



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

Item No. 206
(IB)-130/ND/2024

IN THE MATTER OF:

Savitur Infrastructure Private Limited

B-1/451, Nand Nagari,
North East, New Delhi-110093

**... Applicant/
Financial Creditor**

Versus

Aqua Electronics & Solutions Private Limited

112, 1st Floor, Pir Baba Basti
Jatipur Extension, 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

Ld. Counsels for the parties who are also the counsels for the parties in CP(IB)-127/ND/2024 are ad idem that the present petition arises out of the transaction from which the CP(IB)-127/ND/2024 could arise. Ld. Counsel for the Petitioner could draw our attention to Deed of Corporate Guarantee dated 10.04.2023, in terms of which the corporate guarantor/CD (Respondent) hereinbefore us agreed that in case Parivartan Buildcon Private Limited, the CD



in CP(IB)-127/ND/2024, defaults the payment/repayment of loan amount, the Respondent hereinbefore us shall pay on demand and without any demur. The relevant excerpt of Deed of Corporate Guarantee dated 10.04.2023 (ibid) reads thus:-

*“1. The Guarantor hereby agree that in case Parivartan defaults in payment/repayment of Secured Obligations, the Guarantor shall pay on demand and without any demur, presentment, protest or other notice of any kind to the OCD Holder all the Secured Obligation due and payable by Parivartan till the date of payment. (**“Guaranteed Obligation”**).*

Notwithstanding anything to the contrary contained in this Guarantee or any other Financing Document, the obligation of the Guarantor to guarantee under the terms hereof shall be limited to the Guaranteed Obligation and this Guarantee shall stand ended/ released on the payment of the Secured Obligation by the Parivartan.

- 2. The Guarantor shall, forthwith but in any case within 15 days from the date of demand in writing and without demur, presentment, protest or other notice of any kind, discharge the Guaranteed Obligations. Determination by the OCD Holder, of the amount of Guaranteed Obligations shall be conclusive and binding on the Parivartan and the Guarantor and they shall not dispute the same.*
- 3. The Guarantor shall, indemnify and keep the OCD Holder indemnified against all financial losses and financial damages, if any, whether by way of costs, charges, claims, litigation, penalties and expenses whatsoever which the OCD Holder may suffer, pay or incur by reason of or in connection with any default on the part of the Guarantor in relation to the Guaranteed Obligations including legal proceedings taken against the Parivartan and/or the Guarantor for recovery of the Guaranteed Obligation. The Guarantor shall, pay to the OCD Holder,*



without any demur, such losses and damages within 15 days from the date of the demand.

- 4. The Guarantor hereby agree that, without the concurrence of the Guarantor, Parivartan and the OCD Holder shall vary, alter or modify the security created and the terms and conditions of the OCD Agreement executed by Parivartan and in particular to defer, postpone or revise the payment of Interest and/or other money payable by the Parivartan to the OCD Holder on such terms and conditions as may be considered necessary by the OCD Holder including any increase in the rate of Interest.*
- 5. This Guarantee shall be enforceable against the Guarantor notwithstanding that any undertaking, security or securities comprised in any instrument(s) executed or to be executed by the Parivartan in favour of the OCD Holder, shall, at the time when the proceedings are taken against the Guarantor on this Guarantee, be outstanding or unrealized or lost.*
- 6. The Guarantor hereby agree and declare that the Parivartan will be free to avail further loans or other facilities from the OCD Holder or any other party in addition to OCDs in terms of the OCD Agreement and the Guarantee herein contained shall not be affected or vitiated in anyway whatsoever but will remain in full force and effect and binding on the Guarantor till redemption of OCDs and payment of Secured obligation.*
- 7. The Guarantor hereby declare and agree that the Guarantor have not received and shall not receive any security or commission from the Parivartan for giving this Guarantee, or have any recourse to the any of the assets of the Parivartan, unless permitted by the OCD Holder.*
- 8. The Guarantor shall not in the event of the liquidation of the Parivartan prove in competition with the OCD Holder, as the case may be, in the liquidation proceedings.*



9. *This Guarantee shall be irrevocable and the obligations of the Guarantor hereunder shall not be conditional on the receipt of any prior notice by the Guarantor or by the Parivartan and the demand or notice by the OCD Holder hereof shall be sufficient notice to or demand on the Guarantor.*
10. *The liability of the Guarantor under this Guarantee shall not be affected by:*
- a. any change in the constitution or winding up of Parivartan or any absorption, merger or amalgamation of the Parivartan with any other company, corporation or concern; or*
 - b. any change in the management of the Parivartan or takeover of the management of Parivartan by the Central or State Government or by any Government Authority, or*
 - c. acquisition or nationalization of the Parivartan and/or of any of its undertaking(s) pursuant to any law or any change that would affect the rights of the Parivartan under the Project Documents; or*
 - d. the change in the constitution of any of the OCD Holder; or*
 - e. the insolvency or winding up of the Guarantor; or*
 - f. any change in the set up of the Guarantor, which may be by way of change in the constitution, winding up, voluntary or otherwise, absorption, merger or amalgamation or otherwise; or*
11. *The Guarantor hereby represents, undertakes and warrants that:*
- a. it has full power, capacity and authority to execute, deliver and perform this Guarantee and has taken all necessary action (statutory or otherwise) to comply with the conditions and covenants contained herein;*
 - b. it shall provide to the OCD Holder such information about itself relevant to this Guarantee as the OCD Holder may from time to time require;*



- c. *it is in compliance with and shall continue to comply with all Applicable Laws and regulations and with the terms and conditions of all applicable consents and authorizations;*
- d. *this Guarantee constitutes a valid and legally binding obligation enforceable against the Guarantor in accordance with its terms.”*

2. Indubitably, the FC (Petitioner) hereinbefore us invoked the deed of corporate guarantee in terms of the notice dated 01.12.2023 (ibid). The relevant excerpt of the notice reads thus:-

“We are writing to bring to your attention an outstanding amount of Rs. 5,36,51,000 payable to us by Parivartan Buildcon Private Limited ("Parivartan") in respect of redemption of Optionally Convertible Debentures ("OCDs"). In this respect we bring to the notice the following facts;

1. Savitur Infrastructure Private Limited ("SIPL") had invested an amount of Rs. 5,36,51,000 in 53,651 Optionally Convertible Debentures ("OCDs") of Rs. 1000/- each of Parivartan.

2. The said OCDs were redeemable/convertible on demand at any time within a period of 20 years at the option of the OCD holder at its face value of Rs. 1000/-each. Further in case of default and redemption of OCDs and interest of 18% p.a. is liable to be paid from the date of default.

3. In view the immediate fund requirement by us for our business purposes, we had sent the demand letter to Parivartan on 30th June, 2023 for redemption the said OCDs.

4. Thereafter, Parivartan vide its letters dated 30th July, 2023 had sought 3 months' time to redeem the OCDs.

5. However, Privartan did not redeem the OCDs even after 3 months. Thereafter, we had sent another letter on 01st November, 2023 to Parivartan seeking redemption of OCDs. However, the OCDs are not



redeemed till date. The Corporate Guarantor has been marked copy in all the communication regards redemption of OCDs.

6. As per the Corporate Guarantee Deed executed on 10th April, 2023 your Company had provided a Corporate Guarantee to secure the redemption of OCDs issued by Parivartan.

7. Parivartan has committed persistent breach and default in redemption of OCDs. Under the Corporate Guarantee Deed, you, the Guarantor, have unconditionally and irrevocably agreed that in the event of any default on the part of Parivartan in the redemption of OCDs, SIPL shall be entitled to demand the total outstanding amount from you, the Guarantor.

8. It is regrettable to inform you that Parivartan has defaulted in their repayment obligations under the terms of the OCD Agreement despite repeated reminders by SIPL. Due to this default, we are left with no choice but to exercise our right under the Corporate Guarantee and request the fulfillment of the guaranteed obligations.

9. We hereby formally invoke the Corporate Guarantee provided by your Company to cover the outstanding amount of the OCDs, along with interest of 18% p.a. from the date of default i.e. 31st July 2023.

10. In the circumstances, we hereby call upon you, the Guarantor and demand you, to pay SIPL within 15 (Fifteen) days from the date of receipt of this notice, the outstanding amount of Rs. 5,36,51,000 along with interest of Rs. 32,19,060 @ 18% p.a. from the date of default till 01.12.2023. Also, you are requested to pay additional interest till the date of payment.

11. In case you, the Guarantor fail to make the payments as aforesaid, within 15 (Fifteen) days, SIPL shall be constrained to take such steps and measures as may be permissible under law for recovery of all the monies due and payable by you including but not limited to initiating insolvency proceeding against the Company and the Corporate Guarantor.”



3. It is not in dispute that the Respondent before us did not give any reply to the notice of invocation of bank guarantee.

4. The amount of debt defaulted to be paid and the date of default are mentioned in Part-IV of the petition which 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 to the Principal Borrower, 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. 5,94,45,308.00 (RUPEES FIVE CRORE, NINETY-FOUR LAKH, FORTY-FIVE THOUSAND, THREE HUNDRED EIGHT ONLY) (The above amount includes Rs.5,36,51,000.00 as principal due along with Penal Interest @18% p.a. amounting to Rs.57,94,308.00 upto 05.03.2024) 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 .



Details of Transaction:

- a. In January 2018, the Principal Borrower 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 Principal Borrower 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 Principal Borrower. Accordingly, Debenture Certificate for such subscription was issued.
- c. The instrument of Debentures was converted into Optionally Convertible Debentures ("OCDs").
- d. Accordingly, Debenture Agreement dated 10.04.2023 was executed between the Principal Borrower and the Financial Creditor 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/-.
- 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 Principal Borrower 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 10.04.2023 executed by the Corporate



	<p>Debtor 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 Principal Borrower with a copy to the Corporate Debtor demanding redemption of the Debentures within a period of 30 Days.</p> <p>j. On 30.07.2023, the Principal Borrower replied to the said Demand Notice stating that the Principal Borrower 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 to the Principal Borrower with a copy to the Corporate Debtor 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 the Corporate Debtor 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 Principal Borrower 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>
--	---



5. The CD has not rebutted the assertions made in the aforementioned part of the petition.

6. As has been noted in CP(IB)-127/ND/2024, while considering admission or rejection of an application filed under Section 7(2) of IBC, 2016, what we need to check is that there is amount of debt defaulted to be paid, the application is complete in all respect and no legal proceedings are pending against the IP proposed to be appointed as IRP by the Petitioner. As far as the amount of debt/default is concerned, apparently a reference has been made to the financial contract (Deed of Corporate Guarantee) (Exhibit A-7). For the purpose of the evidence regarding amount being drawn by the CD, a reference may be made to the Debenture Certificate reproduced in CP(IB)-127/ND/2024 (ibid).

7. Indubitably, despite invocation of bank guarantee in terms of the notice dated 01.12.2023 (Annexure A-13), the CD has not repaid the amount of financial liability. In the wake, the requirement of Section 7(3) & (5)(a) of IBC, 2016 , Regulation 8(2)(b) of CIRP Regulations, 2016 are satisfied.

8. Although there is no specific plea raised on behalf of the CD in this regard, still one may wonder as to whether parallel CIRP can continue qua the corporate guarantor and the principal borrower. The proposition has been answered by Hon'ble Supreme Court in the case of **Laxmi Pat Surana vs. Union Bank of India & Anr.** (Civil Appeal No. 2734 of 2020). The relevant excerpt of the judgment reads thus:

“40. As aforesaid, the liability of the corporate guarantor (corporate debtor) is coextensive with that of the principal borrower and it gets triggered the moment the principal borrower commits default in paying



the debt when it had become due and payable. The liability of the corporate debtor (corporate guarantor) also triggers when the principal borrower acknowledges its liability in writing within the expiration of prescribed period of limitation, to pay such outstanding dues and fails to pay the acknowledged debt. Correspondingly, right to initiate action within three years from such acknowledgment of debt accrues to the financial creditor.”

9. In the wake of the aforementioned, **we are left with no option but to admit the present petition. Order accordingly.**

10. **Thus, the 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.



11. As proposed by the Petitioner, Mr. Shamsheer Bahadur Singh having Registration No. IBBI/IPA-003/0341/2021-22/13623 and Email id: shamsheer_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. Shamsheer 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.

12. 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.

13. 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. 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