



**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.1  
**(MP) CP(IB) 67 of 2020**

**Proceedings under Section 7 IBC**

**IN THE MATTER OF:**

Rajendra Bhutta IRP For Prabhat Telecoms (India) Ltd [now  
Known as "Prabhat Technologies (India) Ltd"]  
V/s  
Pragat Akshay Urja Ltd

.....Applicant

.....Respondent

**Order delivered on 15/02/2024**

**Coram:**

P. Mohan Raj, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

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**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

A. Bhadauria

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**P. MOHAN RAJ**  
**MEMBER (JUDICIAL)**



**ADJUDICATING AUTHORITY**  
**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT-1**

**CP(IB)/67/MP/2020**

*(An application under section 7 of the Insolvency and Bankruptcy Code, 2016)*

**In the matter of:**

**Prabhat Telecoms (India) Limited**

CIN No.: L72100MH2007PLC169551

(Now known as "Prabhat Technologies (India) Ltd)

Through Interim Resolution Professional

Mr. Rajendra Bhuta

Having registered address at:

Unit No. 402, Western Express Highway,

Borivali (East), Mumbai,

Maharashtra- 400066

**.....Petitioner/Financial Creditor**

**Versus**

**Pragat Akshay Urja Limited**

CIN No.: U29190MP2009PLC021620

Having registered address at:

1/1, Maharani Road, M-12,

Shreenath Chambers,

Indore,

Madhya Pradesh- 452007

**.....Respondent/Corporate Debtor**

**Order Pronounced On: 15.02.2024**

**Coram: P. Mohan Raj, Member (J)**

**Kaushalendra Kumar Singh, Member (T)**

**Appearance:**

For Petitioner: Ld. Adv. Mr. Vishal J. Dave a.w. Ld. Adv. Mr. Mayur Jugtawat

For Respondent: Ld. Adv. Mr. Rajat Lohia



## **ORDER**

1. This petition was filed on 20.08.2020, by Mr. Rajendra Bhuta, Insolvency Resolution Professional of M/s Prabhat Telecoms (India) Limited (Financial Creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Pragat Akshay Urja Limited (Corporate Debtor). The default amount stated by the financial creditor is Rs 4,68,38,356/- (Principle amount Rs 4,00,00,000/-, and interest amount Rs 68,38,356/-). The date of default stated by the financial creditor is 27.01.2019.

2. The averments made by the financial creditor in its application and presented/argued by the learned counsel for the financial creditor are summarized hereunder:

(i) The petitioner herein being a financial creditor is presently undergoing CIRP vide order dated 10.10.2019 passed by the National Company Law Tribunal, Mumbai Bench. Mr. Rajendra Bhuta was appointed as the Interim Resolution Professional. On 05.05.2020 in the 5<sup>th</sup> COC meeting of the financial creditor, the COC authorized IRP Mr. Rajendra Bhuta to file an application under section 7 of the Code.

(ii) The financial creditor has executed a Memorandum of Understanding (MoU) dated 04.09.2018 with the corporate debtor herein for issuance of 81,80,000 equity shares at Rs 10/- each (equivalent to 51% of the shareholding) to the financial creditor.

(iii) The financial creditor has paid an amount of Rs 4 Crores towards the purchase of the said equity shares as agreed between the parties. However, the corporate debtor failed to transfer/allot the said shares till date and has neither repaid the amount of Rs 4 Crore nor accepted towards the issuance/allotment of the said shares. In fact, the corporate debtor has now backed off from their responsibility of allotting the shares by raising frivolous disputes and refused to refund the amount.



(iv) The amount of debt due and payable by the corporate debtor as on the date of signing present petition amounts to Rs 4,68,38,356/-. The amount deposited with the corporate debtor towards share application money has to be considered as a deposit as per the provisions of section 42(6) of the Companies Act, 2013 read with Rule 2(1)(c) of the Companies (Acceptance of Deposit) Rules, 2014. As the corporate debtor has failed to allot the shares as well as failed to refund the money within the stipulated period as per the Companies Act, the amount of deposit towards share application money is considered as financial debt as per the provisions of section 5(8) of the Code.

(v) Board resolution dated 29.11.2018 passed by the corporate debtor confirms the allotment of share of 51% to the financial creditor. Further, communication between the petitioner and corporate debtor as annexed on page 30-36 of the petition, establishes the debt and default.

(vi) Bank statement of the financial creditor also shows that 8 installments of Rs 50 Lacs each were paid on 29.11.2018 into the account of the corporate debtor.

3. In this context, defense placed by the corporate debtor in its affidavit in reply and submission made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:

(i) Merely depositing the amount in the bank account of the corporate debtor, does not amount to "deposit" under the Companies Act, 2013, read with the Company (Acceptance of Deposit) Rule, 2014.

(ii) The financial creditor has failed to place on record the mandatory requisites under the Companies Act, 2013 to treat the alleged transfer of Rs 4,00,00,000/- as share application money.

(iii) Section 42 of the Companies Act, 2013 provides that a company can make a private placement to a selected group of persons, therefore if the financial creditor was to be issued shares of the corporate debtor, there is no document on record evidencing to be a private placement



offer letter accompanied by an application form serially numbered and addressed either in writing or electronic mode, specifically to the financial creditor to whom such an offer is alleged to have been made.

(iv) Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides the regulations relating to the private placement by companies. The Rules state that the company should offer or invite to subscribe its securities through a private placement offer letter in Form PAS-4, which is not produced by the financial creditor to substantiate their claim because no such private placement was ever approved to be offered.

(v) There has to be a special resolution passed by the corporate debtor for making private placement, which is missing in the impugned case because no such meeting was ever called for.

(vi) As the mode of payment of private placement under section 42, the provision reads as “the monies received on application under this section shall be kept in a separate bank account in a scheduled bank”. In the present case of financial creditor, they have annexed a board resolution dated 03.09.2018, stating that account no. 760300541000002 with Vijaya Bank, Branch Indore, Madhya Pradesh is to be utilized for collection of money for the purpose of issue of shares on a private placement basis.

(vii) On the contrary, the alleged deposit of Rs 4,00,00,000/- as share application money is done in the account no. 006023100002099 in the bank account as maintained with Malad Sahkari Bank Ltd, Kandivali Branch, Mumbai which being categorically against the provisions of the Companies Act, 2013 and against the specific board resolution as produced by the financial creditor.

(viii) The alleged payment received in a different account of the corporate debtor cannot be treated for purchase of share, and therefore cannot be a debt or financial debt.



(ix) Ms. Nutan Birendrapratap Singh (Common director in both companies) was the authorized signatory in the bank account as maintained with Malad Sahkari Bank Ltd, Kandivali Branch, Mumbai which was opened up for a specific business purpose being Saubhagya Yojana. Thereby, raised doubts and discrepancies as to how same bank account be treated for the purpose of alleged deposit of share application money.

(x) The real agreement MoU was entered between the parties on 31.10.2018, and based on the commercial transactions between the corporate debtor and financial creditor, various money transactions were credited and debited in the said bank account maintained with Malad Sahkari Bank.

(xi) By fictitious entry and money laundering, an amount of Rs 4,00,00,000/- shown to have been transferred from Mr. Vishwamani Matamani Tiwari to Financial creditors account (Malad Sahakari Bank Ltd., Kandivali Branch) on 29.11.2018 through 8 Cheques of Rs 50,00,000/- each, which is evident from the bank account of the financial creditor as annexed with the petition.

(xii) On the same day, by fictitious entry and money laundering, an amount of Rs 4,00,00,000/- was shown to have been transferred from the financial creditor account to the corporate debtors account (Malad Sahakari Bank Ltd., Kandivali Branch). Further, on the same day an amount of Rs 4,00,00,000/- shown to have been transferred from the corporate debtor to Arihant Commercial Ltd account (Malad Sahakari Bank Ltd., Kandivali Branch), through 8 cheques of Rs 50,00,000/- each.

(xiii) It is not only highly improbable but impossible that, one person namely, Mr. Satish Jain (former director of the corporate debtor) at Indore is attending meeting of the board of directors and on the very same day being in Mumbai for clearing bogus, false cheques in question. There is some money laundering of huge amount in the



present case, as there was no such money in the bank on the said day and fictitious entries are made.

(xiv) The corporate debtor has requested chairman of Malad Sahakari Bank vide letter dated 16.10.2019 with reference to the transactions carried out by the financial creditor, and Mr. Satish Jain (On behalf of the corporate debtor) from current account maintained in said bank, to make a fair enquiry and forward the said case of money laundering to Enforcement Directorate including the Economic Offences Wing and SEBI for appropriate legal action. It was specifically mentioned by the corporate debtor that, the amount was transferred from the financial creditor to the corporate debtor and from the corporate debtor to Arihant Multi Commercial Ltd, and back to the financial creditor from Arihant Multi Commercial Ltd, and it was a pure case of money laundering where no actual money was transferred and the transaction was carried out with malafied intentions.

(xv) Therefore, the corporate debtor on 19.07.2021, formally lodged the criminal complaint with Economic Offence Wing, Mumbai office against the financial creditor and others including Arihant Multi Commercial Ltd and Mr. Satish Jain.

(xvi) The authorized signatory of the corporate debtor Mr. Prakash Chandra Jain has preferred a Writ Petition before the Hon'ble High Court of Madhya Pradesh, Indore Bench being W.P. 28771/2021 seeking directions against Statutory Authorities to take appropriate actions by registration of FIR, which is pending for adjudication.

(xvii) The corporate debtor came to know of order dated 06.01.2021 in one of the miscellaneous applications filed before NCLT, Mumbai Bench being MA/440/2020, wherein Mr. Rajendra Bhuta gave contradictory statements, whereby he submitted that, the corporate debtor is a subsidiary/holding/wholly owned subsidiary company of the financial creditor. For that evidence and necessary documents were sought by the corporate debtor vide letter dated 31.03.2021, yet no reply was filed.



4. We have heard the learned counsel for the financial creditor as well as the learned counsel for the corporate debtor on the issue of admission of petition filed under section 7 of the Code and have perused the relevant records and documents. It is noted that the financial creditor has enclosed several Board Resolutions of the corporate debtor with the present petition where the following resolutions have been passed:

(i) Board Resolution dated 03.09.2018:

*“Resolved that the consent of the Board of Directors be and is hereby accorded to utilise the Account Number 760300541000002 with Vijaya Bank, Branch Indore, Madhya Pradesh which is an existing account of the Company which shall be used as a separate bank account for collection of money for the purpose of issue of shares on private placement basis.”*

(ii) Board Resolution dated 03.09.2018:

*“Resolved that pursuant to the provisions of section 42 of the Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 and such other provisions (including any statutory modifications or re-enactment thereof) as may be applicable for the time being in force, and subject to the approval of members in general meeting, consent of the board of directors of the company be and is hereby accorded for offering, issuing, and allotting 81,80,000 (Eighty One lakhs eighty thousand) Equity Shares at a face value of Rs 10/- per share amounting to Rs 8,18,00,000/-, be and hereby approved and that the draft letter of offer in Form PAS-4 for issue of such securities, can be placed before the Board for approval within one month from the date of passing of this resolution.”*

(iii) Board Resolution dated 29.11.2023:

*“ALLOTMENT OF EQUITY SHARES OF THE COMPANY:*

*Resolved that pursuant to the provisions of section 42, 62(c) and other provisions, applicable, if any, of the Companies Act, 2013 read with the Companies (Prospectus and Allotment of Securities) Rules, 2014*



*including any statutory enactment, modification etc. thereto, the consent of the Board of Directors of the Company be and is hereby accorded for an allotment of 81,80,000 Equity Shares of Rs 10/- each of the company at par, distinctively numbered from 7820001 to 16000000 (both inclusive), to Prabhat Telecoms (India) Limited from whom the Company has received share application money aggregating to Rs 4,09,00,000/-. Balance amount of Rs 5/- per share is to be paid as per first and final call made by the company before 31<sup>st</sup> March 2018.”*

We further note that all the said resolutions are signed by only Mr. Satish Jain. On perusal of the Board Resolutions and considering all the Board Resolutions enclosed by the financial creditor as true and genuine, it is clear that against the share application money the share has already been allotted as per the Board Resolution dated 29.11.2023. Accordingly, it cannot be considered as a deposit under the provisions of the Companies Act, 2013 and as a financial debt under the provisions of the Code.

5. The corporate debtor in its defense has taken a plea that the said transaction of Rs 4,00,00,000/- in Malad Sahakari Bank was nothing but an act of money laundering where the money was transferred from Mr. Tiwari Vishwamani Matamani to the financial creditor and on the same day to the corporate debtor, further on the same day it was transferred from the corporate debtor to Arihant Multi Trade Commercial Limited. It was further submitted by the corporate debtor that it has informed the financial creditor vide letter dated 04.10.2019 that Mr. Satish Jain, the director of the corporate debtor has carried out such transaction and has entered into an agreement for transfer of 51% of share to the financial creditor without informing/taking prior permission of the shareholders and other directors of the corporate debtor, and as per the saying of Mr. Satish Jain and Ms. Nutan Singh (Common director in the corporate debtor and the financial creditor) Rs 4,00,00,000/- received from the financial creditor was towards the loan and the same was transferred to Arihant Multi Trade Commercial Limited towards loan.



Nevertheless, it is not the case of the financial creditor that the said transactions were made in the Malad Sahakari Bank towards any loan to the corporate debtor. Therefore, the said transaction and the said amount cannot be considered as a financial debt under the provisions of the Code. Accordingly, we are of the considered view that the transactions under which the amount of Rs 4,00,00,000/- have been transferred from the bank account of the applicant petitioner company to the respondent company cannot be considered as financial debt within the meaning of section 5(8) of the Code and as such the application filed under section 7 of the Code deserves to be rejected.

6. Accordingly, the application in CP(IB)/67/MP/2020 is dismissed and rejected.

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**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

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**P. MOHAN RAJ**  
**MEMBER (JUDICIAL)**

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