

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-IV)

I.A./2302/ND/2022

IN

Company Petition(IB)No. -114(ND)/2018

[Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016]

IN THE MATTER OF:

Ms. Shalu khanna
Liquidator Of
M/s. Saubhagya Ornaments Private Limited

... APPLICANT

VERSUS

Advantech India Private. Limited.

...RESPONDENT No.1

Satinder Singh Banga

...RESPONDENT No.2

Hardeep Singh Banga

...RESPONDENT No.3

Order Delivered on: 26.02.2024

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

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

PRESENT:

For the Applicant : Mr. Saurabh Jain, Mr. Prayag Jain, Advs.

For the Liquidator : Mr. Varun Sharma, Ms. Vanshika Gupta, Mr.

Shivam Goel, Advs.

For the R-1 to R-3 : Mr. S. Shiva, Adv.

ORDER

PER: SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

1. The instant application is preferred by Ms. Shalu Khanna, Liquidator of M/s. Saubhagya Ornaments Private Limited ('applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016 against M/s. Advantech India Private Limited ('Respondent No.1'), Mr. Satinder Singh Banga ('Respondent No.2') and Mr. Hardeep Singh Banga ('Respondent No.3') inter alia seeking the following relief(S):-

- a) Pass appropriate orders directing the Respondent No.1 Company to issue fresh and rectified preference share certificate in the name of the Corporate Debtor for 20,00,000 9% Non- Cumulative Redeemable Preference Shares in compliance of Section 55(2) of the Companies Act, 2013.
- b) Pass appropriate orders directing the Respondent No.1 Company to allow the Applicant to redeem the 20,00,000 9% Non- Cumulative Redeemable Preference Shares held by the Corporate Debtor in the Respondent No.1 Company in compliance of Section 55 of the Companies Act, 2013;
- c) Pass such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the facts of the present case.

2. Briefly stated the facts of the present case as averred by the applicant and necessary for the adjudication of the present matter are that the liquidation proceedings were initiated against M/s. Saubhagya Ornaments Private Limited ('Corporate Debtor') by this Adjudicating Authority vide order dated 26.07.2021. It is submitted that M/s. Saubhagya Ornaments Private Limited

('Corporate Debtor') holds 20,00,000 9% Non-Cumulative Redeemable Preference Shares ('NCRPS') of M/s. Advantech India Private Limited ('Respondent No.1 Company') redeemable within 20 years vide offer letter dated 20.03.2015.

3. Further, It is submitted that the applicant on review of Financial Statement of the Respondent No.1 Company for F.Y. 2020-2021, observed that the Respondent No.1 Company had unilaterally changed the terms and conditions of the NCRPS in complete violation of the Companies Act, 2013 as well as in breach of the offer letter dated 20.03.2015. The Applicant had vide e-mail dated 08.02.2022 and 03.03.2022 to the Respondent No.1 Company had requested the Respondent No.1 Company to rectify the variations made and to issue the duplicate share certificate to the Applicant,. It is submitted that in the duplicate share certificate issued by the Respondent No.1 Company it is stated that the NCRPS are redeemable at the end of 20 years from the date of issue whereas, as mentioned above, in the copy of the share certificate It is stated that the NCRPS are redeemable after 20 years. Hence, the present application.

4. The Respondents had filed their reply and submitted that the terms of issue of the NCRPS clearly state that the said NCRPS shall "be redeemed at the maturity period i.e. 20 years" which are in compliance of the provisions of Section 55 of the Companies Act, 2013 and the applicable Rules. The provisions of Section 55 of the Companies Act, 2013 state that the preference

shares can be redeemed "within a period not exceeding twenty years". Further, the Respondents had issued the duplicate share certificate to the Applicant on his request, however, the only document which would determine when and how the NCRPS would be redeemed are the terms and conditions of issue contained in the resolution passed by the shareholders in the Extra Ordinary General meeting of the members of the Respondent No. I Company till its meeting held on 16.04.2015.

5. The Applicant had field its rejoinder and reiterated the same averments and stated that in the duplicate share certificate issued by the Respondent No. 1 Company it is stated that the NCRPS are redeemable at the end the of 20 years from the date of issue whereas, in the copy of the original share certificate and also in the financial statements and Independent Auditors' Report for FY 2020-21, It is stated that the NCRPS are redeemable after 20 years. Therefore, it is apparent that the Respondent No. 1 Company is unilaterally, wrongfully and maliciously varying the terms and conditions of the NCRPS issued to the Corporate Debtor.

6. We have heard the Learned Counsel for both the parties and meticulously perused the documents placed on record by both the parties. The sole and substance of the instant Application of the Liquidator pertains to only one issue which is the redemption of the said NCRPS.

7. Adverting to the facts of the present case, the Respondent No.1, on the request received from the Applicant had issued the duplicate NCRPS share certificate to the applicant, which are issued in terms of the offer letter dated 20.03.2015. The Board Resolution dated 20.03.2015 pursuant to which issuance of 9% Non-Cumulative Preference Shares were issued provides the term that, *“the Non-Cumulative Preference Shares be redeemed at the maturity Period i.e., 20 years”* and further the Duplicate Share Certificate provide the term that, *“the 9% Non-Cumulative Preference Shares are redeemable at the end of 20 years from the date of issue”*.
8. Be that as it may, it is a trite proposition of law that this Adjudicating Authority has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist. However, considering the facts of the present case, the Applicant sought redemption of the preference shares, which have to be redeemed in accordance with terms of the offer letter issued and in compliance of the provisions of Section 55 of the Companies Act, 2013. The Applicant has failed to show nexus between the insolvency proceedings of the present case vis –a-vis the issue of redemption of preference shares.
9. This Adjudicating Authority is of the considered view that the prayer (a) of the Applicant suffers from a defect in view of the fact that the duplicate share certificate already stands issued to the Applicant. Further, with respect to prayer (b), the Applicant has prayed for seeking redemption of the said

preference shares, which are liable to be redeemed at the maturity period in accordance with the terms of issue of Preference Shares and the provisions of Section 55 of the Companies Act, 2013.

10. In view of the aforesaid discussion, the present application (I.A/2302/2022) being devoid of merits **stands dismissed**. No orders to cost

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

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (J)