

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

COMPANY PETITION IB (IBC) NO. 95/ND/2025

(Under Section 227 read with clause (zk) of sub-section (2) of Section 239 of the Insolvency and Bankruptcy Code, 2016 read with Rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019)

IN THE MATTER OF:

RESERVE BANK OF INDIA

New Central Office Building,
Shahid Bhagat Singh Road, Fort,
Mumbai 400001, Maharashtra.

...Petitioner/ Appropriate Regulator

Versus

AVIOM INDIA HOUSING FINANCE PRIVATE LIMITED

Registered Address:

Worldmark 3, Unit 306A, 3rd Floor,
Asset Area No.7, Hospitality District,
Delhi Aerocity, Near Indira Gandhi International Airport,
New Delhi-110037

...Respondent/ Financial Service Provider

Order Delivered on: 20.02.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant:

Mr. Arun Kathpalia, Sr. Adv., Mr. Navneet R., Ms. Diksha Gupta, Mr. Aditya Dhupar, Ms. Alankrita Sinha, Advs.

For the Respondent:

CA Vinod Jain, Ms. Chhavi Jain, Ms. Neha Kataria, Mr. Nimit Bhola, Advs.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This Petition is submitted by Ms. Sridevi K., Assistant General Manager, Reserve Bank of India on 29.01.2025 on behalf of Reserve Bank of India in Form No.1 as prescribed vide Sub-Clause (i) of clause (a) of Rule 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019 (hereinafter referred to as “Rules, 2019”) to initiate Corporate Insolvency Resolution Process against Aviom India Housing Finance Private Limited [hereinafter, referred to as Financial Service Provider (in short, "FSP")] under the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “Code”).
2. We have heard Ld. Counsel for the Petitioner. Since this Petition is filed u/s 227 of the Code, we deem it necessary to quote certain provisions of the Code. The relevant provisions are reproduced hereunder for ready reference:

2.1 Section 227 of The Code, 2016 reads as under: -

“227. Power of Central Government to notify financial service providers, etc.

Notwithstanding anything to the contrary examined in this Code or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.”

Further, Section 3(7) of the Code defines the ‘Corporate Person’ as “**corporate person** means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but **shall not include any financial service provider**”. Therefore, it is pertinent to note that Section 3(7) of the

Code excludes the Financial Service Provider from the definition of 'Corporate Person', however, Section 227 of the Code provides for initiation of CIRP against the Financial Service Provider.

- 2.2 This Section thus prescribe that the Central Government in consultation with the "Financial Sector Regulator" can notify "Financial Service Provider" or "Categories of Financial Service Providers" for the purpose of their Insolvency proceedings to be conducted under Insolvency Code in the manner prescribed therein.
- 2.3 Under the Insolvency Code, there is an enabling Section 239 which enshrines "Power to make Rules" to the Central Government wherein it specifically inserted Sub-section (2)(zk) empowering the Central Government to make Rules in the matter of proceedings prescribed u/s.227 of The Code to formulate the manner of conducting Insolvency & Liquidation Proceedings.
- 2.4 In exercise of power conferred under Section 239 read with Section 227, the Central Government has made "Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)" which has been notified vide G.S.R. 852(E).
- 2.5 Through this Rule there are certain modifications such as wherever the expression "Corporate Debtor" is used in general in this Code, conversely, for the purpose of application of these Rules it shall mean "Financial Service Provider" and wherever the expression "Insolvency Professional", "Interim Resolution Professional" "Resolution Professional" or "Liquidator" occur, now for the application of this Rule, shall mean "Administrator".
- 2.6 Under Rule 5 of the aforesaid Rules, 2019, the process of Insolvency reads as under: -

“5. Corporate Insolvency Resolution Process of financial service providers. — The provisions of the Code relating to the Corporate Insolvency Resolution Process of the corporate debtor shall, mutatis mutandis apply, to the insolvency resolution process

of a financial service provider subject to the following modifications, namely: --

(a) Initiation of Corporate Insolvency Resolution Process. -

(i) no corporate insolvency resolution process shall be initiated against a financial service provider which has committed a default under section 4, 3 except upon an application made by the appropriate regulator in accordance with rule 6;

(ii) the application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7, subject to clause (iii); and

(iii) on the admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in the application filed under sub-clause (i) of clause (a) of rule 5, as the Administrator

(b) Moratorium. – Save as provided in section 14.-

(i) an interim moratorium shall commence on and from the date of filing of the application under clause (a) till its admission or rejection; and

(ii) the license and registration which authorizes the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the corporate insolvency resolution process.

Explanation. - For the purposes of this clause, “interim moratorium” shall have the effect of the provisions of sub-sections (1), (2) and (3) of section 14.

(c) Advisory Committee.-

(i) the appropriate regulator may, where deemed necessary, constitute an Advisory Committee, within 45 days of the insolvency commencement date, to advise the Administrator in the operations of the financial service provider during the corporate insolvency resolution process;

(ii) the Advisory Committee shall consist of three or more Members, who shall be persons of ability, integrity and standing, and who have expertise or experience in finance, economics, accountancy,

law, public policy or any other profession in the area of financial services or risk management, administration, supervision or resolution of a financial service provider;

(iii) the terms and conditions of the Members of the Advisory Committee and the manner of conducting meetings and observance of rules of procedure shall be such as may be determined by the appropriate regulator;

(iv) the compensation paid to the Members of the Advisory Committee shall be part of the insolvency resolution process costs;

(v) the Administrator shall chair the meetings of the Advisory Committee.

(d) Resolution plan

(i) the resolution plan shall include a statement explaining how the resolution applicant satisfies or intends to satisfy the requirements of engaging in the business of the financial service provider, as per laws for the time being in force;

(ii) upon approval of the resolution plan by the committee of creditors under sub-section (4) of section 30, the Administrator shall seek 'no objection' of the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of the financial service provider after approval of the resolution plan under section 31;

(iii) the appropriate regulator shall without prejudice to the provisions contained in section 29A, issue 'no objection' on the basis of the 'fit and proper' criteria applicable to the business of the financial service provider;

(iv) where an appropriate regulator does not refuse 'no objection' on an application made under clause (ii) within forty-five working days of receipt of such application, it shall be deemed that 'no objection' has been granted."

2.7 As far as the appointment of "Insolvency Professional" is concerned, under this Rule supra it is provided under Rule 9 that for the purpose of these Rules, only an "Administrator" proposed by the appropriate Regulator and appointed as such by the Adjudicating Authority shall act as an Insolvency Professional, etc. as the case may be. The "Administrator" so appointed shall have the same

duties, functions, obligations, responsibilities, rights, and powers of an Insolvency Professional, etc. while acting in an Insolvency Resolution of a "Financial Service Provider". A replacement of the "Administrator" is possible on an Application made by the "Appropriate Regulator" before the Adjudicating Authority.

- 2.8 These Rules have also laid down the procedure for submission of requisite Form- I to be accompanied by a fee of Rs.25,000/- having enclosed a written consent and declaration of "Administrator" on Form-2, format is annexed. The Application is to be filed in electronic form as and when such facility is made available by the Adjudicating Authority, however, till such facility is made available, the Applicant may submit the documents in a legible portable format in a data storage device such as Compact Disc or a USB Flash Drive acceptable to the Adjudicating Authority.
3. Vide notification dated 18.11.2019 issued by the RBI, the "Non-Banking Finance Companies" including "Housing Finance Companies" with asset size of 500 Crores or more, the proceedings shall be undertaken in accordance with the provisions of I&B Code 2016 to be read along with these Rules by the appropriate Regulator through Administrator.

Submissions of Learned Counsel appearing for the Petitioner are as under: -

4. On 15.11.2019, the Central Government in accordance with its power under Section 227 of the IBC, notified the FSP Rules, to govern the Insolvency Resolution of Financial Service Providers. As per the last Audited Balance Sheet of the Respondent, Aviom India housing Finance Limited is a Non-Banking Financial Company with an Asset size of more than Rs. 500 crores.
5. The Respondent/ FSP is a company registered under the Companies Act, 2013 having CIN: U65993DL2016PTC291377 and having its registered office at Worldmark 3, Unit 306A, 3rd Floor, Asset Area No. 7, Hospitality District, Delhi Aerocity, Near Indira Gandhi International Airport, New Delhi-110037. Therefore, this bench has jurisdiction to deal with the present petition.

6. Pursuant to the Press Release dated 27.01.2025 in exercise of its power under Section 45-IE of the RBI Act, 1934, the RBI superseded the Board of Directors of the Respondent due to governance concerns and default in meeting various payment obligations. RBI also appointed Mr. Ram Kumar as the Administrator. A copy of the Press Release dated 27.01.2025 is placed on record as 'Annexure P-1'.
7. On 29.01.2025, Utkarsh Small Finance Bank Limited ("USFB") intimated the RBI that the Respondent herein had committed defaults in excess of Rs. 1 crore in respect of the loans advanced by USFB and also submitted relevant documents to prove the existence of default. Apart from above, RBI has received letters from various other creditors of Aviom, inter alia, informing about the defaults committed by Respondent which are substantially in excess of INR 1,00,00,000 (Rupees One Crore Only).
8. Further, the Petitioner contends that the Respondent has committed defaults of significant amounts in relation to the financial debt availed by it from various financial creditors. In particular, Utkarsh Small Finance Bank Limited ("USFB"), LIC Housing Finance Ltd ("LIC HFL"), Suryodaya Small Finance Bank Limited ("Suryodaya") and Poonawalla Fincorp Limited ("PFL") have intimated the Petitioner of specific instances of default by the Respondent aggregating to amounts which is substantially in excess of INR 1,00,00,000 (Rupees One Crore Only). A copy of the letter dated 29.01.2025 from USFB is placed on record as "Annexure P-4". A copy of the two letters dated 28.01.2025 from LIC HFL is placed on record as "Annexure P-5". A copy of the letter dated 29.01.2025 from Suryodaya is placed on record as "Annexure P-6". A copy of the letter dated 28.01.2025 from PFL is placed on record "Annexure P-7".
9. Further, it is noteworthy that in relation to the default suffered by USFB, the USFB its letter dated 29.01.2025 to the RBI has stated that USFB had sanctioned and disbursed financial debt to the Respondent aggregating to INR 46 crore under the Term Loan Agreement dated 28.12.2021 for INR 15 Crores, Term Loan Agreement dated 30.05.2023 for INR 12 Crores and Term Loan Agreement dated 20.08.2024 for INR 19 Crores. In relation to these Term Loan Agreements, Aviom has defaulted

on 30.11.2024 accordingly a recall notice was issued on 03.12.2024 for an amount of Rs. 27,07,67,161.06 (Rupees Twenty-Seven Crore Seven Lakh Sixty-Seven Thousand One Hundred Sixty-One and Six Paise Only). Furthermore, as on 27.01.2025, the total outstanding amount is Rs. 24,51,69,460.76/- (Rupees Twenty-Four Crore Fifty- One Lakh Sixty-Nine Thousand Four Hundred and Sixty and Seventy-Six Paise Only).

10. The supporting documents submitted by the USFB to the RBI have been made part of the record from 'Annexure P-8 to Annexure P-16' of the petition. The communication dated 29.01.2025 from USFB to the RBI contains the following:

- i) A Copy of the Sanction Letter dated 23.12.2021.
- ii) A copy of the Term Loan Agreement dated 28.12.2021.
- iii) A Copy of the Sanction Letter 29.05.2023.
- iv) A copy of the Term Loan Agreement dated 30.05.2023
- v) A Copy of the Sanction Letter dated 12.08.2024.
- vi) A copy of the Term Loan Agreement dated 20.08.2024.
- vii) Account Statement of USFB for the aforesaid loans disbursed to Aviom.
- viii) Recall Notice dated 03.12.2024 issued by USFB to Aviom.
- ix) Certificate under the Bankers' Books Evidence Act, 1891.

11. Further, the Central Repository of Information on Large Credits (CRILC) Report as on 31.12.2024 demonstrating that the account of Aviom is in default is placed on record as 'Annexure P-17'.

Analysis and Findings

12. We have heard the Learned Counsels for the Appropriate Regulator and the Financial Service Provider and perused the averments made in the petition. Since the registered office of the Respondent 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 Financial Service Provider under Section 227 of the Code.

13. During the course of proceedings, the Administrator appointed by the RBI was also present. The Ld. Sr. Counsel on behalf of the Petitioner while placing its reliance on the decision of the Hon'ble NCLAT in the matter of **Adisri Commercial Private Limited Vs. Reserve Bank of India & Or.s [Company Appeal (AT) (Insolvency) No. 1074 & 1075 of 2023] decided on 04.04.2024** submitted that there was no requirement of issuance of any notice to the Financial Service Provider. The relevant extract of the aforesaid Order dated 04.04.2024 is reproduced hereunder as:

“19. The power of recall can be exercised on limited ground as noticed in the above Five Members Bench judgment of this Tribunal and other judgment of the Hon'ble Supreme Court referred therein. The power of recall can be exercised if there is any procedural error committed by the Court or order was obtained by playing fraud on the Court. The present is not a case where any procedural error has been committed by the Adjudicating Authority by passing the order dated 08.10.2021. Counsel for the Appellant has advanced submission that order dated 08.10.2021 is in violation of principle of natural justice which submission is wholly unfounded. As noted above, the Board of Directors of the Corporate Debtor was superseded by RBI on 01.10.2021 and Mr. Rajneesh Sharma was appointed as Administrator with immediate effect, the Corporate Debtor, thus, had to be represented by the Administrator alone. Administrator was present on the date when order was passed on 08.10.2021, hence, the submission that the order was passed in violation of principle of natural justice cannot be accepted. There was no requirement of issue any notice to shareholders of the Corporate Debtor before passing of the order dated 08.10.2021.”

An appeal against the aforesaid Order of the Hon'ble NCLAT was filed before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court vide its Order dated 03.06.2024 in Civil Appeal No. 6601 of 2024 dismissed the appeal filed against that Order.

14. Rule 5(a)(i) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 mandates that no CIRP shall be initiated against an FSP which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6. Sub-clause (ii) thereof which

specifies that an application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7.

15. Therefore, the first requisite to be seen is whether present petition satisfies the ingredients of section 7 of the Code. For this the existence of debt and default are required to be proved to the satisfaction of the Adjudicating Authority. On perusal of the records, it is observed that the Total Financial Assistance sanctioned and disbursed by the USFB amounts to Rs. 46 Crores. It is noted that a Loan Recall Notice dated 03.12.2024 was issued by the USFB to the Respondent herein pertaining to an amount of Rs. 27,07,67,161.06 (Rupees Twenty-Seven Crore Seven Lakh Sixty-Seven Thousand One Hundred Sixty-One and Six Paise Only). Therefore, the total amount in default is in excess of limits prescribed under section 4 of the Code, which is at present is One Crore Rupees.
16. It is further observed that pursuant to Loan Recall Notice dated 03.12.2024, a deed of Personal Guarantee dated 09.12.2024 was also invoked by the USFB to recover the outstanding dues from the Respondent. However, even after the issuance of Loan Recall Notice dated 03.12.2024 and invocation of Personal Guarantee of Ms. Kaajal Aijaz Ilmi, Managing Director and CEO of the Respondent, the USFB liquidated the cash collateral along with the accrued interest and adjusted the same towards the pending outstanding amount in the Loan Accounts on 18.12.2024. Furthermore, the Central Repository of Information on Large Credits (CRILC) Report as on 31.12.2024 demonstrating that the account of Aviom is in default is placed on record as 'Annexure P-17'.
17. During the course of proceedings, the Authorized Representative of the alleged CEO of the Respondent appeared virtually before this Adjudicating Authority and made certain objections regarding the admission and maintainability of the present petition. The Learned Counsel appearing on behalf of the Respondent submits that the present petition is filed without any valid authorization. In this regard, the Ld. Counsel appearing on behalf of the RBI had submitted that the Objector does not have any locus in the instant case. Further, it is observed that the Petitioner herein has placed on record a valid authorization duly signed by Ms. Sridevi K., Assistant

General Manager of the RBI, therefore, the objection raised by the Respondent in this regard does not hold any ground.

18. The Ld. Counsel for the Respondent further objects that the procedure laid down under Section 45-IE of the RBI Act, 1934 is not followed by the Petitioner herein, which requires for the constitution of committee by the bank in order to assist the Administrator. The Ld. Counsel for the Respondent contends that instead of following the procedure laid down under Section 45-IE of the RBI Act, 1934, the Petitioner herein has approached this Adjudicating Authority under Section 227 of the Code. In this regard, it is observed that as per the language of clause (a) of sub-section 5 of Section 45-IE of the RBI Act, 1934, the words '*bank **may** constitute a committee...*' are used. It is observed that the term 'may' instead of 'shall' is used, thereby making it clear that the aforesaid provision is mere directory and not mandatory in nature. Further, Section 238 of the Code has an overriding effect over all other laws. Section 238 of the Code reads as under:

"238. Provisions of this Code to override other laws.

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Therefore, in view of the afore-stated discussion, the objection raised by the Objector in this regard also does not hold any ground.

19. We are, therefore, satisfied that this is a fit case for initiation of proceedings under section 227 read with rule 5 of the Rules, since the debt in question qualifies as financial debt under section 5(8) read with section 3(11) of the Code.

20. The RBI vide its notification dated 24.01.2025 has superseded the Board of Aviom India Housing Finance Private Limited and appointed Mr. Ram Kumar, ex-Chief General Manager, Punjab National Bank as the Administrator. The RBI has proposed the name of Mr. Ram Kumar as the Administrator of the Financial Service Provider. He has also filed his written consent in Form 2 to act as such Administrator, which has been placed on record as 'Annexure P-3' of the petition.

21. The Petition made by the Reserve Bank of India is complete in all respects as required by law. It clearly shows that the Respondent/FSP is in default of a debt due and payable, and the default is more than the minimum amount as stipulated under section 4(1) of the Code. Therefore, the default stands established and there is no reason to deny the admission of the Petition. Therefore, this Adjudicating Authority hereby admits this Petition and orders as follows:

- a) The Petition bearing CP (IB) No.95/ND/2025 filed by the Reserve Bank of India, the Appropriate Regulator, under section 227 of the Code read with rule 5 of the Insolvency & Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 for initiating Corporate Insolvency Resolution Process against Aviom India Housing Finance Private Limited [CIN: U65993DL2016PTC291377], the Financial Service Provider, is hereby **admitted**.
- b) There shall be moratorium in terms of section 14 of the Code in respect of Financial Service Provider from the date of this Order. It may be noted that in terms of Rule 5(b)(i) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019, an interim moratorium has already commenced from the date of filing of this petition.
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under section 31(1) of the IBC or passes an order for liquidation of the Financial Service Provider under section 33 of the Code, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code.
- e) In terms of rule 5(a)(iii) of the Rules *ibid*, Mr. Ram Kumar, 160, Sarai Jullena, Near Fortis Escorts Hearts Institute, New Delhi-110025, e-mail id: ram.kumar@aviom.in, is hereby appointed as Administrator of the Financial Service Provider to carry out the functions as per the Code. The Written Consent of the Administrator is placed on record as 'Annexure P-3'. The Administrator

shall carry out his functions as contemplated by sections 15, 17, 18, 19 and 20 of the Code.

- f) During the CIRP period, the management of the Financial Service Provider shall vest in the Administrator. The officers and managers of the Financial Service Provider shall provide all documents in their possession and furnish every information in their knowledge to the Administrator within one week from the date of receipt of this Order, failing which coercive steps will follow.
 - g) The Court Master/ Registry is hereby directed to communicate this Order to the Petitioner/ Reserve Bank of India and the Administrator by Speed Post, e-mail immediately.
 - h) Additionally, the Administrator shall serve a copy of this Order on the Registrar of Companies, New Delhi by all available means for updating the Master Data of the Financial Service Provider. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
 - i) CP (IB) No. 95/ND/2025 to come up on 21.04.2025 for filing the progress report.
22. 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)