



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

Item No. 204
(IB)-127/ND/2024

IN THE MATTER OF:

Savitur Infrastructure Private Limited
B-1/451, Nand Nagari,
North East, New Delhi-110093

**... Applicant/
Financial Creditor**

Versus

Parivartan Buildcon Private Limited
103, Ground Floor, Gali No. 6,
Jatipur, Badarpur, New Delhi-110044

**... Respondent/
Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on 01.04.2024

CORAM:

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

PRESENT:

For the Applicant : Mr. Akshay Goel, Mr. Harsh Jadon, Advs.
For the Respondent : Adv Karan Grover, Varsha Banerjee

[DAY ONE OF FULL HYBRID HEARING]

ORDER

It is the case of the Petitioner that way back in January 2018, the Corporate Debtor made an offer to the Financial Creditor to subscribe to its proposed issue of Compulsorily Convertible Debentures (“**CCDs**”). On 31.03.2018, the FC accepted the offer of the CD and agreed to subscribe to 53651 Debentures being issued by the CD having face value of Rs. 1,000/- each against the outstanding amount due from the CD. Accordingly, Debentures Certificate for such subscription was issued. The said Debentures carried a zero coupon rate.



2. Subsequently, the instrument of Debentures was converted into Optionally Convertible Debentures (“OCD”) in terms of the Debenture Agreement dated 10.04.2023 which was executed between the parties i.e. the Petitioner and the Respondent. It is not in dispute that a Debenture Certificate for 53651 OCD was issued by the Corporate Debtor in favour of the Financial Creditor. The Debenture Certificate reads thus:

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Debenture Certificate


PARIVARTAN BUILDCON PRIVATE LIMITED
 Corporate Identification Number: U70102DL2013PTC259066
 (Incorporated under the Companies Act, 1956)
 Registered Office: 921A, Ninth Floor, Devika Towers, Nehru Place, New Delhi-110019

DEBENTURE CERTIFICATE ISSUED IN LIEU OF CONVERSION OF COMPULSORILY CONVERTIBLE DEBENTURE INTO OPTIONALLY CONVERTIBLE DEBENTURES

THIS IS TO CERTIFY that the person(s) named below or the last transferee(s) whose name(s) is/are duly recorded in the Memorandum of Transfer on the reverse hereof is/are holder(s) of the within mentioned Optionally Convertible Debentures (the “Debentures”/“OCDs”) subject to the Memorandum and Article of Association of the Company and the terms and conditions on the reverse hercof.

OPTIONALLY CONVERTIBLE DEBENTURES OF RS. 1000/- EACH AMOUNT PAID-UP PER DEBENTURE RS. 1000/- EACH	
Registered Folio No.	: OCD-01 Certificate No.: OCD 1
Name(s) of Holder(s)	: Savitur Infrastructure Private Limited
No. of Debenture(s) held	: 53,651 (Fifty Three Thousand Six Hundred Fifty One)
Distinctive No. (s)	: OCD 1 to OCD 53,651

GIVEN under the Common Seal of the Company this 10th day of April, 2023



Lashmi Nigam
Director

Ratan Choudhary
Director

Secretary/Authorised Signatory

NOTE: No transfer of the above debentures will be registered unless accompanied by this Certificate.

For SAVITUR INFRASTRUCTURE PVT. LTD.
Dilip Kumar
Director



Agreement”) dated 10th April 2023. As per the terms stated in the Agreement, the OCDs are redeemable at any time at the option of the OCD holder.

Our Company is in urgent need of funds for business requirements. Hence, we request you to redeem the OCDs and repay us the redemption amount of Rs. 5,36,51,000/- within 30 days of this letter.

Please also take note that in case of non- completion of redemption within 30 days penal interest @18% will be applicable on outstanding amount as per the term of OCDs agreement.

Redemption of debentures at this time will enable us to meet our immediate financial obligations.

We request you to initiate the redemption process at the earliest.”

4. The relevant excerpt of the deed dated 30.04.2023 viz. the Schedule 1 thereto reads thus:-

SCHEDULE 1

Terms of Optionally Convertible Debentures (OCDs)

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1. Each OCD shall carry the face value & issued price of Rs. 1000/- (Rupees One Thousand only);
2. The OCDs shall carry zero coupon rate;
3. The tenure of OCDs shall be 20 Years from the date of allotment;
4. The OCDs would be optionally convertible into equity shares or redeemable at the option of the OCD holder within a period of 20 years from the date of its allotment, with not less than 30 Days' notice to the Company at face value of Rs. 1000/- per OCD and in case of conversion, the resultant Equity shares shall rank pari-passu with the existing equity shares of the Company.
5. If Company fails to redeem the OCDs as per the option of OCDs holder within a period of 30 days from the date of receipt of redemption notice from OCD holder, the Company shall pay penal interest on outstanding principal amount at the rate 18% per annum for the period of default.
6. The conversion ratio of OCDs shall be 100:1 (100 Equity shares @ Rs. 10/- shall be allotted in lieu of 1 OCD);
7. The OCDs if not converted/redeemed within a period of 20 years would be redeemed at the expiry of 20 years from the date of allotment at a price as may be determined by the Board at the time of redemption (including redemption premium, if any).
8. The OCDs shall be secured by the Corporate Guarantee from Aqua Electronics & Solutions Private Limited in favour of OCDs holder.



5. It is not in dispute between the parties that the demand notice dated 30.06.2023 was responded in terms of the reply dated 30.07.2023 (Exhibit A-12 to the petition) the response reads thus:

“We acknowledge the receipt of your letter dated 30th June 2023. However, due to some unavoidable reasons, the Company is in financial difficulties and is unable to accede to your request for an immediate redemption of the Debentures. We are not disputing the terms and conditions and seek an accommodation of time to redeem the instrument within a period not exceeding 3 (three) months for the redemption of 53,651 Optionally Convertible Debentures and payment of redemption amount of Rs. 5,36,51,000. We are agreeable to pay the interest as per the agreement.”

6. As can be seen from the response (ibid), the CD acknowledged the receipt of letter dated 30.06.2023 and expressed its inability to pay the consideration for the debentures on account of financial difficulties.

7. Again on 01.11.2023, the Financial Creditor (Petitioner) raised the demand for redemption value of the debentures. In other words, in terms of the Debenture Agreement dated 10.04.2023, the Petitioner called upon the CD to redeem the OCDs immediately and pay the outstanding amount of Rs. 5,36,51,000 along with penal interest of Rs. 24,14,295. The text of the demand notice reads thus:-

“This is in reference to the above letters, We as the concerned debenture holder of Parivartan Buildcon Private Limited (“The Company”) again writing to you regarding the pending redemption of OCDs.

Despite our demand letter and your letter dated 30.07.2023 through which you have agreed to redeem the OCDs in 3 months, we regret to



inform you that the above timeline has lapsed and the company has not yet fulfilled its obligation to redeem the debentures till date.

Also, we have not received any communication regarding the delay. Delay in redemption not only affects the trust of investors but also reflects poorly on the company's reputation.

We bring to your attention that as per the terms of OCD agreement, the Company is liable to pay penal interest@ 18% p.a. in case of default.

We hereby call upon you to redeem the OCDs immediately and pay the outstanding amount of Rs. 5,36,51,000 along with penal interest of Rs. 24,14,295 from the date of default i.e. 30.07.2023 till 31.10.2023. Also, you are requested to pay additional interest till the date of payment.

Please consider this letter as an final document request from us. We trust that the Company will take the necessary steps to address this issue promptly.

Further, failure to do so will leave us with no choice but to pursue legal action to recover the due amount of OCDs, including but not limited to initiating insolvency proceeding against the Company which may result in additional costs and inconvenience for both parties. We urge you to take this matter seriously and prioritize the redemption.

I look forward to a prompt resolution.”

8. Rebutting the plea raised in the petition, the Ld. Counsel for the CD submitted that the original deed of debenture provided that the debentures were compulsorily convertible. Nevertheless, he could not rebut the stand taken on behalf of the FC that there was novation of the contract and in response to the demand notice dated 30.06.2023, the CD accepted the liability, but sought extension of time to redeem the debenture. There is also



no material on record to rebut the plea raised on behalf of the Petitioner that the demand notice dated 01.11.2023 was not rebutted by the CD.

9. A conjoint reading of Section 7(5) of IBC, 2016 and Regulation 2A & 8(2) of IBBI (CIRP) Regulations, 2016 would reveal that the default qua financial debt would be established, if the Petitioner is able to adduce the financial contract, the evidence that the amount committed by the FC is drawn by the CD and there is default in payment of the amount. Such is also the requirement of the provisions of Section 7(3) of IBC, 2016. In the present case, the Petitioner could draw our attention to the Debenture Agreement Deed, Optionally Convertible Debenture Agreement (Exhibit A-7), Debenture Certificate (Exhibit A-9), the notice of redemption dated 30.06.2023 & 01.11.2023. From the aforementioned documents it is established that there is amount of debt/financial facility extended by the FC to the CD, which could be defaulted to be repaid. It is also seen from the application that the FC has suggested the name of Mr. Shamsheer Bahadur Singh as RP. The part-III of the application containing the details of the RP reads thus:

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL				
1.	NAME,	ADDRESS,	EMAIL	MR. SHAMSHER BAHADUR SINGH
	ADDRESS	AND	THE	REGISTRATION NO.: IBBI/IPA-
	REGISTRATION NUMBER OF THE			003/0341/2021-2022/13623
	PROPOSED		INTERIM	EMAIL: shamsher_cs@yahoo.co.in
	RESOLUTION PROFESSIONAL			ADDRESS: D-54, DEFENCE COLONY,
				NEW DELHI-110024
				(Copy of the consent form of the
				proposed Interim Resolution
				Professional along with his Certificate of
				Registration and Authorisation for
				Assignment is annexed herewith and
				marked as EXHIBIT A-4 (COLLY)



10. There is no plea raised on behalf of the CD that the application is deficient in any manner. The CD has also not raised any issue of pendency of disciplinary proceedings qua the aforementioned IP, proposed to be appointed as IRP.

11. In Part-IV of the application, the Petitioner specifically mentioned the amount of debt and the date of default. The part-IV reads thus:-

PART-IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	RS. 5,36,51,000.00 (RUPEES FIVE CRORE THIRTY-SIX LAKH FIFTY-ONE THOUSAND ONLY) <u>DATE OF DISBURSEMENT: 31.03.2018</u> The amount of debt was earlier disbursed as advance on 19.05.2016, which was thereafter utilized towards subscription of Debentures.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	RS. 5,92,86,559.84 (RUPEES FIVE CRORE, NINETY-TWO LAKH, EIGHTY-SIX THOUSAND, FIVE HUNDRED FIFTY-NINE AND EIGHT-FOUR PAISE ONLY) (The above amount includes Rs.5,36,51,000.00 as principal due along with Penal Interest @18% p.a. amounting to Rs.56,35,559.84 upto 28.02.2024) The Financial Creditor reserves its right to claim future interest also as per the terms of the Debenture Agreement. <u>DATE OF DEFAULT: 31.07.2023</u> The working for computation of amount and days of default in tabular form is annexed and marked as EXHIBIT A-5 . <u>Details of Transaction:</u>



- a. In January 2018, the Corporate Debtor made an offer to the Financial Creditor to subscribe to its proposed issue of Compulsorily Convertible Debentures ("CCDs").
- b. On 31.03.2018, the Financial Creditor accepted the offer of the Corporate Debtor and agreed to subscribe to 53651 Debentures being issued by the Corporate Debtor having face value of Rs.1000/- each against the outstanding amount due from the Corporate Debtor. Accordingly, Debenture Certificate for such subscription was issued. The said Debentures carried a zero coupon rate.
- c. The instrument of Debentures was converted into Optionally Convertible Debentures ("OCDs").
- d. Accordingly, Debenture Agreement dated 10.04.2023 was executed between the parties and a Debenture Certificate for 53651 OCDs was issued by the Corporate Debtor in favour of the Financial Creditor.
- e. Pertinently, the said OCDs were having face value of Rs.1000/- and carried a zero coupon rate.
- f. The Financial Creditor had the option to seek redemption of the OCDs by serving a Demand Notice for redemption which amount would be payable by the Corporate Debtor within 30 Days from such notice.
- g. In the event of default in redemption, a penal interest @18 % p.a. shall be levied for the period of default.
- h. The Debentures were secured by a Deed of Corporate Guarantee dated



		<p>10.04.2023 executed by Aqua Electronics & Solutions Private Limited in favour of the Financial Creditor.</p> <p>i. Due to urgent need of funds for its business requirements, the Financial Creditor issued a Demand Notice dated 30.06.2023 to the Corporate Debtor demanding redemption of the OCDs within a period of 30 Days.</p> <p>j. On 30.07.2023, the Corporate Debtor replied to the said Demand Notice stating that the Corporate Debtor is facing financial constraints and requested the Financial Creditor to allow a period of 3 months to redeem the OCDs and pay the redemption amount.</p> <p>k. On not receiving the amount due within the extended period also, the Financial Creditor issued another Demand Notice dated 01.11.2023 demanding immediate payment of the amount due by virtue of redemption of OCDs.</p> <p>l. The Financial Creditor also invoked the Corporate Guarantee issued by Aqua Electronics & Solutions Private Limited on 01.12.2023.</p> <p>m. Even after issuance of the said Demand Notices and invocation of Corporate Guarantee, the Corporate Debtor and the Corporate Guarantor defaulted in payment of the redemption amount.</p> <p>n. It is stated thus that in view of the default committed by the Corporate Debtor in repayment of the financial debt along with interest, the Financial Creditor is constrained to approach this Hon'ble Tribunal for initiation of insolvency proceedings against the Corporate Debtor.</p>
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12. There is no denial of the liability to repay the aforementioned amount of debt (redemption of debenture) and default in redemption of debenture by the CD. In the wake, **we are left with no option but to admit the present petition. Order accordingly.**

13. **In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and** as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

14. As proposed by the Petitioner, Mr. Shamsher Bahadur Singh having Registration No. IBBI/IPA-003/0341/2021-22/13623 and Email id: shamsher_cs@yahoo.co.in) is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that Mr. Shamsher Bahadur Singh



having Registration No. IBBI/IPA-003/0341/2021-22/13623 shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

15. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

16. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

17. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

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

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

Upasana/Ruchita