



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

CP (IB)/27/KOB/2025

*(Under Section 7 of Insolvency
and Bankruptcy Code, 2016)*

Date of Institution : 02.09.2025

Order delivered on:21.11.2025

In the matter of:

M/s. Inditrade Capital Limited

MEMO OF PARTIES:

M/s. Arthan Finance Private Limited

302, 3rd floor, Building No. 2 Star Hub,
Sahar Airport Road, Andheri (East), Mumbai,
Maharashtra- 400059.

...Petitioner/Financial Creditor

-Vs-

M/s. Inditrade Capital Limited

Second Floor, MES Building. Kaloor.
Ernakulam, Kochi, Kerala, India, 682017

...Respondent/Corporate Debtor

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SMT. MADHU SINHA

Appearances:

For the Petitioner : Mr. Sachin Patil, Advocate.

For the Respondent : Ld. Counsel, Mr. Akhil Suresh, Advocate.



ORDER

Per Coram

1. This petition has been filed by the Arthan Finance Private Limited on 02.09.2025 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'the Code'), for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor viz. M/s Inditrade Capital Limited.
2. Part I of the petition sets out the details of the Financial Creditor from which it is evident that the Financial Creditor is registered under the Companies Act, 1956, as a Non-Banking Finance Company and regulated by the Reserve Bank of India. As per Part II of the petition, the Corporate Debtor is a Public Limited Company with Corporate Identification Number: L67120KL1994PLC008265 and having its registered office at Second Floor. MES Building, Kaloor, Ernakulam, Kochi, Kerala, India, 682017. Therefore, this Bench has jurisdiction to deal with this petition.
3. As per Part III of the petition, the Financial Creditor has proposed the name of Mr. Anil Kashi Drolia, IBBI Registration Number: IBBI/IPA-001/IP-P-02327/2020-2021/13482, as the Insolvency Resolution Professional. Part IV of the petition signifies the amount of debt to the tune of Rs. 1,07,29,90/- as on 31.03.2025.
4. Part V of the petition describes the particulars of Financial Debt; documents, records and evidence of default as described below:
 1. Sanction Letter dated 02.08.2023
 2. Copy of Statements of Accounts
 3. Particulars of Claim
 4. Copy of CIBIL Iteport
 5. Demand Promissory Note dated 25.07.2023 for Rs.1,50,00,000/-.



6. Declaration cum Indemnity dated 02.08.2023.
7. Deed of Hypothecation for all Facilities dated 02.08.2023.
8. Deed of Corporate Guarantee dated 02.08.2023.
9. Facility Agreement dated 31.07.2023.
10. Loan Agreement dated 02.08.2023.
11. Restructuring the facilities by letter dated 03.09.2024.
12. Restructured Deed of Corporate Guarantee dated 03.09.2024.
13. Articles of Association,
14. Memorandum of Association,
15. Demand notice along with postal receipts and email Communication between the financial Creditor and the Corporate Debtor.

Facts of the Case and Submissions made by Ld. Counsel for the Petitioner:

5. The Financial Creditor in its petition submitted that in 2023, M/s. Inditrade Rural Marketing Limited applied for a credit facility of Rs.1.50 crore for invoice financing, for which the Corporate Debtor acted as the Corporate Guarantor. Based on this guarantee, the Financial Creditor sanctioned and disbursed the facility. The Corporate Debtor executed various loan and security documents in favour of the Financial Creditor to secure the repayment obligation. Subsequently, the facility was restructured by a letter dated 03.09.2024 into a term loan of Rs.. 1,01,90,453/-, and a Restructured Deed of Guarantee was executed accordingly.
6. Further, it is submitted that the Corporate Debtor has failed to discharge its liability under the guaranteed credit facility, as a result of which the account was classified as a Non-Performing Asset on 31.03.2025. Consequently, the Financial Creditor has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor, who had executed the corporate guarantee securing the said financial facility.



Submissions on behalf of the Respondent: -

7. The Respondent in the reply affidavit submitted that the petition filed by Arthan Finance Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016, is not maintainable in law or on facts and deserves to be dismissed at the threshold. The Respondent contends that the petition is misconceived, filed in abuse of legal process, and lacks proper jurisdiction. It is further submitted that the petition is based solely on an alleged corporate guarantee purportedly executed by the Respondent for credit facilities availed by a separate legal entity, Inditrade Rural Marketing Limited, and is therefore unsustainable.
8. The Respondent stated that the Petitioner's claim of an alleged default amounting to Rs. 1,07,66,113.40 is incorrect, inflated, and artificially computed to meet the statutory threshold of Rs. 1 crore under Section 4(1) of the Insolvency and Bankruptcy Code, 2016. The Respondent contends that only the principal amount disbursed and lawfully accrued interest can constitute a "financial debt" under Section 5(8) of the Code. The inclusion of unapplied interest, penal charges, and fees is neither supported by the Facility Agreement nor the Corporate Guarantee and is therefore unjustified. Once these inadmissible components are excluded, the alleged default reduces to about Rs. 97 lakhs, which is below the minimum threshold, rendering the present petition not maintainable in law.
9. The Respondent submitted that the Petitioner has wrongly included "fees" and "penal charges" along with applicable GST in its computation of the alleged debt, without providing any proof of payment or accounting of such GST. The petition does not disclose whether the Petitioner has fulfilled its statutory obligation to remit GST to the Government, and the ledger extracts filed do not reflect any GST entries or supporting documentation. In the absence of



invoices, tax returns, or evidence of GST payment, these amounts are fictitious and cannot form part of a legally recoverable debt. The Respondent, therefore, calls upon the Petitioner to strictly prove such claims, failing which these components must be excluded from the computation of default.

10. The Respondent submits that the Petitioner continues to hold a cash collateral of Rs. 15,00,000/- under Clause 5.4 of the Facility Agreement, which was meant to be adjusted against any losses or defaults before invoking the corporate guarantee. Since the Petitioner has neither adjusted nor accounted for this amount, there exists no subsisting “default” within the meaning of Section 3(12) of the Code. After giving effect to this adjustment, the alleged outstanding reduces to Rs. 92,66,113.40/-, which is below the statutory threshold under Section 4(1) of the Code. Furthermore, as per the Reserve Bank of India’s Master Directions on Securitisation of Standard Assets and Co-Lending by Banks and NBFCs, such cash collateral should have been maintained as a lien-marked fixed deposit earning interest. The Petitioner’s failure to structure and credit the collateral in the prescribed RBI manner not only breaches prudential norms but also results in unjust enrichment, as both the principal and accrued interest on the collateral should have been set off before alleging default.
11. The Respondent submits that the Petitioner’s computation of the alleged default amount is inconsistent and contradictory. While the Synopsis of the petition claims a default of Rs. 1,07,66,113.40/-, Part IV of Form-1 mentions Rs.1,07,29,900/-. This discrepancy shows a clear lack of application of mind and uncertainty on the part of the Petitioner regarding the actual quantum of debt. Such inconsistency goes to the root of the matter, as the Adjudicating Authority must be satisfied about a definite amount of default exceeding ₹1 crore under Section 7 of the Code. The internal mismatch demonstrates that



the petition has been mechanically prepared without proper verification and is therefore liable to be dismissed at the threshold.

12. The Respondent further submits that the present petition is not maintainable for want of proper authorisation. The petition has been filed through Mr. Suhas Haribhau Navale without enclosing any Board Resolution under Section 179(3)(f) of the Companies Act, 2013 authorising the initiation of proceedings under Section 7 of the Code. A mere letter of authority does not fulfil this statutory requirement. Since the power to institute legal proceedings must flow from the Board of Directors and not from an individual officer, the absence of such a resolution renders the petition defective, incompetent, and liable to be dismissed at the threshold.
13. The Respondent further submitted that the Facility Agreement dated 31.07.2023 and the Sanction Letter dated 02.08.2023 clearly show that the loan was disbursed exclusively to Inditrade Rural Marketing Limited (IRML), with the Respondent not being the recipient of any funds. The agreement defines IRML as the “Borrower” and Inditrade Capital Limited as the “Co-Borrower,” and all disbursements were made to IRML’s designated accounts. Since the Respondent neither received any loan amount nor any financial consideration from the Petitioner, it cannot be regarded as a “corporate debtor” under Section 3(8) read with Section 5(8) of the Code. Accordingly, the petition is not maintainable for want of a subsisting financial debt against the Respondent.
14. The Respondent submitted that the alleged Corporate Guarantee has not been formally invoked as required, so no liability has arisen and no “default” exists under the Insolvency and Bankruptcy Code. The Petitioner's claim of default and NPA is also disputed, as no proper evidence like bank certificates or records from an Information Utility has been provided. The only documents



submitted are internal account statements, which are not enough to prove default. Therefore, the petition is premature and not maintainable.

15. The Respondent stated that the authorisation for the proposed Resolution Professional has expired and no valid consent has been produced, making the petition unsupported and not in compliance with Section 7(3)(b) of the Code and Rule 9 of the Adjudicating Authority Rules. Additionally, the inclusion of penal charges, unapplied interest, and service fees in the alleged default is incorrect. Penal interest under the Facility Agreement applies only after a notice of default, which has not been issued, and processing or other charges were payable only before disbursement. Therefore, the Petitioner's calculation is inflated and not supported by the contract.
16. The Respondent submitted that merely having a guarantee does not make the guarantor liable for insolvency proceedings unless the guarantee has been formally invoked and the debt remains unpaid, as held by the *Supreme Court in Laxmi Pat Surana v. Union Bank of India (2021)*. The present petition relies on internal accounting entries, expired authorisations, uninvoked guarantees, and inflated calculations, and therefore no clear, undisputed financial debt exists. Even if some debt were assumed, admission under Section 7 is discretionary, not automatic, and the Tribunal must consider factors like bona fide disputes, existing securities, and alternative remedies, all of which weigh against admitting this petition.
17. The Respondent further submitted that the present petition is a clear abuse of the insolvency process, filed not to resolve insolvency but to coerce payment of disputed and uncrystallised claims. The Petitioner has inflated the debt, failed to invoke the guarantee, and ignored existing cash collateral. This conduct demonstrates mala fide intent, contrary to Section 65 of the Code, and amounts to misuse of the insolvency mechanism, as highlighted by the Supreme Court in



Phoenix ARC Pvt Ltd. v. Ketulbhai Ramanlal Patel (2021). The petition is therefore without merit, unsupported by evidence, and fails to meet the requirements of Sections 4 and 7 of the Code, warranting dismissal and imposition of appropriate costs on the Petitioner.

Submissions on behalf of the petitioner in the rejoinder states as follows:

18. The petitioner submitted that the Respondent's objections to the maintainability of the petition are wholly without merit. The Petitioner, Arthan Finance Private Limited, is a duly registered NBFC and a financial creditor under Section 5(7) of the Code, having extended credit facilities to Inditrade Rural Marketing Limited (IRML). The Respondent executed a Corporate Guarantee in favor of the Petitioner, and upon default by IRML, became a corporate debtor under Section 3(8) read with Section 5(8)(i) of the Code. The Hon'ble Supreme Court in *K. Paramasivam v. The Karur Vysya Bank Ltd.* (2022) 18 S.C.R. 100 held that a financial creditor can initiate CIRP against a corporate guarantor without first suing the principal borrower, as the guarantor's liability arises co-extensively with the borrower. Similarly, in *Laxmi Pat Surana v. Union Bank of India* (2021) 2 S.C.R. 924, the Court held that Section 7 permits a financial creditor to proceed against a corporate guarantor once the principal borrower defaults. The Respondent's claims of "abuse of process" or non-maintainability are factually incorrect, legally untenable, and made with mala fide intent to evade lawful contractual obligations. All jurisdictional requirements for initiating the petition under Section 7 of the Code are fully satisfied, and the petition is maintainable both in fact and law.
19. The petitioner stated that the Respondent's claim that the alleged default falls below ₹1 crore under Section 4(1) of the Code is legally unsustainable and contrary to the documentary evidence on record. The Petitioner relies on the judgments of the Hon'ble Supreme Court in *Global Credit Capital Ltd. v. Sach*



Marketing Pvt. Ltd. (2024), Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd. (2022), and China Development Bank v. Doha Bank Q.P.S.C. (2024), which establish that the existence of a financial debt and default is sufficient for initiating proceedings under the Code, irrespective of the quantum of debt, and that the definition of financial debt under Section 5(8) is inclusive and not exhaustive.

20. The petitioner further submitted that the Respondent's allegation regarding non-production of GST payment proof is wholly misconceived and legally irrelevant. The petitioner is a duly registered NBFC, fully compliant with all tax laws, including the Income Tax Act, 1961, and the GST Act, 2017, maintaining proper statutory records, invoices, challans, and returns, which are available for inspection. Importantly, GST compliance is not a jurisdictional requirement under Section 7 of the Code for establishing the existence of a financial debt or default, as held by the Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank (2017)*. The Section 7 petition has been duly accompanied by documents evidencing debt and default. Further, the Respondent is estopped from raising this objection, having acknowledged its liabilities under the Restructuring Agreement and Corporate Guarantee dated 03.09.2024 without any reservation regarding GST. The Respondent's objection is a belated, diversionary, and frivolous attempt to deflect from its contractual default and deserves to be rejected with costs. Furthermore, it is stated that the Respondent's claim that cash collateral of ₹15,00,000/- is available for adjustment is wholly incorrect and unsupported by any record.
21. The Petitioner submitted that the Respondent's reliance on RBI Master Directions on Securitisation, Co-Lending, and Default Loss Guarantee is wholly misplaced and legally irrelevant. The present transaction is a standard bilateral Supply Chain Finance facility by an NBFC, with the petitioner as the direct



lender bearing credit risk. The cash collateral of ₹15,00,000/- is a simple security deposit, not a Default Loss Guarantee, and there is no contractual or legal basis for claiming interest thereon. The RBI guidelines cited apply only to digital lending and are inapplicable to this transaction. The Respondent's contentions are factually incorrect, legally untenable, and intended to mislead the Tribunal.

22. The Petitioner further submitted that the Respondent's allegation of internal inconsistency in the claim amount is baseless. Any minor variations in figures arise from daily/monthly accrual of interest at the contractual rate of 24% per annum due to the Respondent's continued default. In any case, the outstanding debt far exceeds Rs. 1 crore, satisfying the statutory threshold under Section 4(1) of the Code. Furthermore, it is stated that the Respondent's objection regarding authorization is factually and legally incorrect. The petitioner is duly authorized to file this petition and Rejoinder Affidavit, as evidenced by the Letter of Authority dated 10.01.2025. Specific board resolutions for each proceeding are not required by law, and this technical objection does not affect the existence of the debt or default.
23. The Petitioner stated that the Respondent's contention of not receiving funds from the Petitioner is irrelevant. By executing the Corporate Guarantee dated 02.08.2023 (restructured on 03.09.2024), the Respondent assumed independent liability for repayment of the loan. Under Section 5(8)(i) of the Code, the guarantor's obligation constitutes a financial debt, regardless of whether the funds were disbursed directly to it. Further, it is submitted that there is no legal requirement to "invoke" a guarantee in writing before filing a Section 7 petition. The Respondent's liability as Corporate Guarantor is co-extensive with the principal debtor under Section 128 of the Indian Contract Act, 1872, and arose automatically upon IRML's default. Multiple demand



notices, including the Demand Due dated 04.10.2024, were issued to both IRML and the Respondent, establishing that proper demands for payment were made.

24. The Petitioner stated that the Respondent's objections regarding evidence of default and authorization of the Resolution Professional are misconceived. The petitioner has furnished ample evidence of default, including the Restructuring Letter, Corporate Guarantee, Demand Due, emails, and payment confirmations. Certificates under the Bankers' Books Evidence Act or records from an Information Utility are not mandatory under Section 7(3) of the Code. The proposed Resolution Professional has a renewed certificate dated 09.06.2025, and any prior authorization defect is curable and does not affect the maintainability of the petition.
25. The Petitioner further submitted that the debt, including principal, additional interest at 24% per annum on overdue amounts, and processing fees, is clear, undisputed, and crystallized under the Restructuring Agreement dated 03.09.2024, acknowledged by both IRML and the Respondent Corporate Guarantor. The first EMI was due on 04.10.2024, and only a partial payment of ₹12,21,137/- was made on 08.01.2025, leaving the balance unpaid despite repeated demands. The petition is neither premature nor an abuse of process and is filed after default and failed attempts at amicable resolution.
26. The Petitioner submitted that the petition fully complies with Sections 4 and 7 of the Code, with a financial debt exceeding ₹1 crore, clear default by the borrower and Corporate Guarantor, a valid guarantee, sufficient documentary evidence, and proper authorization. The petition is filed for legitimate recovery of dues after the petitioner's repeated concessions, including loan restructuring, waiver of fees, extended repayment, and multiple opportunities to pay, were ignored, leaving no option but to initiate these proceedings.



FINDINGS: -

27. At the time of final hearing, counsel for both parties argued at length, and the arguments have been reproduced in the order dated 14.11.2025.

“CP(IB)/27/KOB/2025

Ld. Counsel, Mr. K. B. Arunkumar, appears physically before this Tribunal on behalf of the Petitioner/Financial Creditor. Ld. Counsel, Mr. Akhil Suresh, appears physically before this Tribunal on behalf of the respondent through virtual mode.

With the concurrence of both sides, the case is taken up for final hearing. Counsel for the Petitioner argued his case, and this Tribunal put a specific query as to whether there is any demand notice or invocation of the bank Guarantee executed on 03.09.2024. In response, learned Counsel for the Petitioner submitted that both the borrower and guarantor are jointly liable and their liability is co-extensive, so we can proceed against the guarantor. Then this Tribunal again insisted on whether the Petitioner has placed on record any document for the invocation of the bank guarantee. Counsel for Petitioner sought short pass over. At the request of counsel for the Petitioner, case is passed over for half an hour.

Ld. Counsel, Mr. K. B. Arunkumar, appears physically before this Tribunal on behalf of the Petitioner/Financial Creditor. Ld. Counsel, Mr. Akhil Suresh, appears physically before this Tribunal on behalf of the respondent through virtual mode.

At this stage, the matter has been taken up after half an hour. In response to the query of this Tribunal, Counsel for the Petitioner submitted that no demand notice was issued after the guarantee agreement dated 03.09.2024, and that the bank is relying on Annexure Q at page 318. He further submitted that the petition has been filed under Section 7, and therefore, issuance of a demand notice is not mandatory.

Counsel for the Petitioner Bank fairly admitted that the Bank has not produced any NeSL report. He further clarified that the respondent has admitted its liability. It was also submitted that the respondent committed default and had paid only one instalment, five months after the restructuring.

Counsel for the Petitioner submitted that there is no threshold requirement and that the cash collateral of Rs.15 lakhs have not been adjusted. He further submitted that the invocation of the guarantee has been made, as reflected in the recital at page No. 178 of the CP.



Both parties are permitted to file written submission within 24 hours.

Reserved for Orders.

28. The respondent in the present case has taken vivid and multifold defences, but before proceeding further, we would like to take up the defence taken by the respondent regarding the invocation of the guarantee, as it goes to the root of the matter. Therefore, whether there is a valid invocation of the guarantee and whether any default exists in the present case on the part of the respondent are the key questions which require determination first, before proceeding further.
29. Having heard both sides, admittedly, this is a petition filed under Section 7 of the Code against the Corporate Guarantor to initiate insolvency proceedings. The facts of the case are required to be looked into afresh to arrive at the right conclusion. M/s. Inditrade Rural Marketing Limited, the principal borrower, approached the petitioner for financial assistance for Rs. 1.50 crore. To avail such credit facility, the principal borrower M/s. Inditrade Rural Marketing Limited and the present respondent, M/s. Inditrade Capital Limited, as Corporate Guarantor, executed loan and security documents on 02.09.2023. The principal borrower availed the credit facility but failed to observe the financial discipline of the petitioner and, accordingly, the petitioner issued a demand notice dated 11.07.2024 to the principal borrower as well as to all the guarantors, including the respondent. After the demand notice dated 11.07.2024, there was a settlement and restructuring of the loan qua the principal borrower M/s. Inditrade Rural Marketing Limited, and the guarantors, including the respondent, the principal borrower, and guarantors in their respective capacities, again executed security and loan documents on 03.09.2024. Certainly, the petitioner has preferred this petition under Section 7 of the Code, citing default.



30. The respondent filed a written statement and, in paragraph 13, took a specific defence that there was no invocation of guarantee; as such, the petition under Section 7 of the Code is not maintainable. In response thereto, the petitioner filed a rejoinder and dealt with such contentions. The relevant paragraphs of the counter and rejoinder are reproduced verbatim as under:

Paragraph 13 of the reply affidavit: -

13. The Petitioner relies on an alleged Corporate Guarantee executed on 02.08.2023 and subsequently restructured on 03.09.2024. The Respondent submits that the said documents, even if assumed to exist, have not been invoked by the Financial Creditor prior to filing the present petition. Clause 6 of the Guarantee Deed explicitly provides that "the Lender may, upon default by the Borrower and upon written demand on the Guarantor, call upon the Guarantor to pay the sums due." No such written invocation or demand has been produced along with the petition. In the absence of invocation, there can be no crystallisation of liability and no "default" as defined under Section 3(12) of the Code. The petition is therefore premature and not maintainable in law.

Relevant portion of the rejoinder filed by the petitioner: -

112. I state that there is no requirement under law that a guarantee must be "invoked" by way of a separate written demand before initiating proceedings under Section 7 of the IBC. The liability of a guarantor is co-extensive with that of the principal debtor and crystallizes upon default by the principal debtor.

113. I state that under Section 128 of the Indian Contract Act, 1872, "the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract." Once IRML defaulted in payment as per the restructured terms, the liability of the Respondent Corporate Guarantor automatically arose.

114. I state that multiple demand notices and reminders have been issued to both IRML and the Respondent calling for payment. The Demand Due dated 04.10.2024 showing EMI due amount of 12,21,137/- was communicated to both parties. Email communications between the parties clearly establish that demands for payment were made.



31. We have gone through the records. In notice dated 11.07.2024 issued by the petitioner, addressed to the principal borrower and guarantors, the petitioner raised a demand as under: -

JYOTI GANESH MESTRY
B.A., LL.B.
ADVOCATE, HIGH COURT, BOMBAY
B-001, DINESH TERRACE CHS LTD.,
B/H OLD PETROL PUMP, PARSHWANAGAR,
MIRA-BHAYANDER ROAD, MIRA ROAD (E),
THANE-401 107
CONTACT: 9920659118
E-Mail : jyotimestryandassociates@gmail.com

REF. NO. : L-6A-LRN-1/JUL/2024 SPEED POST Date : 11/07/2024

To,

- 1) Inditrade Rural Marketing Limited (Boonbox)
(Borrowers)
- 2) Mr. Anand Maliwal, Director
- 3) Brij Gopal Daga, Director
- 4) Kerachan Ayyappan Somasekharan, Director
- 5) Sairam Anuradha, CFO
- 6) Sudip Bandyopadhyay, Director
- 7) Sudhangshu Shekar Biswal, Additional Director
2nd Floor, M E S Building, Kaloor,
Kochi Ernakulam KL 682017

And also at

First Floor, Door No 18, Mussuri,
Subramaniam Salai, Mylapore, Chennai,
Tamil Nadu, 600004

Narayanan.h@boonbox.com

9037888000

AND

GUARANTORS

- 8) Inditrade Capital Limited, (Guarantors)
- 9) Mr. Anand Maliwal, Director
- 10) Brij Gopal Daga, Director
- 11) Mrs. Jhuma Guha, Director
- 12) Kerachan Ayyappan Somasekharan, Director
- 13) Radhakrishna Nair, Director
- 14) Sivanandhan Dhanushkodi, Director
- 15) Sudip Bandyopadhyay, Director
- 16) Sudhangshu Shekar Biswal, Director
- 17) Naveen Kumar Jain, CFO
2nd Floor, M E S Building, Kaloor,
Kochi Ernakulam KL 682017
Maya.menon@inditrade.com
9895213707



SUB: DEMAND NOTICE for Rs. 11402121.82.

Customer Id : 28092

Loan A/c Nos : 030140201575,

030140201581 to 030140201611,

030140201614 to 030140201642,

030140201654 to 030140201667

REF : Sanction Letter : AF/2022-23/SCF/6

Revolving Credit Agreement dated 02/08/2023

Deed of Hypothecation dated 02/08/2023

Dear Sir/Ma'am,

Under instructions from and on behalf of our client, Arthan Finance Private Limited having its registered and corporate address at 302, 3rd Floor, Star Hub Building No.2, Near ITC Maratha Hotel, Sahar, Andheri (E), Mumbai- 400 059 , I hereby address you as hereunder that:

- 1) The client, above named is a non-government company registered under the Companies Act, 2013 and carrying on business as Non-Banking Finance Company (NBFC) under License from Reserve Bank of India (RBI) having its Registered and corporate office at Star Hub Building No.2, 3rd Floor, Near ITC Maratha Hotel, Sahar, Andheri (E), Mumbai- 400 059 involved inter alia in the business of providing finance facilities.
- 2) You, the Noticee Nos. 1 to 7 above named, availed a revolving credit facility from our client vide Revolving Credit Agreement dated 02/08/2023 for the tenure of 12 months for Invoice Financing for the sanctioned amount of Rs.1,50,00,000/- (Rupees One Crore Fifty Lacs Only) at the floating interest rate at 24% p.a. along with processing fees (2%+GST) and default interest @ 3% p.a. on overdue amount over and above ROI. You Noticee Nos. 8 to 17 have also offered the cash security of Rs. 15,00,000/- vide Deed of Corporate Guarantee dated 03/08/2023. You Noticee Nos. 1 to 7 have also executed Declaration-cum-Indemnity and Deed of Hypothecation both dated 02/08/2023 along with a Demand Promissory Note dated 25/07/2023.



- 3) Based on the terms of the said agreement, the revolving credit facility was advanced against the various 75 invoices in the month of May'2024. The Outstanding amount against 75 Invoices as on 10/07/2024 is **Rs.11402121.82** (which also includes outstanding principal, interest and other penal interest charges, taxes etc. which are incidental thereto.
- 4) As per the stipulated terms and conditions envisaged in the Loan Agreement, Clause No. 19, the amounts released against the invoices was required to be repaid within the due dates as per each of the total 75 invoices as per Schedule-I of the Loan Agreement. The concerned parties have failed to discharge their liability and therefore, you all the Noticees have become liable to discharge the said liability.
- 5) You Noticee Nos. 1 to 7 have willfully defaulted in repayment of **Rs.11402121.82** and failed to discharge your legally enforceable debt and you Noticee Nos. 8 to 17 being the Guarantors for the same, you all Noticee Nos.1 to 17 have become liable to discharge the said liability jointly and/or severally which is as on date overdue.
- 6) Under these circumstances, you are hereby called upon to pay to our client the aforesaid sum of **Rs.11402121.82**. being the outstanding dues as on 10/07/2024 against the 75 invoices, within a period of fifteen (15) days of the receipt of this notice and collect the receipt for the said payment, failing which our client shall be constrained to invoke the corporate guarantee, proceed with the hypothecation and also to initiate appropriate legal proceedings before the competent Court of law to recover the due amount entirely at your own risk as to costs and consequences thereof, which please note seriously. Kindly also note that failure to repay the full amount shall further attract interest, default charges, taxes etc. as envisaged in the agreement, which please note seriously.



32. Except for the address and paragraphs 2, 5, and 6, there is no reference to the guarantors anywhere else in the notice. There is no invocation of the guarantee in clear terms. Leaving aside such technical aspects, we can say that there was a demand of the entire sum due. With stipulation that in case the noticee's fails to make payment within 15 days, the creditor shall be constrained to invoke the corporate guarantee. Thereafter, there was a restructuring of the loan, and fresh security and loan documents, including guarantee agreements, were executed on 03.09.2024. There was novation of contract. After default, no demand for invocation notice has been proved on record. Though, as per Section 128 of the Contract Act, the liability of guarantors would be joint with the principal borrower, as per the contract between the parties, there should be a valid demand by the creditor from the guarantors. The relevant clause of the guarantee agreement is read as under:

The principles of Interpretation set out in the SA shall mutatis mutandis apply to this Deed.

2. *The Guarantor hereby guarantees, as primary obligor and not merely as surety, the discharge of the Secured Obligations under the arrangement detailed in the SA and hereby irrevocably, unconditionally and unequivocally undertakes to AFPL that, the Guarantor shall, on each demand by AFPL from time to time, forthwith unconditionally and irrevocably pay to AFPL and make good all amounts demanded in respect of the Secured Obligations, without any counter-claim, set-off, protest, dispute or demur. Any such demand made by AFPI on the Guarantor shall be final, conclusive and binding notwithstanding any difference or any dispute between AFPL, Anchor and Borrower or any arbitration or other legal proceedings, pending before any court, tribunal, arbitrator or any other authority. All such payments to be made by the Guarantor shall be made forthwith upon each such demand being made and in the event of failure by the Guarantor to make payment in accordance with the terms of this Clause, the Guarantor shall pay interest thereon at the rate of Additional Interest on the amounts claimed by AFPL, from the date of the demand/ claim till the date of payment without prejudice to and in addition to any other remedies that AFPL may have against the Guarantor.*
3. *This guarantee shall act as and operate as continuing security in favour of AFPI until the Final Settlement Date, and shall not be affected or limited or released, notwithstanding: (i) any invocations or demands thereunder from time to time, any intermediate payments or settlement of account or*



accounts or satisfaction of the whole or any part of any sum or sums of money due or owing as aforesaid or otherwise (ii) the closing of any of the credit facility with AFPL which is/are subsequently reopened or the subsequent opening of any facilities by the Borrowers whether solely or jointly with any other person or persons (in partnership or otherwise); and this guarantee shall extend to cover all or any sum or sums of money which shall at any time for the time being constitute the balance due or owing under the SA from the Borrower or Anchor in relation to the credit facility present and future, including any addition, revision, inter-change, enhancement, renewal, extensions, restructurings of any of the Facilities, of the limits and/or sub-limits thereof, and payment of interest and charges thereon and all monies payable thereunder due to default. The Guarantor expressly agrees that any such addition, revision, inter-change, enhancement, renewal, extensions, restructurings, or revolving may be done without the permission of or notice to the Guarantor and the Guarantor shall be bound by the same.

33. The petitioner cannot be permitted to rely upon an earlier issued demand notice, and the petitioner cannot be allowed to file a petition under Section 7 of the Code directly against the guarantor upon commission of default by the principal borrower without invoking the guarantee in terms of the contract as per law. The invocation of the guarantee in accordance with law is mandatory before initiating any action under the Code against the guarantor. Any notice of demand issued prior to the execution of the guarantee agreement cannot be treated as a notice to invoke the guarantee under any circumstances. In the present case, the petitioner issued a demand notice on 11.07.2024; thereafter, there was a restructuring, and a fresh guarantee agreement was executed by the guarantor on 03.09.2024. Therefore, reliance on the earlier demand notice is bad in the eyes of law. There can be different dates of default for the borrower and the guarantor. Though a guarantee can be invoked only upon the commission of default, simultaneously by recalling the loan from the borrower or subsequent to that, the invocation of the guarantee is the Sine qua non loan for initiating any legal proceeding against the guarantor to enforce the terms, conditions, and obligations stipulated in the guarantee agreement. Having considered all material on record, we are of the opinion that the petitioner has



misconceived the provisions of law by stating that invocation is not required, as pleaded in paragraphs 112, 113, and 114 of the rejoinder reproduced supra. On this ground alone, the petition merits dismissal. Without invocation of guarantee as required under law and as per the contract between the parties, the petitioner cannot implement the terms of the guarantee agreement against the guarantors and cannot even initiate the insolvency process under Section 7 of the Code. Insolvency process under Section 7 of the Code has its own ramifications *in rem* against the guarantor and other third parties. So, adequate opportunity to the guarantor by invoking the guarantee and raising requisite demands is required, so that the guarantor, by fulfilling his obligations, can avoid the insolvency process against him. There is no need to go into the merits of other defences, and accordingly, we are not discussing or dealing with them. The petition is, therefore, **dismissed**. However, the petitioner would be able to comply with the provisions of law if it intends to pursue action under Section 7 of the Code against the respondent, after a legally valid invocation of guarantee.

34. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
35. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
36. Let the Certified Copy of this order be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
MADHU SINHA
(MEMBER TECHNICAL)

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 21st day of November, 2025.

Steno_A