

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301
C.P.(IB)/220(AHM)2025

Proceedings under Section 7 IBC

IN THE MATTER OF:

Apheloin Finance Private Limited
V/s
Osia Hyper Retail Limited

.....Applicant

.....Respondent

Order delivered on: 28/04/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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

C.P. (IB)/ 220 (AHM) 2025

(Company Petition Filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of Insolvency and Bankruptcy Application to Adjudicating Authority Rules 2016).

In the matter of :-

1. Aphelion Finance Private Limited
2nd Floor, B-Wing,
Bhagyashree Building,
Above Apna Sahakari Bank,
Dr. Ambedkar Road, Mulund, (West)
Mumbai, 400080, Maharashtra, India.

... Applicant/
Financial Creditor

Versus

2. Osio Hyper Retail Limited
Basement Store 1, 4D Square,
IIT Engineering College, Nr. D Mart,
Visat Gandhinagar Highway,
Motera , Ahmedabad,
Gujarat, India, 380005

...Respondent /
Corporate Debtor

Order pronounced on 28.04.2026

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Sd/-

Sd/-

Appearance:

For the Applicant : Sr. Adv Amar N. Bhatt a.w. Kunal
Vaishnav, Adv.
For Respondent : Mr. Arjun Padhiyar, Adv.

JUDGMENT

1. This Application has been filed by the Financial Creditor viz. Aphelion Finance Private Limited under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. Osio Hyper Retail Limited seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.
2. In Part II of the application, it is stated that the Corporate Debtor was incorporated on 18.10.2013 with the Nominal Share capital of Rs.45,00,00,000/- (Rupees Forty Five Crores Only) and the paid up share capital of Rs.13,31,23,900/- (Rupees Thirteen Crore Thirty One Lakh Twenty Three Thousand Nine Hundred Only). In Part III of the Application the Financial Creditor has proposed the name of one Mr. Ritesh Prakash Adatiya as the Interim Resolution Professional, who has also filed his written consent in Form 2. In Part IV of the application the default amount is stated to be Rs. 6,72,12,850/- (Rupees Six Crore Seventy Two Lakh Twelve

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Thousand Eight Hundred Fifty Only) as on 06.05.2025 and date of default is mentioned as 05.10.2024.

3. The financial Creditor is a non-banking financial company and is engaged in the business of providing supply chain financing. The Financial Creditor works in close collaboration with Greenizone Agritech Consultancy Private Limited (hereinafter referred to as "GACPL") and it acts as the lending service provider for the Financial Creditor. The Corporate Debtor wanted to avail financial services for its vendors and thus it approached the Financial Creditor. The Financial Creditor has provided financial services to (i) Paras Trading Corporation (ii) Vinayak Trading Corporation and (iii) VR Food respectively who are the vendors of the Corporate Debtor. It was agreed that Financial Creditor would extend credit facilities up to an extent of Rs. 7,50,00,000/- to the vendors of the Corporate Debtor.
4. The Applicant submits that on 10.08.2023 , GACPL issued to the Corporate Debtor an in - principle sanction letter by which a loan limit of INR 7,50,00,000/- (Rupees Seven Crores Fifty Lakhs Only) was sanctioned to be disbursed among the vendors/suppliers recommended by the Corporate Debtor. The loan would be extended by the Financial Creditor and the Corporate Debtor was to act as the guarantor for the said loan.

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The details of the mode and frequency of repayment were also recorded, along with the securities to be provided. A memorandum of understanding was also executed between GACPL and the Corporate Debtor on the same date, wherein the Corporate Debtor inter alia agreed to indemnify GACPL as per the terms and conditions therein.

5. It is further submitted that to ensure the security against the loan being sanctioned by GACPL, following agreements were entered :-

- i. A promissory note executed on August 14,2023 by the Corporate Debtor in favour of GACPL up to the sum of INR 7,50,00,000/- (Rupees Seven Crores Fifty Lakhs Only).
- ii. Undated blank cheques issued by the Corporate Debtor and its directors (i.e. Dharendra Chopra and Kavita Chopra).
- iii. personal guarantor agreements dated August 10,2023 executed by directors of the Corporate Debtor (i.e. Dharendra Chopra and Kavita Chopra) covering the entire institutional sanction limit plus applicable interest towards GACPL.

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- iv. Corporate Guarantee agreement dated August 10, 2023 executed by the Corporate Debtor in favour of GACPL covering the entirety of the institution sanction limit and applicable interest.
6. It is further submitted that when post sanction documentations were completed, Credit facility agreements were executed between Financial Creditor and vendors of the Corporate Debtor (Vinayak Trading Corporation, VR Food and Paras Trading Corporation) respectively on different dates and some of Credit facility agreements were also amended through addendum. It is further stated that all the Credit Facility Agreements are identical except the parties, quantum of credit extended and tenure of the loan amounts. The Applicant has relied on clause 2.4, 3.1, 3.4 and 5.4 of the Credit facility Agreement and due to these clauses, the Corporate Debtor was primarily liable under the said credit facility agreements.
7. As on 04.09.2024, the Applicant had disbursed INR 7,35,07,922 (Rupees Seven Crore Thirty Five Lakh Seven Thousand Nine Hundred and Twenty Two only) to the vendors. Under Clause 5.4 of the Credit Facility Agreements, the Applicant had the right to delegate to a third party the authority to take all steps as are necessary for the lender to

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take in order to recover the amount due to the lender. Since, no repayment was forthcoming, thus on 24.12.2024 loan recall notices were issued on behalf of the Applicant to Vinayak Trading Corporation and the Corporate Debtor demanding payment of INR 1,63,65,961/-, to V R Food and the Corporate Debtor demanding payment of INR 3,33,76,438/-, to Paras Trading Corporation and the Corporate Debtor demanding payment of INR 3,22,65,205/- and indemnity demand notice on behalf of GACPL was also issued to the Corporate Debtor demanding payment of INR 8,20,07,605/.

8. It is further stated that on 16.01.2025, a demand notice on behalf of the Applicant was sent to the Corporate Debtor pertaining to the default amount of INR 8,45,71,989/- (Rupees Eight Crore Forty Five Lakh Seventy One Thousand Nine Hundred and Eighty Nine only) that was due until January 16, 2025. It is further stated that in the event of the Corporate Debtor's failure to comply with its obligations of repayment within fourteen days, the Applicant would be constrained to initiate legal action before the appropriate forum, including initiation of insolvency proceedings under Section 7 of the Code.

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9. It is further submitted that a letter dated 21.01.2025 (which was received on February 1, 2025) was sent on behalf of the Corporate Debtor to the Applicant and Corporate Debtor disputed the demand. Later, the Applicant, addressed a letter dated 11.02.2025 in response to the letter dated 21.01.2025 [sent by the Corporate Debtor], reiterating the contents of the letter dated 16.01.2025.
10. Thereafter, in March, 2025 an amount of INR 2,81,69,649/-, was adjusted by the Applicant against the outstanding amount and thus, the balance due as on 06.05.2025 is Rs. 6,72,12,850/-. It is further stated that the date of repayment of debt due was 05.10.2024. However, no amounts have been received from the Corporate Debtor till date.
11. The Respondent in its affidavit in reply submits that the Financial Creditor had not mentioned the date of Form - 1 which is mandatory to be mentioned as per the format provided under Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. In view of this, Corporate Debtor has relied on the case of Torrecid India Private Limited Vs. Capson Tiles India Private Limited C.P. (IB) 281 (AHM) 2023 passed by this Tribunal vide order dated 05.07.2024 in which the issue of date on petition and affidavit

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was raised, and this Tribunal considered the said defect in dates as fatal and rejected the Petition. It is further stated that in Part-II, Serial No. 4, the Applicant has mentioned the Paid – Up Share Capital of the Respondent as Rs. 13,31,23,900/-, however from the document attached at Annexure – 2 of the Petition, it is crystal clear that the paid-up capital of the Respondent is Rs. 17,69,58,900/- . The Financial Creditor had mentioned the wrong details in the Form-1.

12. It is further submitted that the date of default mentioned in the Form –C is 06.10.2024. The date of default mentioned in the Form – 1 at Serial No. 2 mentions 05.10.2024, whereas in the legal notice which is issued by the Financial Creditor through their advocate mentions the date of repayment as 31.10.2024 . The entire application of the Financial Creditor is mentioning different default dates. It is further stated that in Form – 1, as per the Part-IV Serial No. 1, the amount was disbursed on 04.09.2024 and the interest was deducted at upfront. As per the sanction letter which specifies the cycle duration of 90 days , then the payment which was disbursed on 04.09.2024 the same becomes due and payable in December, 2024. The Applicant has wrongly considered the date of default.

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13. It is further submitted that only GACPL and Respondent are party to the sanction letter dated 10.08.2023. From the bare perusal of the said letter, it appears, that the same is signed by one Archna Nagrani on 14.08.2023 and no Board Resolution of the Respondent is attached with the sanction letter authorising Mrs. Archna Nagrani to sign the said letter on behalf of the Respondent. It is further stated that the facility tenure which was agreed between the parties while signing the sanction letter was for a period of 12 months (from 14.08.2023 to 13.08.2024) thus, the liability of the Respondent was for the period of 12 months only from the date of signing of sanction letter i.e. 14.08.2023. The Applicant had disbursed the amount to the Respondent on 04.09.2024, that too after 14.08.2024, expiry of the terms of the sanction letter entered into between GACPL and Respondent. Not a single penny has been received by the respondent from the Applicant on 04.09.2024. The entire claim of the Applicant is bogus.

14. It is further submitted that the corporate guarantee as signed by Mrs. Archna Nagrani on behalf of the Respondent by claiming it as an authorised person. However, no authority letter or board resolution authorising Mrs. Archna Nagrani to sign this agreement is placed with the agreement. The

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Corporate Guarantee deed dated 14.08.2023 was signed between GACPL and Respondent where applicant is not the signing party. Thus, no guarantee is given by the Respondent to Applicant. In view of this Section 126 of the Indian Contract Act, 1872 has been relied and submits that guarantee is given to GACPL and not to applicant and hence he is not the financial creditor of the Respondent . The Respondent has relied on the Judgment passed by Hon'ble NCLAT in Company Appeal (AT) (INS) No. 310 of 2024 in Moneywise Financial Services Private Limited vs. Mr. Arunava Sikdar, Resolution Professional of M/s. Dream Procon Private Limited in which it is held that Appellant had not demonstrated the existence of a legally binding and enforceable corporate guarantee executed by the Corporate Debtor, then the very foundation of its claim, asserting his status a financial creditor under the Code, must necessarily fail.

15. Respondent had relied on Section 133 of the Indian Contract Act, 1872 and submits that the transactions in the form of Credit facility Agreements which took place after 14.08.2024 between the Applicant and the said alleged vendors as mentioned in the loan agreement is without the consent of the respondent and hence, the respondent is discharged as

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guarantor from any such liabilities which is without the consent of respondent.

16. It is further submitted that loan agreements clearly specifies different borrowers in different agreement. Each Agreement has different instalment dates, different disbursement amount, and different tenures. Each Agreement is a separate contract in itself and has different set of facts which are in contradiction with each other. It is further stated that the Financial Creditor has not produced the bank statement establishing the payment/ disbursement of the amount as mentioned in the loan agreements.
17. It is further submitted that the Corporate Debtor is a Public Limited Company and is further listed on National Stock Exchange. It is involved in the business of hyper retail stores and has more than 33 stores across India . It is further stated that the Corporate Debtor had without admitting any of the liabilities under protest has also made the payment of Rs. 2,30,00,000/- which clearly shows that it is a solvent company.
18. In view of this , the Corporate Debtor has relied upon the Judgment passed by the Hon'ble Supreme Court of India being Vidarbha Industries Power Limited Vs Axis Bank Limited, Civil

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Appeal No. 4633 of 2023 in which it was held that it is not the object of the IBC to penalise solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7 (5)(a) of the IBC, confers discretionary power on the adjudicating authority to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP. It is further stated that application under Section 7 of the Code cannot be filed solely for a purpose to pressurize the Corporate Debtor for some undue demands.

19. In response to the reply filed by Respondent, the Applicant in its rejoinder submits that the Respondent having already made the payment for an amount of Rs. 2,30,00,000/- subsequent to the filing of the Petition clearly demonstrates that there is a clear liability on the Respondent to make payment of the amount which is due and payable. It is further stated that Respondent has acted as a guarantor and anchor for the credit facilities that have been advanced by the Applicant to the vendors/ borrowers identified by the Respondent.
20. It is further submitted that the borrowers are the traders and vendor of the Corporate Debtor who wanted financial liquidity. The Respondent was desirous of facilitating financial service to such vendors and thus approached GACPL and Applicant for

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this purpose. It is further stated that the amount which have been disbursed to the vendors have been utilized by them to supply goods and merchandise to the respondent over which the respondent has a lien in accordance with the terms of the Credit Facility Agreements.

21. It is further submitted that this Tribunal has to look into evidence of the debt due and default. The Respondent has executed documents and agreements agreeing to stand as the Guarantor/ anchor for the payments made by the Applicant. The Respondent as the guarantor and the entity primarily responsible for such repayment has failed to make payments of the amount leading to an uncontroverted default on the part of Respondent.
22. It is further submitted that the last page of Form – 1 bears the signature of the Notary, as well as the date when the said Form – I was signed. The reference to the order of this Tribunal in the matter of Torrecid India Private Limited Vs Capson Tiles Private Limited is highly misplaced as it relates to the date of filing of a certain company petition and the corresponding date of filing of the affidavit in support being prior in time of the date of Petition.

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23. It is further submitted that paid-up capital mentioned in Sr. No. 4 of Part –II of Form -1 of the Petition should be read as INR 17,69,58,900/- (Rupees Seventeen Crore Sixty Nine Lakhs Fifty Eight Thousand Nine Hundred Only). It is further stated that Clause 7.8 of the Credit Facility Agreement itself states that the Credit Facility Agreement shall have an overriding effect on any agreement / document attached therein or referred therein as well as the sanction letter.

24. It is further submitted that the sanction letter dated 10.08.2023 has been signed appropriately by a person duly authorized by a valid Board Resolution of the Respondent. That vide sanction letter dated 10.08.2023 which was issued in favour of Respondent by GACPL, the Respondent has agreed to act as the Guarantor to the loans extended by the Applicant to the vendors. The Financial Creditor has executed Credit Facility Agreement with the vendors , in these documents the Corporate Debtor is a guarantor of the facilities advanced to the vendors.

25. It is further submitted that solvency of an entity extends beyond the mere ability to make immediate payments, and extends to the entity's long term financial health and stability. The reliance placed by the Corporate Debtor on the Judgment,

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being Vidarbha Industries Power Limited Vs Axis Bank Limited is misplaced as it is denied that the Corporate Debtor is solvent.

26. The Applicant and Respondent had entered into a settlement and had filed their terms of settlement before this Tribunal in which the Respondent had agreed and undertaken to repay to the applicant an amount of Rs. 6,81,92,343/- which arose from the repayment of the amount that had been extended by the Applicant to various entities, with the Respondent as the Guarantor under the Credit Facility Arrangements. In, the order dated 25.03.2026, the submission of the Applicant have been noted in which it is submitted that Respondent had not paid the amount of dues as agreed upon and the amount is still due. It is further stated that a small amount has been paid to prevent further adjudication of this matter and there is a breach of agreement to pay on the due date.

27. The Respondent have filed an affidavit in compliance of the order dated 16.02.2026 and states that it had already made the payment of first and second instalment to GACPL as per the consent terms. While during the pendency of this matter, Respondent had already made the payment totalling to Rs. 2,35,00,000/-. It is further stated that applicant by email

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dated 08.03.2025 informed the Respondent that the total outstanding dues is of about Rs. 4,80,22,929 /- as on 08.03.2025 which is after adjusting the fixed deposit of Rs. 5,40,27,909/-. Pursuant, to this the claim was raised to the tune of Rs. 6,72, 12,850/- as on 06.05.2025. In two months amount was raised from Rs. 4,80,22,929/- as 08.03.2025 to Rs. 6,72,12,850/- as on 06.05.2025. The Respondent had again made payment of Rs 2,25,00,000/-.

28. It is further submitted by the Respondent that when it was trying to get some investors on board, Applicant started directly approaching the investors of the Respondent and started threatening them which caused havoc among the investors and prevented them from entering into any transaction with the Applicant.

29. Heard both the parties and perused the documents on record.

Observations:

a) The Financial debt evolves out of 4 parties, with the intermediaries being the loan disbursing agency and the borrower, taking solace of availing such credit facility on the guarantee extended by the respondent who has stood as a guarantor. This also in a way appears to be a suppliers credit (arranged) through the loan disbursing agent GACPL which

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issued the loan sanction and was indemnified by the corporate debtor.

- b) The loan is secured by way of issue of Personal guarantee by two of the CD's Directors on August 10, 2023, Corporate Guarantee dated August 10, 2024 and also supported by promissory notes dated August 10, 2023 and blank cheques (undated).
- c) The Credit Facility agreements signed by the applicant financial creditor with the borrowers(4) are guaranteed by the CD. It is submitted that the credit disbursements took place on 4 Sept 2024. It is further submitted that when the borrowers did not repay the amounts on Dec 24, 2024, notices were issued by the financial creditor to the borrowers. Indemnity notices were also issued through GACPL to the CD.
- d) On Jan 16, 2025 a demand notice was issued by the applicant through its advocate of financial creditor to the borrower. The borrower replied vide letter dated Jan 21, 2025 and disputed the debt but in March 2025 an amount of Rs.2.81 crores is adjusted in the books as repayment which is not disputed. The Financial creditor has reckoned the date of default as Oct 5, 2024, which appears to be the first instalment due and payable while the process of sanction and disbursements have

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taken over an year including securing the guarantee of the respondent CD.

e) The loan sanction document dated 10.08.2023 to the CD is clearly specifying the loan facilitation agreement with GACPL and in principle sanction of the loan. This basically is an invoice financing agreement. The applicant is mentioned as lender partner and the CD as "Institution or Anchor" and the agreed amount is Rs.7.50 crores repayable at the end of every cycle. Credit Facility agreement signed with its annexures and the sanction letter through GACPL are enough to connect the link between the financial creditor and the CD, and there is admitted/failure to repay the debt.

f) While the financial creditor who is NBFC has given an overarching financial facility for invoice discounting has produced various documents for compliance of financial debt status, the respondent has attempted to repay the amount which is also clarified in its affidavit dated 16.02.2026, exposing himself to non repayment in full and hence this debt given as credit facility has become due and payable, which is not paid inspite of repeated hearings before this tribunal.

30. Hence, we pass the following order:

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ORDER

- I. CP (IB) No.220 of 2025 is allowed.
- II. The CIRP is ordered to be initiated against the corporate debtor – Osia Hyper Retail Limited.
- III. We hereby appoint Mr. Ritesh Prakash Adatiya (of NPV Insolvency Professionals Private Limited) having Registration No. IBBI/IPA-001/IP-P01334/2018-2019/12013 email id- riteshadatiya01@gmail.com to act as IRP. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- IV. We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the IRP to meet the expenses for performing 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

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one week from the date of receipt of this order by the Financial Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.

- V. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate Debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.
- VI. The Registry is directed to communicate this order to the applicant, IRP and the corporate debtor. In addition, a copy of the order shall also be forwarded to IBBI for its records and to take steps for updating the Master Data of the corporate debtor in the MCA portal and shall forward the compliance report to the Registrar, NCLT.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)