NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 475 of 2022

[Arising out of Order dated 12.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (IB) No. 2119/KB/2019]

IN THE MATTER OF:

Adventz Finance Private Limited
Registered office at:
Hongkong House, 31, B.B.D. Bagh (S),
Kolkata - 700001

...Appellant

Versus

Jai Annanya Investments Private Limited
Registered office at:
8, Camac Street, Shantiniketan Building,
7th Floor, Room No. 11 & 12,
Kolkata – 700017.

...Respondent

Present:

For Appellant: **Ms. Neha Somani, PCS.**

For Respondent:

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by the Financial Creditor has been filed against the order dated 12.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata rejecting Section 7 application filed by the Appellant. Brief facts of the case necessary for deciding this appeal are:-

(i) The Corporate Debtor vide letter dated 14.05.2014 sent a request for grant of Inter Corporate Deposit to 'Adventz Investments and Holdings Ltd.'. Request was for Inter Corporate Deposit of Rs.40 Crore with interest @12.5% payable half yearly.

(ii) Adventz Investments and Holdings Ltd.' (which subsequently got merged with the Appellant pursuant to a scheme of amalgamation sanctioned by Hon'ble Calcutta High Court on 02.06.2014) accepted to grant Inter Corporate Deposit to the Corporate Debtor of Rs.40 Crore and a cheque of Rs.25 Crore was annexed alongwith letter dated 16.05.2014.

(iii) The Corporate Debtor from time to time has repaid some amounts on account of principal and also on account of interest. Corporate Debtor had also made deductions on account of Tax Deducted at Source and Form 26 AS was also filed in this regard.

(iv) Due to defaults committed by the Corporate Debtor in servicing its Interest and its repayment obligation, a legal notice dated 04.01.2016 was issued regarding repayment of inter-corporate deposit, which notice was replied by the Corporate Debtor on 03.02.2016 where the Corporate Debtor stated that entire amount of Inter Corporate Deposit has been invested in various securities and due to adverse directions issued by the Securities and Exchange Board of India (SEBI) business of the company has come to a standstill. It was further stated that company has been making best possible efforts to manage funds to repay. The Corporate Debtor even thereafter in writing has acknowledged and admitted its liability towards the Appellant.

(v) In view of the defaults committed by the Corporate Debtor, an application was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'I&B Code') in March, 2019.

(vi) The Corporate Debtor appeared before the Adjudicating Authority on 16.12.2019 and sought direction to file vakalatnama and reply.

(vii) The Adjudicating Authority proceeded ex-parte against the Corporate Debtor by order dated 22.09.2021.

(viii) Subsequently, by order dated 12.01.2022, the application under Section 7 has been rejected.

2. In this appeal notices were issued to the Corporate Debtor on 04.05.2022. Although notices were served but no one appeared nor any reply was filed.

3. We have heard Ms. Neha Somani, Authorized Representative of the Appellant on 28.09.2022. None had appeared for the Respondent. Learned Authorized Representative of the Appellant challenging the order passed by the Adjudicating Authority submits that the Adjudicating Authority erred in not taking into consideration the acknowledgements in writing issued by the Corporate Debtor where debt was acknowledged. It is submitted that

the Adjudicating Authority also erred in observing that in the Independent Auditor's Report of the Financial Creditor for Financial Years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 names of the companies to whom Financial Creditor has advanced Inter Corporate Deposit are distinctly mentioned whereas there is no mention with regard to the Corporate Debtor. It is submitted that the mention of names of those few companies was made against whom litigations were going on and the total of Inter Corporate Deposit given by the Financial Creditor were mentioned. Further, all details of the dues in a tabular chart has been mentioned. It is submitted that the Adjudicating Authority erred in rejecting Section 7 application whereas debt and default both were successfully proved.

3. We have considered the submissions of learned Authorized Representative for the Appellant and perused the record.

4. It is relevant to notice that alongwith Section 7 application, the Financial Creditor in Part IV has given the details of amounts which were granted as Inter Corporate Deposit to the Corporate Debtor. The request letter dated 14.05.2014 which was received from the Corporate Debtor has been mentioned and the same was filed as Annexure A-IV. It is useful to extract the letter dated 14.05.2014.

> *"Dated: 14th May, 2014*
>
> *Adventz Investments And Holdings Ltd.*
> *31, Hongkong House,*
> *B.B.D. Bagh (South),*
> *Kolkata – 700001*

Sub: Request for grant of Inter-Corporate Deposit (ICD).

Sir,

With reference to above you are requested to kindly grant us an Inter-Corporate Deposit (ICD) of Rs.40 Crore on the following terms and conditions:

1. ICD Amount	*:*	*Rs. 40 Crore (Rupees Forty Crore only)*
2. Rate of Interest	*:*	*12.50% p.a. (payable half yearly)*
3. Repayment	*:*	*1 year with an option to renew further*
4. Disbursement	*:*	*Immediate in single or tranches*
5. PAN No.	*:*	*AABCGO769Q*

We shall appreciate for your immediate response.

Thanking you

Yours faithfully
For Jai Annanya Investments Pvt. Ltd."

5. The request made by the Corporate Debtor was accepted vide letter dated 16.05.2014 which was also referred to and filed as part of Annexure IV, which is as follows:-

"Dated: 16th May, 2014

Jai Annanya Investments Pvt. Ltd.
31, Hongkong House,
B.B.D. Bagh (South),
Kolkata – 700001

Sub: Inter-Corporate Deposit.

Dear Sir,

This has reference to you request letter dated 14/05/2014, requesting for providing for Inter-Corporate Deposit for a sum of Rs. 40 Crore on the terms mentioned therein.

We are pleased to inform you that we have sanctioned ICD on the following terms as mentioned below:

1.	*ICD Amount*	*:*	*Rs. 40 Crore (Rupees Forty Crore only)*
2.	*Rate of Interest*	*:*	*12.50% p.a. (payable half yearly)*
3.	*Repayment*	*:*	*1 year with an option to renew further*
4.	*Disbursement*	*:*	*In tranches*

We enclose herewith out Cheque No. 000309 dated 16/05/2014 drawn on The Ratnakar Bank Ltd for Rs. 25 Crore (Rupees Twenty Five Crore only) towards the said ICD.

Our PAN is AACCP3995N.

You are requested to acknowledge the receipt of the same.

Thanking you

Yours faithfully
For Adventz Investments & Holdings Ltd."

6. The Financial Creditor has also brought on record the Bank Statement to prove that in pursuance of the communication dated

16.05.2014 an amount of Rs.25 Crore was deposited in the account of the Corporate Debtor. The Inter Corporate Deposit with the terms and conditions as contained in the both the above letters clearly prove that financial facility by Inter Corporate Deposit was extended by the Financial Creditor. In the Part IV of the application there is a specific reference of legal notice dated 04.01.2016 issued on behalf of the Financial Creditor to the Corporate Debtor where it was mentioned that a sum of Rs.4,03,17,465/- is due towards interest. The Corporate Debtor was called upon to pay the interest on the said corporate deposit since 01.10.2014. The legal notice was replied by the Corporate Debtor by letter dated 03.02.2016 which is also part of Section 7 application. In the reply dated 03.02.2016 following has been stated by the Corporate Debtor:-

"February 3, 2016

By Hand Delivery

To,
The Director
Adventz Finance Private Limited
31, B.B.D. Bagh (S),
Hong Kong House,
Kolkata – 700001

Dear Sir,

Sub: Your Legal Notice dated January 4, 2016

We refer to your subject legal notice whereby you have called upon us to pay an amount of Rs. 29,03,17,465/- being the balance amount of inter-corporate deposit sanctioned by you vide your *letter dated May 16, 2016 together with interest thereon calculated at the rate of 12.50 % p.a. within 7 days from the date of receipt of the notice.*

In reply thereto, we inform you that the entire amount of inter-corporate deposit has been invested in various securities. Vide order dated August 20, 2015, the Securities and Exchange Board of India (SEBI) has restrained the Company from buying, selling or dealing in the securities markets, either directly or indirectly, in any manner, till further directions.

Due to the adverse directions issued by SEBI vide its order dated August 20, 2015, the complete business of the Company has come to a standstill resulting in a loss of INR 93.12 Lacs to the Company.

Further, the demat accounts of the Company has been frozen thereby preventing us from liquidating the investments and paying off our creditors.

We further inform you that in order to liquidate the Company's investments and pay off its creditors, applications have been made by the Company to SEBI including dated February 2, 2016 seeking certain interim reliefs. Please find enclosed a copy of the interim application dated February 2, 2016 for your reference.

The Company has been making best possible efforts to arrange for funds to repay its creditors. However, due to unforeseen circumstances *beyond its control, the Company is unable to discharge its commitments within time.*

In the interest of maintaining business relations, we request you to kindly hold back initiation of legal recourse against the Company until the disposal of the above interim application by SEBI.

We sincerely regret the inconvenience caused to you by the delay in repayment of the balance amount of inter-corporate deposit.

Thanking you

Yours faithfully,

For Jai Ananya Investments Private Limited

Director"

7. When we look into the above letters issued by the Corporate Debtor there is a clear acknowledgement of debt. The Adjudicating Authority had not adverted to aforesaid materials before coming to the conclusion that there is no acknowledgement of the Inter Corporate Deposit in the Independent Auditor's Report of the Financial Creditor for Financial Years 2014-15 to 2018-19.

8. Now coming to the Independent Auditor's Report of the Financial Creditor which has relied by the Adjudicating Authority in Para 9, it is relevant to notice that there is mention of name of certain companies in the Independent Auditor's Report. For example: at page 160, Para 2.28 (FY-2014-15), following has been stated:-

> *"2.28 The company has given Inter-Corporate Deposits of Rs. 2 crores to M/s . Chopra Marketing Private Limited, Rs.7 crores to Enso Private Limited and Rs.2.30 crores to Birla Power Solutions Limited. Since the amounts were not refunded by the said parties on time, the Company has filed legal cases at Division/High Court at Calcutta/ Bombay for recovery of the said amount. Necessary provisions have been made in the accounts."*

9. Similarly, there is mention of certain other companies at page 181 (para 2.21, FY 2015-16), page 211 (para 2.19, FY 2016-17), page 238 (para 2.19, FY 2017-18), page 276 (para 2.30, FY 2018-19) of the paper book. When we look into all the above paras, mention of Inter Corporate Deposit given to certain entities has been clearly mentioned but what is relevant is that all those refer to litigations with regard to Inter Corporate Deposit. It is further relevant to notice that in the Financial Statements details of Inter Corporate Deposit where total Short Term Loans and Advance have been given. For example in the Balance Sheet as on 31.03.2015, Short Term Loans and Advance as on 31.03.2015 are mentioned as 1,46,31,84,491/- which referred to Note No. 2.14, which is to the following effect:-

"NOTE No. - 2.14
SHORT TERM LOANS AND ADVANCES

Unsecured. Considered good

Inter-Corporate Deposit	*1,43,37,53,247*

Advances (recoverable in cash or kind or value to be received

Advance Income Tax (net of provision)		*54,01,771*
Advances to Employees		*14,83,873*
Prepaid Expenses		*3,16,286*
Others		*2,22,29,314*
Unsecured. Considered Doubtful		
Inter-Corporate Deposit	*18,56,87,409*	
Less: Provision for Doubtful Loans	*18,56,87,409*	
		1,46,31,84,491

10. The above financial statement clearly mentions the Inter Corporate Deposit of Rs.1,43,37,53,247/-. Similarly, with regard to other financial years mention of total Inter Corporate Deposit is given. The Adjudicating Authority has drawn adverse inference against the Financial Creditor only relying on few names of companies to whom Inter Corporate Deposit was given and whose names were mentioned in the note in the Independent Auditor's Report, but as noted above the names in the Report were with regard to those companies with whom litigations were going on. As noted above, the details of total Inter Corporate Deposits, which runs to Rs.143 Crores, has been reflected in the financial statements and the Adjudicating Authority without adverting to the relevant material jumped to conclusion that financial creditor has failed to prove Inter Corporate Deposit given to the Corporate Debtor, which finding is unsustainable.

11. Now, we come to the observation of the Adjudicating Authority that there is no date of default mentioned in the application. In the Part IV Item

No.2 under the column "Amount claimed to be in default and the date on which the default occurred", following has been stated:-

2.	*AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED*	*AMOUNT CLAIMED TO BE IN DEFAULT* ***Rs. 4,05,51,038/-*** *(Rupees Four Crores Five Lakh Fifty One Thousand and Thirty Eight only)* ***Rs.1,18,50,000/-*** *on account of principal, ii)* ***Rs.2,87,01,038/-*** *on account of interest.* *DATES ON WHICH THE DEFAULT OCCURRED* *On 31-03-2015, interest to be received was Rs.3,27,48,287/- out of which only Rs.1,31,14,726/- was received and balance Rs.1,96,33,561/- was in default.* *On 31-03-2016, total outstanding interest was Rs.35,10,16,758/- out of which only Rs.54,00,000/- was received and balance Rs.4,56,16,758/- was in default.* *On 31-03-2017, total outstanding interest was Rs.6,62,57,905/- out of which only Rs.2,75,56,867/- was received and balance Rs.3,87,01,038/- was in default.*

		On 31-03-2018, total outstanding interest was Rs.3,87,01,038/- out of which only Rs.1,00,00,000/- was received and balance Rs.2,87,01,038/- was in default. *The details of amount of default in tabular format attached hereto and marked as* ***"Annexure A-XVI"****.*

12. Further details of amount of default in tabular format are annexed as Annexure-XVI. Thus, observation of the Adjudicating Authority that date of default has not been mentioned also cannot be accepted.

13. It is also relevant to notice that Corporate Debtor has also made payments in the years 2015, 2016, 2017 till the financial year 2018-19 which details are all mentioned in the Part IV of the application. It is further relevant to notice that Corporate Debtor although once appeared before the Adjudicating Authority but neither filed any reply nor appeared thereafter and Adjudicating Authority proceeded ex-parte against the Corporate Debtor. In this appeal also despite service of notice, Corporate Debtor did not appear. There is not even dispute to allegations and case set up by the Financial Creditor against the Corporate Debtor.

14. We, thus, are of the view that Adjudicating Authority committed error in rejecting Section 7 application. The order passed by the Adjudicating Authority dated 12.01.2022 cannot be sustained and is hereby set aside. Section 7 application being CP (IB) No. 2119/KB/2019 is revived before the

Adjudicating Authority and Adjudicating Authority is directed to pass an order of admission alongwith all consequential directions within period of one month from the date the copy of this order is produced before the Adjudicating Authority. The Appeal is allowed accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

12th October, 2022

Archana