



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 06.06.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA No.174/2020 in CP(IB) No.326/7/HDB/2018</b>
<b>NAME OF THE COMPANY</b>	<b>Khaitan Electricals Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Bank of India</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Khaitan Electricals Ltd</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

**IA No.174/2020**

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH – II**

**I.A.No.174 of 2020 in**  
**CP (IB) No.326/07/HDB/2018**

**Between:**

Mr. Kamalesh Kumar Singhania,  
Liquidator of M/s. Khaitan Electricals Limited,  
Bajrang Kunj, Room No.412 & 413,  
2B Grant Lane, 4<sup>th</sup> Floor,  
Kolkata – 700 012.

....Applicant

**And**

The Oriental Mercantile Co. Ltd,  
Khaitan Mansion, Ground Floor 22,  
Debendra Lal Khan Road,  
Kolkata – 700 025.

....Respondent

**In the matter of:**

Bank of India,  
Mid Corporate Branch,  
5 B.T.M. Sarani, P.S. Hare Street,  
Kolkata – 700 001.

....Financial Creditor

**Vs.**

M/s. Khaitan Electricals Limited,  
A-13, Sri Venkateshwara Co-operative  
Industrial Estate, Balanagar,  
Hyderabad – 500 032.

....Corporate Debtor

**Date of order : 06.06.2024**



**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsels present:**

For the Applicant : Mr. Pranay Agarwal

Heard on : 10.05.2024

**Per : Sanjay Puri, Member (Technical)**

**ORDER**

1. This application has been filed by the Liquidator of the Corporate Debtor (CD) M/s. Khaitan Electricals Limited, seeking an order directing the Respondent herein to deposit the amount of Rs 34,34,47,356 into CD's account.

**Brief facts of the application:**

2. It is submitted that the Corporate Insolvency Resolution Process (CIRP) was initiated against the CD by an order of this Tribunal dated 28.11.2018, appointing the Applicant as the Interim Resolution Professional (IRP). He was subsequently confirmed as the Resolution Professional (RP) vide order of this Tribunal dated 13.02.2019.
3. Subsequently, as no Resolution Plan was received, the Committee of Creditors (CoC) in its 5th meeting held on 30.04.2019 with 79.78% voting share recommended liquidation of the CD and appointment of RP as the Liquidator.



This recommendation was approved by this Tribunal by order<sup>1</sup> dated 23.08.2019.

4. It is asserted that, the CD had made an advance payment of Rs 34,34,47,356 to the Respondent which was shown as Security Deposit under the head 'Other Financial Assets' in the Balance Sheet as on 31.08.2018. The said payment was made during the period of two years preceding the insolvency commencement date, as it was reflected in the Balance Sheet of 31.03.2018. According to the Transaction Audit Report<sup>2</sup>, the Respondent herein is a shareholder of the CD, and thus a related party. Therefore, the said payment is in contravention of Section 43(4)(a) of the Code.
5. In view of the above, the Applicant Liquidator seeking orders directing the Respondent to refund/deposit the said advance payment into the CD's account.

**Respondent's Reply:**

6. It is submitted that, the Respondent Company being a group entity of the CD had given a collateral security and corporate guarantee to the CD using its property situated at 10C, K.G. Marg, New Delhi, against the term loan of Rs 75 Crores obtained by the CD from Allahabad Bank vide Sanction Letters<sup>3</sup> dated 06.12.2010 and 11.09.2013. The collateral of the property was given on a condition that the CD would deposit an amount of Rs 35 Crores with the Respondent

---

<sup>1</sup> Pg 12-18 of the application.

<sup>2</sup> Pg 99-130 of the application.

<sup>3</sup> Pg 57-59 of the counter.



Company. The CD has accordingly deposited the said amount with the Respondent.

7. Subsequently, due to the CD's default in paying the said term loan to the Bank, the loan account has become NPA. The the Bank took over the said property and sold out the same to M/s for Rs 70.05 Crores vide Sale Certificate<sup>4</sup> dated 13.01.2020. This resulted in a loss to the Respondent Company as it lost its prime property Rs 212.43 Crores (FMV Rs 180 Crores), and received only Rs 35 Crores as Security Deposit from the CD.
8. It is asserted that, the said loan transaction, collateral security and corporate guarantee in question transpired during the year 2011-12 between the Respondent and the CD. Consequently, it does not fall under the two years period preceding to the insolvency commencement date and it is not a preferential transaction under Section 43(4)(a) of IBC. It is further stated that, the sum of Rs 35 Crores was adjusted as Security Deposit against the losses incurred by the Respondent due to the sale of its property by the Bank. Therefore, the Respondent reserves right to recover the balance amount of Rs 35,70,52,644 along with interest.

### **Clarification of the Respondent**

9. During the course of hearing, Ld. Counsel for the Respondent was asked to specify the exact date on which the transactions of advance payments were made by the CD to the Respondent. In response, it was submitted that the CD had transferred the

---

<sup>4</sup> Pg 66-73 of the counter.



money to the Respondent in various tranches from the FY 2010-2011 onwards, which was shown under the loans and advances in the Books of Accounts. Confirmation of Accounts of the CD in the Books of Respondent for the period from 01.04.2010 to 31.03.2012, showing the transfers of money by the CD to the Respondent over these two years, was also filed.

10. It was further submitted that, the Respondent continued to pay interest to the CD in respect of the advances so received till FY 2015. Thereafter, once the credit facility to the CD was restructured by the lenders in FY 2014-2015, and the financial position of the CD had deteriorated, the Respondent stopped paying interest on the amount of advance and held the same as Security Deposit against the property situated at 10C, K.G. Marg, New Delhi which was offered as Security by the Respondent for the loan availed by the CD.

#### **Clarification of the Applicant**

11. The Applicant was also asked to identify the exact dates on which the transfers of sums amounting to Rs 34,34,47,356 from the CD to the Respondent. Along with his reply, the Applicant Liquidator filed details of transactions between the CD and the Respondent starting from 01.04.2010 to 31.10.2018. A statement of calculation of interest from 01.04.2016 was also filed.

#### **The Decision**

12. We have heard the parties and have gone through the records. The entire premise of this application filed under Section 43



of IBC rests on the claim that the CD had made payment of Rs 34,34,47,356 to the Respondent during the look-back period of two years from the date of initiation of CIRP on 28.11.2018.

13. For a transaction to be considered as preferential transaction under Section 43 of IBC, it should have been carried out within a period of two years preceding the commencement of CIRP in case of a related party, which the Respondent admittedly is. Another condition is that, such transaction should not be in ordinary course of business or financial affairs of the CD or the Transferee.
14. From the details of transactions filed by the Applicant himself, it is clear that the transactions of money having been transferred by the CD to the Respondent resulting in the outstanding balance of Rs 34,46,25,922 took place prior to 25.11.2016 i.e. two years before the date of CIRP on 28.11.2018. Following transactions have taken place between the CD and the Respondents during the look-back period of two years:

Date	Paid	Received
08-12-2016	2,60,000	
14-01-2016	3,50,000	
16-12-2016	50,000	
31-03-2017		9,05,040
21-04-2017	3,00,000	
31-10-2018		12,33,526
Total	9,60,000	21,38,566

It is apparent that during the two years preceding the CIRP, the CD had received more money than it paid to the Respondent. Moreover, all these transactions appear to have



been carried out in the ordinary course of business between the CD and the Respondent.

15. That the advances given by the CD to the Respondent were later converted into interest to the Security Deposit in the year 2016-17 in its own Books, does not change the fact that advances of Rs 34,46,25,922 were made and amounts transferred much before the look-back period of two years as stipulated in Section 43 of IBC.

For this reason alone, we find the present application without any merit and therefore dismissed.

**Sd/-**

**(SANJAY PURI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)**

VL