



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

I.A. – 2068/2023
IN
C.P.(I.B.) – 360(ND)2021

IN THE MATTER OF:

Indian Renewable Energy Development Agency Ltd.

...Financial Creditor

Versus

M/s Taxus Infrastructure and Power Projects Pvt. Ltd.

...Corporate Debtor

AND

AND IN THE MATTER OF:

Waaree Energies Limited

602, Western Edge I,
Western Express Highway
Borivali (East), Mumbai-400066

...Applicant

Versus

Mr. Darshan Singh Anand

Resolution Professional
M/s Taxus Infrastructure and
Power Projects Pvt. Ltd
3rd Floor, EG-46, Inder Puri,
New Delhi-110012

... Resolution Professional/Respondent

Order delivered on: 29.05.2024

UNDER SECTION: 60(5) r/w Rule 11 OF NCLT Rules, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the RP : Adv. Akshay Sapre, Adv. Abhijeet Swaroop &
Adv. Aneesha Rastogi

I.A. 2068/2023 in C.P.(IB)-360(ND)/2021
Waaree Energies Limited Vs. Darshan Singh Anand, RP



ORDER

I.A. 2068/2023 has been filed by Waaree Energies Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 against the wrongful rejection of its claim by the Resolution Professional/Respondent and has prayed, inter alia, to set aside the order dated 06.01.2023 by the Resolution Professional rejecting the Applicant's total claim and consequently recognise the applicant as a Financial Creditor. It is further prayed that the Resolution Professional be directed to allow the Applicant a seat in the CoC and allow it to participate in all further CoC meetings with all rights provided under the IBC, 2016.

2. The case of the Applicant is that it had filed the claim for Rs. 21,45,42,466/- in Form-C which was rejected by the Resolution Professional. It is stated that the Applicant has made an investment of Rs. 10 crore in the form of Compulsory Convertible Debentures in terms of the conditions laid down in Debenture Subscription Agreement. According to the Applicant, a Debenture Subscription Agreement was executed between the Corporate Debtor and the Applicant, pursuant to which the Applicant made an investment of Rs. 10 crores in the form of Compulsory Convertible Debentures. In terms of the Debenture Subscription Agreement, on maturity the Applicant was entitled to conversion of the instrument, namely the Compulsorily Convertible Debentures into equity shares and the failure to do the same was defined as an event of default, pursuant to which the Applicant became entitled to the

return/ repayment of the Investment Amount of Rs. 10 Crores (“Principal
I.A. 2068/2023 in C.P.(IB)-360(ND)/2021
Waaree Energies Limited Vs. Darshan Singh Anand, RP



Sum”). It is further stated that the Corporate Debtor defaulted in converting the instrument into equity shares on maturity, which qualified as an event of default. Consequently, the Applicant became entitled to the return of the investment amount along with interest vis-a-vis the default.

2.1 The Corporate Debtor, on 16.10.2012, executed an unconditional, absolute and irrevocable personal guarantee in favour of the Applicant, guaranteeing the corporate debtor’s obligation under the DSA and interest thereon. When the CCDs were not converted into Equity Shares by the due date, the Applicant in terms of DSA vide its letter dated 08.12.2017 called upon the Corporate Debtor to repay the Applicant an amount of INR 15,63,86,301/- (Investment amount along with applicable interest). There was a failure on the part of the Corporate Debtor who failed to convert the debentures into equity shares in terms of clause 4 of the DSA. In view of such failure, there was a default and it is the submission on behalf of the Applicant that such failure falls under the definition of “financial debt.”

2.2 The Applicant invoked Arbitration Clause and got an Arbitral Award dated 31.12.2021 in his favour, pursuant to which the Corporate Debtor was directed to pay the investment amount of INR 10,00,00,000 along with interest at the rate of 24% per annum. It is pointed out that the arbitral award only crystallises the rights that the Applicant had under the Debenture Subscription Agreement, but the actual default had taken place much prior to the same.

2.3 When it went into CIRP, it is averred that by the time the arbitral award was rendered, the Corporate Debtor was admitted into insolvency. Hence, the



applicant filed its claim accumulating to Rs. 21,45,42,466/- in Form C dated 21.10.2022.

2.4 The Applicant espoused that under the terms of the Debt Subscription Agreement (DSA) dated 16.10.2012, the Compulsory Convertible Debentures (CCDs) are meant to be treated as debt till the time they were converted into equity. According to it, the debentures would be compulsorily convertible into equity shares of the corporate debtor within 65 months from the date of allotment.

2.5 A reference is made to Clauses 4.1 and 7 of the DSA. Further Clause 8 of the DSA stipulates that upon the occurrence of an event of default, the debentures and the amounts payable towards redemption thereof, would become payable along with an interest at the rate of 24% per annum.

2.6. It is that the Ld. Arbitrator affirmed that, in terms of clause 8.1 of the DSA, the Applicant is entitled to the release/refund of the entire investment fund, i.e. Rs. 10 crores along with interest at the rate of 24%.

2.7. It is also pointed out by it that, as a recognition of the Applicant as a holder of debentures, he was allowed to vote as a financial creditor in the first two meetings of the COC. Subsequently, the RP sought a legal opinion, on the basis of which it rejected the claim filed by the Applicant.

3. The Resolution Professional in his response has relied on several judicial decisions, including the decision of the Hon'ble Supreme Court in the



case of “Narendra Kumar Maheshwari vs. Union of India & Ors.” [1990 (Supp) SCC 440], and has extracted the following from para 98 of the said judgement:

“... It has to be borne in mind that the debentures issued in the present case are compulsorily convertible. Therefore, no repayment of principal is really involved.... xxxx

“...A compulsorily convertible debenture does not postulate any repayment of the principal. Therefore, it does not constitute a ‘debenture’ in its classic sense...xxxx

“...Wherever the concept of compulsorily convertible debentures is involved, the guidelines treat these as “equity”...xxxx

“...These two sets of guidelines clearly indicate that any instrument which is compulsorily convertible into shares, is regarded as a “equity” and not as a loan or debt....”

3.1. Reliance is also placed on the decision of the Hon’ble Delhi High Court in the case of “Cochin International Airport vs. Presiding Officer, DRT & Ors.” [WP (C) No. 6531 of 2008] dated 23.12.2009 in which the aforementioned decision of the Hon’ble Supreme Court has been followed.

3.2 Further, reliance is also placed on the decision of the Hon’ble Delhi High Court in the case of “Zaheer Mauritius Vs. Director of Income Tax (International Taxation)-II” [W.P.(C) 1648 of 2013], it could be ruled thus:

*“13. There is no dispute as to the nature of Compulsorily Convertible Debentures. A debenture indisputably creates and recognizes the existence of a debt and till it is discharged, either by payment or by conversion, the debenture would essentially represent a debt. **A***



Compulsorily Convertible Debenture is a debt which is compulsorily liable to be discharged by conversion into equity.”

(Emphasis Supplied)

3.3 It is also brought out that the arbitral award in favour of the Applicant has been challenged before the Hon'ble High Court of Bombay in terms of the provisions of Section 34 of the Arbitration and Conciliation Act, 1996, the challenge preferred against the award is still pending.

3.4 Regarding the ramifications of the issue of Arbitral Award was examined in the matter of “K. Kishan vs. Vijay Nirman Co. Pvt. Ltd.” [C.A. No. 21823 of 2017, (2018) 17 SCC 662] treatment of an Operational Debtor under IBC has and it could be viewed thus:

“18) We repeat with emphasis that under our Code, insofar as an operational debt is concerned, all that has to be seen is whether the said debt can be said to be disputed, and we have no doubt in stating that the filling of a Section 34 petition against an Arbitral Award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an Award, continues even after the Award, at least till the final adjudicatory process under Section 34 & 37 has taken place.”

(Emphasis Supplied)

3.5 The plea espoused before us is that though the Hon'ble Supreme Court held as above in the context of a petition filed under section 9 of the Code, the legal position is applicable to all Arbitral Awards which get challenged in terms of Section 34 of the Arbitration and Conciliation Act, 1996 including the present matter in hand. It is submitted that the dispute which had culminated



in the Arbitral Award dated 31.12.2021 continues even after the award, till the petition filed on 20.01.2023 before the Hon'ble High Court of Bombay under Section 34 of the Arbitration and Conciliation Act is finally adjudicated.

4. In its reply, the Respondent has made a reference to para 3.2 of the DSA under the head of "Conversion" and also para 1.1 of the DSA under the head of "Definition" laying down the meaning of various terms including that of "Compulsory Convertible Debentures". In the backdrop and with reference to para 7.1 and para 8 of the DSA, it has been concluded thus:

"There is neither any provision in the DSA for redemption of the CCDs and/or for payment/repayment nor was the intention of the parties. Thus, there was never any amount due under the DSA and accordingly, there cannot be any instance of failure to pay any amount. Accordingly, there can be no "Event of default" in the nature of failure to pay any (alleged) amount (allegedly) due under the agreement. Thus, there can be no "event of default" in the nature of "failure to redeem one or more debentures in accordance with the DSA."

As no "event of default" has occurred, the "remedies on an event of default" do not get triggered.

The DSA does not stipulate "repayment or payment of any amount", there is no (alleged) "due date" for the same and thus, there is no "defaulted amount" and accordingly. "Remedy on event of default" is not triggered. This further confirms the intention of the parties that the transaction under DSA was the CCD and not as of debt. Thus, the matter of conversion of CCDs to equity became sub-judice. Even otherwise, the



debentures were issued on 22.11.2012 and the last date for conversion thereof was 21.04.2018, being 65 months from issuance whereas Waaree had invoked arbitration on 30.12.2017.

4.1 Reliance has been placed on the following judicial decisions:

(i) Judgment dated 14.03.2023 of Hon'ble NCLT, Hyderabad in IA No. 1465 of 2022 in CP(IB) No. 28/07/HDB/2022 in the matter of IFCI Ltd. vs. Sutanu Sinha, RP for IVRCL Chengapalli Yollways Ltd. & Ors.

(ii) Judgment dated 05.06.2023 of Hon'ble NCLAT, Chennai in Company Appeal (AT)(CH)(Ins) No. 108/2023 in the matter of IFCI Ltd. vs. Sutanu Sinha, RP.

5. In its Rejoinder, the Applicant has stated that the ratio in the case of "Narendra Kumar Maheshwari (supra) has been wrongly interpreted by the Respondent as in the present case. Although the instrument was titled as Compulsory Convertible Debentures (CCDs), it is essentially an Optionally Convertible Debentures in as much as the Debentures Subscription Agreement (DSA) specifically directs the Corporate Debtor to repay the principal amount along with interest in the event it failed to convert the CCD upon maturity. It is further stated that as the time frame provided for conversion lapsed long back, the Applicant is entitled to ask for repayment in terms of express understanding recorded in the DSA. It is further stated that the DSA provides that in case the CCDs are not converted into equity, the same amounts to an "Event of Default" under Clause 7 of the DSA.



6. We have carefully considered the submissions made before us and have gone through the relevant documents.

7. It is a fact that though the generic term Compulsory Convertible Debentures (CCDs) is used for a variety of financial instruments, the true nature of a CCD can only be deciphered from the provisions of the Debenture Subscription Agreement (DSA). This fact has also been underlined by the Hon'ble NCLAT in its decision in the case of IFCI Limited Vs. Sutanu Sinha and Ors. (Supra) as under:

“Even if these amounts were reflected in the financial statements of the Corporate Debtor as 'Other Financial Liability', it would depend on the facts of each case as to whether such an entry in the balance sheet construes a 'Financial Debt' as defined under the Code. In the instant case, the terms of the DSA, CLA and the 'Share Agreement' have to be read together with the fact that it was the Sponsor Company which was liable to pay the interest component and not the Corporate Debtor.”

(Emphasis Supplied)

7.1 In the aforementioned case, the Hon'ble NCLAT further observed that the terms and conditions of the Compulsory Convertible Debenture (CCD) and the intention of the parties did not anywhere specify that the instrument takes on the character of the Financial Debt, in the occurrence of any event. It is further noticed that Clause 2.1 of the DSA specifies interest at 11% p.a. to be payable on quarterly basis by the “Sponsor Company” on the last date of the quarter and it was not the Corporate Debtor, who was liable to pay the interest



of the CCDs. It was therefore held that in the given factual matrix of the case there was no “Time Value of Money”. On the basis of such facts, it was held by the Hon’ble NCLAT that CCD in that particular case did not postulate any repayment of the principal and hence was recorded as equity, but not a loan or debt. The said findings were upheld by the Hon’ble Supreme Court in its order in Civil Appeal No. 4929/2023 dated 09.11.2023.

7.2 As regards the reliance placed on the decision of the Hon’ble Apex Court in the case of “K. Kishan vs. Vijay Nirman Co. Pvt. Ltd.” (Supra), we are of the view that as the default in payment had occurred much prior to the arbitral proceedings, the fact of Arbitral Award and Appeal against the same are not relevant for deciding the issues in the present case.

8. Now coming to the facts of the present case, we notice that the Conversion Terms (Clause 4.1), Event of Default (Clause 7), Remedies on an Event of Default (Clause 8) are clearly stated in the DSA. For the sake of clarity, the relevant clauses are extracted below:

"4. CONVERSION TERMS

4.1. The Investor shall have the option to convert the CCDs into Equity Shares of the Company by giving 1 (one) month notice ("Conversion Notice") in writing to the Company."

7. EVENT OF DEFAULT

7.1. The occurrence of any of the following events or circumstances (whether or not continuing) shall constitute an event of default (the "Event of Default").



I. *The Company fails to pay any amount due under this Agreement or any other Transaction Document on the due date (unless the failure is caused by administrative or technical error and payment is made within 2 (two) banking days of the due date) or on demand, as the case may be. Each failure of the Company to pay any amount due shall constitute a separate Event of Default;*

II. *Failure to comply with, or a breach of any of the provisions of the Transaction Documents, or any other document referred to herein or entered into, pursuant to or in relation to the transaction contemplated under the Transaction Documents by Company and/or Promoters and such failure is not rectified within a period of 30 days from the date on which a notice is served upon them under any Transaction Documents.*

XVI. *failure to redeem one or more Debentures by the Company in accordance with this Agreement; ... "*

8. REMEDIES ON AN EVENT OF DEFAULT

8.1 *Upon the occurrence of one or more Event of Default. the Debentures and the amounts payable towards redemption thereof fees, costs, charges, expenses and other monies whatsoever stipulated in the Transaction Document payable by the Company or the Promoters shall forthwith become payable by the Company, the Security shall become enforceable and the Debenture Holder shall be entitled to exercise its rights in accordance with this Agreement and the Transaction Documents in relation to such Security and otherwise under Applicable Law. The Debenture Holder shall have the right to require the Promoters or any of them to*



purchase its Debentures. In addition, in case of default by the Company in repaying or paying amounts on the due date, the Company shall pay on the defaulted amounts, interest from the due date for payment until payment or repayment, at Twenty-Four (24%) per cent per annum. However, in the event the Company redeems the Debentures in accordance with the debenture return formula within 30 days from the date of the occurrence of the Event of Default, the Debenture Holder shall not enforce the Security.

8.3 Continuing Obligations. The liabilities and obligations of the Company and the Promoters under or pursuant to this Agreement and the other Transaction Documents shall remain in full force and effect notwithstanding any act, omission, event or circumstance whatsoever until the time the Debenture Holder hold equity shares in the Company whichever is earlier.”

(Emphasis Supplied)

8.1 Thus, in the present case the liabilities and obligations of the Corporate Debtor are clearly defined in the event of any default by the Corporate Debtor in converting the Compulsory Convertible Debentures into Equity. The payment of interest by the Corporate Debtor at the rate of 24% p.a. is also stipulated in the event of a default.

8.2 We also notice that the Sole Arbitrator, Mr Shiraz Rustomjee in terms of the award dated 31.12.2021 on Dispute under Debenture Subscription Agreement dated 16.10.2012 on Waaree's Claim for Rs. 16,39,78,082 has held



that the Corporate Debtor is liable to pay the Applicant the amount borrowed at the rate of 24% p.a. with the following observations:

“The failure to redeem the CCDs amounts to an event of default under clause 7 of the DSA. Under clause 8.1 of the DSA, upon the occurrence of an event of default, Waaree is entitled to the return of the amount paid along with interest@ 24%. Even otherwise, Taxus has received the funds from Waaree and is required to account for the same. There is no defence to this claim on merits.”

8.3 In view of the above, the facts of the present case are completely distinguishable from that of IFCI (Supra) which is being relied upon by the Respondent. The decision of the Hon’ble Apex Court in the case of “Narendra Kumar Maheswari” (supra) also does not support the case of the Applicant.

9. Now coming to the issue whether the CCDs fall within the definition of Financial Debt, a reference is made to the following extract from Section 5(8) of the Code:

“(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes

(a) money borrowed against the payment of interest;”

9.1 The financial instrument in the present case, though coming under the broad term Compulsory Convertible Debenture (CCD), has an interest component payable in case of default, signifying the Time Value for Money. In



the result, we are of the view that the CCDs in the present case are not convertible Debentures in the classical sense and are to be categorised as a 'Debt' falling within the definition of 'Financial Debt' as defined under the 'Code'.

10. In exercise of its Summary jurisdiction, this Tribunal is not expected to conduct extensive trials and determine the disputed question. The broad scope of jurisdiction is to see whether the claim is based on authentic record/document or not. In the present case, the Arbitral Award dated 31.12.2021 is placed on record and is not disputed. In this context, a reference has been made Regulation 8(2)(b)(iv) of the IBBI (Insolvency Resolution Process for Corporate Persons), 2016.

“8. Claims by financial creditors

(2) The existence of debt due to the financial creditor may be proved on the basis of -

(b) the records available with an information utility, if any; or other relevant documents, including -

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.”

11. Thus, in the present case, when there is an Arbitral Award in favour of the Applicant, its claims should not have been rejected by the Resolution Professional.

12. In the result, the prayer is allowed and the Resolution Professional is directed to consider the claim made by the applicant as a Financial Debt and also to call the meeting of the CoC within 7 days of this order for passing appropriate resolution to that effect. The Applicant is allowed to participate in



all the future CoC meetings with all rights provided under IBC. **The IA is disposed of accordingly.**

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)



IN IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

I.A. – 4982/2023

IN

C.P.(I.B.) – 360(ND)2021

IN THE MATTER OF:

Indian Renewable Energy Development Agency Ltd.

...Financial Creditor

Versus

M/s Taxus Infrastructure and Power Projects Pvt. Ltd.

...Corporate Debtor

AND

AND IN THE MATTER OF:

Mr. Darshan Singh Anand

Resolution Professional

M/s Taxus Infrastructure and Power Projects Pvt. Ltd.

...Applicant

Order delivered on: 29.05.2024

UNDER SECTION: 30(6) OF IBC, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the RP

: Adv. I.P.S. Oberay, Adv. H.S. Wadhwa



ORDER

The present IA No. 4982 of 2023 in CP IB No. 360/ND/2021 has been preferred by Mr. Darshan Singh Anand, Resolution Professional of M/s Taxus Infrastructure and Power Projects Pvt. Ltd. (hereinafter referred to as, the **'Applicant/RP'**) under Section 30(6) of IBC, 2016 seeking the following reliefs:

“(i) Allow the present application,

(ii) Approve the Resolution Plan of M/s Sunrise Industries, the Resolution Applicant, as aforesaid in terms of Section 31(1) of the Code,

(iii) Discharge the Applicant from the role and responsibilities of Resolution Professional, and

(iv) Pass any other order/s as may be deemed fit and necessary by this Hon'ble Adjudicating Authority in the facts and circumstances of the matter.”

2. To put the facts concisely, the underlying main Petition CP (IB)-360/(PB)/2021 was filed by Indian Renewable Energy Development Agency Ltd. against the Corporate Debtor, namely, M/s Taxus Infrastructure And Power Projects Pvt. Ltd. under Section 9 of the IBC, 2016, which was admitted vide Order dated 13.12.2021 of this Adjudicating Authority and the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated. The Corporate Debtor is currently represented through its RP, Mr. Darshan Singh Anand.

3. This Tribunal initially appointed Mr. Darshan Singh Anand was the IRP of the Corporate Debtor who was confirmed as the RP in the First Meeting of the CoC held on 09.11.2022.



4. It is stated by the Applicant that in terms of Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant made a Public Announcement in Form-A on 12.10.2022 to invite claims, a copy of which was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

5. The following is the Voting Share of Members of CoC:

Name of the financial creditor	Amount claimed	Amount admitted	Percentage of voting share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
Indian Renewable Energy Development Agency Ltd. (IREDA) (Secured FC)	Rs.69,83,70,832/-	Rs.69,83,70,832/-	100%	Yes
Waaree Energies Ltd. (Unsecured FC, as claimed)	Rs.21,45,42,466/-	Nil	N/A	N/A

6. The RP got the assets of the Corporate Debtor vale and the Fair Value and Liquidation Value of the Corporate Debtor is as under:

Sr. No.	Name of Valuer	Fair value	Liquidation Value
1.	Adroit Appraisers and Research Pvt. Ltd.	Rs.11,33,95,400/-	Rs.7,21,80,400/-
2.	Devang Shah, Parag Seth and Manish Bhagat.	Rs.12,93,90,818/-	Rs.6,34,20,818/-

7. Several meetings of the CoC have been conducted by the Resolution Professional which have been extracted in the present application. The CoC



approved the Resolution Plan in its 9th meeting held on 07.08.2023 with 100% voting share. Subsequently, the present application was filed on 11.09.2023.

8. Subsequent to the filing of I.A. 4982/2023, the present application for Approval of Resolution Plan, another application bearing I.A. No. 2068/2023 was filed on 10.04.2023 against the alleged wrongful rejection of the claim of one Waaree Energies Limited by the Resolution Professional/Respondent and with a prayer, inter alia, to set aside order dated 01.06.2023 by the Resolution Professional rejecting the Waaree Energies Limited's total claim and consequently recognise the said applicant as a Financial Creditor.

9. After hearing both the sides, this Bench, in its order of even date, has directed the Resolution Professional to consider the claim made by Waaree Energies Limited as a Financial Debt and also to call the meeting of the CoC within 7 days of the said order for passing appropriate resolution to that effect. The Applicant, i.e. Waaree Energies Limited, is further allowed by this Bench to participate in all the future CoC meetings with all rights provided under IBC, 2016.

10. Thus in view of the aforementioned directions, the present application is restored back to the CoC for further consideration in the light of the said directions. **In the result, this application is disposed of with observations**

as above.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)