) of SARFAESI Act in conjunction with Section 8F of the Indian Stamp Act, 1899, we find that Section 5 (1) of the SARFAESI Act, 2002 empowers a Bank to assign loan to an Asset Reconstruction Company and clause 1A of Section 5 of the SARFAESI Act, 2002 particularly elucidates that documents executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty. Therefore, considering the exemption provided under Section 5(1A) of SARFAESI Act, 2002 we are not inclined to accept the contention that the said assignment agreement being unregistered is not legally enforceable.
13. Proceedings under Insolvency and Bankruptcy Code, 2016 are summary proceedings and it is beyond the ambit of this Adjudicating authority to delve into the details regarding the requirement or exemption of registration of the Assignment Agreement dated 18.01.2021. Therefore, the assignment agreement cannot be challenged in the petition under Section 7 of the Code, 2016.
14. Further, the assignment does not affect the liability and obligations of the Corporate Debtor to discharge the debt. When this is so, the Applicant herein i.e., CFM Asset Reconstruction Private Limited would step into the shoes of SBI (original lender) with the Assignment Deed dated 18.01.2021 executed in its favour. The contentions raised by the Corporate Debtor is accordingly repelled.
15. From the perusal of aforesaid facts, it is clear that the applicant is a Financial Creditors and the debt owed by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. “Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”

Section 5(7) of IBC defines Financial Creditor: “Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”

Section 5(8) of IBC defines Financial Debt. “Financial Debt means a debt along with 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 maybe 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;*
- (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.”*

16. As regard to the Corporate Debtor's contention that applicant has made a mala fide attempt to file duplicate claims with respect to the same debt on same facts and for the same default, it is pertinent to note that under section 128 of the Indian Contract Act, 1872 the liability of the surety is coextensive with that of the principal debtor, unless otherwise provided under the contract. The Hon'ble Supreme Court in the matter of **Laxmi Pat Surana Vs. Union Bank of India & Anr. (2021) 8 SCC 481** wherein it was held that the liability of the 'Corporate Guarantor' is 'coextensive' with that of the 'Principal Borrower' and that acknowledgment given by the 'Principal Borrower' also binds the 'Corporate Guarantor'. The relevant extract of the said judgment is reproduced below:

*“49. The appellant was at pains to persuade us that the intention behind the communication dated 8-12-2018 sent to the financial creditor by the corporate guarantor (corporate debtor) is a triable matter, as it was sent without prejudice. We are not impressed by this submission. The fact that the principal borrower had availed of credit/loan and committed default and that the (corporate) guarantor/corporate debtor had offered guarantee in respect of the loan account is not disputed. What is urged by the appellant is that the acknowledgment of liability to pay the amount in question was by the principal borrower and that acknowledgment cannot be the basis to proceed against the corporate guarantor (corporate debtor). Section 18 of the Limitation Act, however, posits that a fresh period of limitation shall be computed from the time when the party against whom the right is claimed acknowledges its liability. **The financial creditor has not only the right to recover the outstanding dues by filing a suit, but also has a right to initiate resolution process against the corporate person (being a corporate debtor) whose liability is coextensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability.**”*

17. The Corporate Debtor failed to bring on record any document to prove that there exists any such provision in the Guarantee Agreement which provides for discharge of the surety before the entire dues guaranteed under the Guarantee Agreement are repaid. Therefore, we are of considered view that the liability of the Corporate Debtor cannot be extinguished simply because CIRP has been

initiated against the Principal Borrower. Therefore, this contention of the Corporate Debtor is overruled.

18. As regard to Corporate Debtor's contention that the date of default as relied by the applicant is 29.08.2017 i.e., the date when SBI issued demand notice upon Borrower and its guarantors (including Corporate Debtor) calling upon to repay the outstanding amount is sent after the default has taken place and not prior to that therefore, the date of default relied upon by the Applicant is not tenable, for the purpose of limitation. As far as the question of limitation is concerned, from the records, we observe that the Corporate Debtor being guarantors executed revival letters acknowledging their liability to pay the outstanding amount along with interest costs, charges and expenses and acknowledged the validity of all security documents on 16.07.2016. Further, the account of the Principal Borrower was declared as Non -Performing Asset on 31.03.2017, consequent to which SBI had issued notice dated 20.09.2017 under Section 13(2) of SARFAESI Act, 2002 and also filed an application before the DRT, New Delhi bearing OA No. 189/2018 under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 against the Principal Borrower and its Guarantor including the Corporate Debtor. In the OA No. 189/2018, the Corporate Debtor had filed its reply as well counter claim on 14.03.2019. Again, vide notice dated 29.08.2018, the SBI had issued a demand notice upon the Borrower and Guarantor calling them to repay the outstanding amount. In accordance to Section 18 of the Limitation Act, 1963, the Corporate Debtor had acknowledged its liability on 16.07.2016 by executing the revival letters, submitting reply and also by way of counter claim to the case pending before DRT, New Delhi on 14.03.2019. Be that as it may, if we take the limitation period to start running from 31.03.2017 ('Date of NPA') then the limitation would fall under the time period which has been waived by Hon'ble Supreme Court during Covid Pandemic. In the **Suo Moto Writ Petition (C) No. 3 of 2020 in Re: Cognizance for Extension of Limitation**, the Hon'ble Apex Court took Suo Motu cognizance of the difficulties that might be faced by the litigants and held that "In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of

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limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply”. The present application under Section 7 of the Code, 2016 is filed on 25.09.2021 as per the records, which is well within the extended period of limitation as declared by Hon’ble Supreme Court.

19. Thus, from the facts which are borne on record, as narrated above, we are of the considered view that the ‘financial debt’ is not barred by limitation and the submissions of the Corporate Debtor as to the present application being barred by limitation is not sustainable. Hence, in all respects the ‘debt’ as claimed by the Financial Creditor is well within the period of limitation. It is not denied that the Corporate Debtor has committed ‘default’ in repayment of the said ‘financial debt’.

20. The Hon’ble Supreme Court in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407**, held as follows :-

*“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 subsection (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 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.” “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.”*

21. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 25.09.2021, and even admittedly the debt owed to the Financial Creditor is an amount of Rs. 1025,53,60,198.71/- (Rupees One Thousand Twenty-Five Crore Fifty-Three Lakh Sixty Thousand One Hundred Ninety-Eight and Seventy-One Paise Only) which meets the threshold of Rs. One Crore.
22. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant Company Petition **IB (IBC)/115(PB) 2022** filed by the CFM Asset Reconstruction Private Limited, the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M.G. Finvest Private Limited, the Corporate Debtor, stands **admitted**.
23. That the petitioner in part-III of the petition has proposed the name of Mr. Shiv Nandan Sharma, as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IPP00384/2017-2018/10641 and E-mail ID

sharmasn@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for corporate debtor. Resolution Professional so appointed also directed to file Valid AFA along with requisite FORM 2 within the 5 days of receipt of this order.

24. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (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.*
- (e) *The IB Code 2016 also prohibits Suspension or termination of any 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, 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.*

25. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium

period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

26. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
27. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Shiv Nandan Sharma to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
28. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
29. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate

application to this Adjudicating Authority with a prayer for passing appropriate orders.

30. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
31. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
32. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./115 (PB)/2022 stands admitted.**
33. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)