

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT -III
IB-138(ND)/2024**

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. Aqua Electronics & Solutions Private Limited

Having its registered office at:

112, 1st Floor, Peer Baba Basti, Jaitpur Extension,
Badarpur, New Delhi-110044.

CIN: U31900DL2008PTC184457

.... Applicant/ Financial Creditor

Versus

M/s. Legend Power Private Limited

Having its registered office at:

103, Ground Floor, Gali No. 6,
Jaitpur, Badarpur, New Delhi-110044.

CIN: U74999DL2007PTC205925

.... Respondent/ Corporate Debtor

Order Pronounced On: 22.07.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For Applicant : Ms. Udit Singh, Adv.

For Respondent : Mr. Palash S Singhai and Mr. Harshal Sareen,
Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

IB-138(ND)/2024

Date of Order: 22.07.2024

1. This Application has been filed by M/s. Aqua Electronics & Solutions Private Limited, the Applicant/Financial Creditor before this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), against M/s. Legend Power Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the Financial Debt of Rs. 8,00,00,000/- as principal debt along with Penal Interest @18% p.a. amounting to Rs. 93,89,589/- upto 29.02.2024 totaling to Rs. 8,93,89,589/-. The date of default in the present application is 07.07.2023.

2. Submissions of the Applicant/Financial Creditor:

- i.** The Corporate Debtor made an offer to the Financial Creditor to subscribe to its proposed issue of Compulsorily Convertible Debentures ("CCDs") in April 2015. On 27.05.2015, the Financial Creditor accepted the offer of the Corporate Debtor and agreed to subscribe to 12,51,950 Debentures being issued by the Corporate Debtor having a face value of Rs.1000/- each against the outstanding amount due from the Corporate Debtor. Accordingly, Debenture Certificate was issued. The said Debentures carried a zero-coupon rate. Subsequently, out of the said Debentures, 39,950 Debentures were redeemed.
- ii.** In July 2018, the Corporate Debtor made a further offer to the Financial Creditor to subscribe to its proposed issue of CCDs. On 31.08.2018, the Financial Creditor accepted the offer of the Corporate Debtor and agreed to subscribe to 43,400 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 was issued. The said Debentures carried a zero-coupon rate. The Financial Creditor thus had a total of 12,55,400 CCDs.

- iii.** The instrument of Debentures to the extent of 80,000 units was converted into Optionally Convertible Debentures ("OCDs"). Accordingly, a Debenture Agreement dated 15.04.2023 was executed between the parties and a Debenture Certificate for 80,000 OCDs was issued by the Corporate Debtor in favour of the Financial Creditor. Pertinently, the said OCDs had having face value of Rs.1000/- and carried a zero- coupon rate. 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. In the event of default in redemption, a penal interest @18% p.a. shall be levied for the period of default.
- iv.** The Financial Creditor issued a Demand Notice dated 08.06.2023 to the Corporate Debtor demanding redemption of the OCDs within a period of 30 Days. As the Corporate Debtor failed to redeem the Debentures within 30 days of the said Notice, a reminder Letter dated 10.07.2023 was sent. On 12.07.2023, the Corporate Debtor replied to the said Demand Notices 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.
- v.** On not receiving the amount due within the extended period also, the Financial Creditor issued another Demand Notice dated 18.10.2023 demanding immediate payment of the amount due by virtue of redemption of OCDs. Even after issuance of the said Demand Notices, the Corporate Debtor and the Corporate Guarantor defaulted on payment of the redemption amount. It is thus 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 Adjudicating Authority for initiation of insolvency proceedings against the Corporate Debtor.

3. Submissions of the Respondent/Corporate Debtor:

- i.** The Respondent has filed a reply affidavit denying the allegations made by the Applicant and stated that initially, the Applicant subscribed to Compulsorily Convertible Debentures (CCDs), issued by the Corporate Debtor having a face value of Rs.1,000/- each. These CCDs were issued against the amount paid by the Applicant to the Corporate Debtor. However, it was only at the request and instance of the Applicant that few of the CCDs being 80,000 in number, were subsequently converted into Optionally Convertible Debentures (OCDs) on 15.04.2023. Therefore, the debt granted to the Corporate Debtor by the Applicant was in the nature of CCDs, which were admittedly for a tenure of 20 years from the date of allotment, thus, the same were to be converted into shares of the Corporate Debtor only after 26.05.2035. Hence, in terms of the initial mutual agreement, the Corporate Debtor was to transfer shares to the Applicant on or after 26.05.2035 and no debt was to be repaid, therefore, there is no default on the part of the Corporate Debtor.
- ii.** It is submitted that the present application under reply has been filed by the Financial Creditor in contravention of the direction passed by this Adjudicating Authority dated 03.04.2023 and IBBI circular No. IBBI/IU/59/2023, dated 16.06.2023, wherein all the Applicants filing an application under Sections 7 and 9 of IBC are required to file a record of default issued by Information Utility, before filing of the Application.
- iii.** It is further submitted that the FORM 1 filed by the Applicant is incomplete and not in accordance with the provisions of the IBC particularly Section 7 and Section 215 of the IBC. In terms of Section

215 of IBC, it is mandatory for the Financial Creditor to furnish the record of default recorded with the Information Utility. It is stated that the record of default as available with the Information Utility is required to be annexed at Part V of Form 1 which the Financial Creditor has failed to provide.

- iv.** It is contended that a bare perusal of the Application would reveal that the same has been filed by the Financial Creditor for recovery of monies. It is a well-settled law and no more res integra that the proceedings under IBC are not recovery proceedings and cannot be invoked for arm twisting or for the purpose of recovery of any alleged outstanding amount. The Hon'ble Supreme Court in catena of judgments has held that IBC is not intended to be a substitute to a recovery forum and thus, cannot be used to jeopardize the financial health of an otherwise solvent company by pushing it into Insolvency.

4. Analysis and Findings:

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent. We have also perused the records.
- ii.** The Applicant has placed the following documents on record in support of the case:
- a. Working for computation of the amount and days of default.
 - b. Copy of debenture agreement dated 15.04.2023 executed between the Financial Creditor and the Corporate Debtor.
 - c. Copy of Debenture Certificate dated 15.04.2023.
 - d. Copy of demand notice dated 08.06.2023 issued by Financial Creditor for redemption of debentures.
 - e. Copy of demand notice dated 10.07.2023 issued by Financial Creditor reminding the Corporate Debtor for the redemption of debentures.

- iii.** From the perusal of the records and the rival contentions raised by the Ld. Counsel appearing for the parties, it emerges that the Financial Creditor initially agreed to subscribe to 12,51,950 Compulsorily Convertible Debentures ("CCDs") being issued by the Corporate Debtor having a face value of Rs.1000/- each and 43,400 CCDs having face value of Rs.1000/- each. The Optionally Convertible Debentures Agreement dated 15.04.2023 was executed between the parties whereby the CCDs converted into Optionally Convertible Debentures ("OCDs") to the extent of 80,000 units of Debentures having face value of Rs.1000/- each. Thereby Corporate Debtor owes the Financial Debt of Rs. 8,00,00,000/- as principal debt along with Penal Interest @18% p.a. amounting to Rs. 93,89,589/- upto 29.02.2024 totaling to Rs. 8,93,89,589/-.
- iv.** The Ld. Counsel for the Corporate Debtor raised a preliminary objection that the present application is premature as the debt granted to the Corporate Debtor by the Applicant which were admittedly for a tenure of 20 years from the date of allotment. The Corporate Debtor was to transfer shares to the Applicant on or after 26.05.2035 and no money/debt was to be repaid, therefore, there is no default on the part of the Corporate Debtor.
- v.** Therefore, the issue that needs to be determined in this case as to whether the Debentures that were issued by the Corporate Debtor vide Optionally Convertible Debentures Agreement dated 15.04.2023 can be redeemed before the subscription period or not.
- vi.** At this stage, it is pertinent to refer to the definition of the expression "Financial Creditor" in sub-section 7 of Section 5 of the Code.

Section 5 of sub-section 7 reads as follows:

"Financial Creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;"

- vii.** At this stage, it is also pertinent to refer to the definition of the expression “Financial Debt” in sub-section 8 of Section 5 of the Code. Section 5 of sub-section 8 “Financial Debt” reads as follows:

“Financial Debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;”

- viii.** In accordance with Section 5(8)(c), the Corporate Debtor is liable to pay the amount claimed as Financial Debt on account of the “Optionally Convertible Debentures Agreement dated 15.04.2023” to the Financial Creditor. Therefore, we come to the conclusion that M/s. Legend Power Private Limited is the Corporate Debtor with regard to the Section 7 application filed by the Financial Creditor.

- ix.** For a better understanding of the case, it is pertinent to refer to the clauses of the Optionally Convertible Debentures Agreement dated 15.04.2023:

“BACKGROUND

A. AESPL currently holds 12,55,400 Compulsorily Convertible Debentures (CCDs) having a face value of RS. 1,000 each issued by LPPL. AESPL requested to vary the terms of 80,000 CCDs out of 12,55,400 CCDs such that the 80,000 CCDs are redeemable/convertible to the extent of 80,000 (Eighty Thousand) no. of CCDs and 80,000 CCDs thereby becoming 80,000 Optionally Convertible Debentures (“OCDs”) of face value of Rs. 1000 (Rupees One Thousand only) in lieu of CCDs.

B. Now on request of AESPL, the Company has agreed to convert 80,000 No. of CCDs to OCDs on the terms and conditions contained in Schedule-1

SCHEDULE 1

Terms of Optionally Convertible Debentures (OCDs)

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;

6. The OCDs would also be 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 a redemption price of Rs. 1000/- per OCD.

7. 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.”

- x.** On perusal of the various clauses of the Optionally Convertible Debentures Agreement dated 15.04.2023, it becomes amply clear that the OCDs were redeemable at the option of the Debenture Holder (i.e., Applicant) within a period of 20 years from the date of its allotment, after giving a minimum period of 30 days' notice. After the period of 30 days, penal interest at the rate of 18% per annum was applicable.
- xi.** In view of financial difficulties, the Financial Creditor vide its Demand Notice for the redemption of OCDs dated 08.06.2023, conveyed its decision to redeem the Optionally Convertible Debentures and sought payment of INR 8,00,00,000/- within a period of 30 days from the date of the Demand Notice. Therefore, following the terms of the Optionally Convertible Debentures Agreement dated 15.04.2023 read with the Demand Notice for

redemption of OCDs dated 08.06.2023, the Corporate Debtor was duty bound to pay the sum of INR 8,00,00,000/- by 07.07.2023. On failure to pay the debt by 07.07.2023. A reminder letter dated 10.07.2023 was also addressed to the Corporate Debtor

- xii.** The Applicant in order to substantiate its case has relied upon the Record of Default (Form-D) available with the Information Utility (NeSL). On perusal of the Record of Default (RoD) of the Corporate Debtor maintained by the Information Utility namely National E-Governance Services Limited (NeSL) dated 06.03.2024, we find that this is the record w.r.t. the status of authentication by the debtor is shown as “DEEMED TO BE AUTHENTICATED” (Colour Code Yellow). Therefore, we are satisfied that there exists debt and default and the same is corroborated by the IU certificate filed along with the application.
- xiii.** The Hon’ble NCLAT in the matter of **Budhpur Buildcon Pvt. Ltd. Vs Abhay Narayan Manudhane CA (AT) (Ins) No. 589 of 2021** held that the subscription towards debentures carries a ‘time value for money’ and therefore such amounts are ‘Financial Debts’.
- xiv.** In view of the above-cited judgment, we are of the considered view that the Applicant is a Financial Creditor holding Financial Debt that is in default of payment by the Corporate Debtor. Therefore, we are satisfied that there exists debt and default and the same is corroborated by the averments made within the application.
- xv.** On the basis of the above analysis, we are of the considered view that the amount involved in the present case is a “Financial Debt” within the definition of Sub-Section 8 of Section 5 of the Code and the Applicant is a Financial Creditor holding financial debt which is in default of payment by the Corporate Debtor and the present Application under Section 7 of the Code is maintainable.
- xvi.** It is settled law that the prerequisites for an application under Section 7 of the Code are the existence of 'financial debt' and a

'default'. In the light of the above facts and circumstances, the existence of debt and default is reasonably established by the Applicant as a major constituent for admission of the Application under Section 7 of the Code.

5. **Order**

In light of the above facts and circumstances, it is hereby ordered as follows: -

- i.** The Application bearing **IB-138(ND)/2024** filed by the Applicant, under Section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted.**
- ii.** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) and (d) of the Code. Thus, the following prohibitions are imposed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor 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 Corporate Debtor 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 Corporate Debtor 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 Corporate Debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.
- iv.** The Applicant has proposed the name of Mr. Bihari Lal Chakravarti as the Interim Resolution Professional (“IRP”) having address: G C 901, Aditya Mega City, Vaibhav Khand Indirapuram, Ghaziabad, Uttar Pradesh-201014. His Email id is blchakravarti.associates@gmail.com. His registration number is IBBI/IPA-002/IP-N00863/2019-2020/12776. The Applicant filed a copy of the Consent Issued by Mr. Bihari Lal Chakravarti in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the

Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Bihari Lal Chakravarti is appointed as IRP.

- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix.** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment

by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.

- x.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- xi.** The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xii.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xiii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)