

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP NO.67/ALD/2021

IN THE MATTER OF:

[An application under Section 71(10) of the Companies Act, 2013]

IN THE MATTER OF:

IDBI Trusteeship Services Limited

Ground Floor 17, Asian Building,
R. Kamani Marg, Ballard Estate,
Mumbai-400 001

.... Debenture Trustee/Applicant

AND

Margdarshak Financial Services Limited.

118 Dayal Farm, Ganeshpur-Rehmanpur,
Chinhat, Dewa Road,
Lucknow (UP) - 226 028

...Company/Respondent

Order pronounced on 2nd May, 2024

CORAM:

Mr. Praveen Gupta	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

APPEARANCES :

Sh. Kartikeya Saran, with _____ : *For the Petitioner*

Sh. Parthasarathy Bose & Sh. Lakshay Kumar, Advs.

Respondent _____ : *Ex-parte v.o.d. 14.03.2024*

ORDER

1. This application has been filed by **IDBI Trusteeship Services Limited** (hereinafter referred as the “**applicant**”) seeking the following prayer:

i. Direct the respondent to make repayment of the aforesaid debentures along with interest and other charges due thereon, in accordance with the terms and conditions of the Debentures i.e. an amount of Rs.21,84,18,974.18 [Rupees Twenty One Crore Eighty Four Lakh Eighteen Thousand Nine Hundred Seventy Four and Eighteen Paise] as on 02.09.2021 as per Annexure A-13;

ii. Pending the hearing and disposal of the captioned application, direct the Respondent to deposit the claim amount of Rs.21,84,18,974.18 [Rupees Twenty One Crore Eighty Four Lakh Eighteen Thousand Nine Hundred Seventy Four and Eighteen Paise] as on 02.09.2021 (as per Annexure A - 13) with the Registry of this Hon'ble Tribunal;

- iii.** Alternatively, pending the hearing and disposal of the captioned application, pass an order injuncting the Respondent from alienating, disposing of or creating any third-party rights or otherwise dealing with any of its assets, whether moveable or immovable, tangible or intangible;
- iv.** *Pending the hearing and disposal of the captioned application, pass an order directing the Respondent to disclose on oath details of all their movable and immovable assets as well as their bank accounts;*
- v.** *Pending the hearing and disposal of the captioned application, pass an order directing freezing of all bank accounts of the Respondent;*
- vi.** *Pending the hearing and disposal of the captioned application, direct the Respondent to disclose on Affidavit its receivables in terms of the Deed of Hypothecation;*
- vii.** *Pending the hearing and disposal of the captioned application, pass an order directing Mr. Rahul Mitra, (Managing Director of the Respondent and Ms. Saroj Topno (Chief Financial Officer of the Respondent), respectively to surrender their passports with the registry of this Hon'ble Tribunal and they may further be restrained from leaving the country; and*

viii. Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

- 2.** The Applicant is involved in providing trusteeship services and is registered with the Securities and Exchange Board of India ('SEBI') as a Debenture Trustee under the SEBI (Debenture Trustees) Regulations, 1993.
- 3.** The Respondent, on the other hand, is categorized as a Category B, non-deposit taking Non-Banking Finance Company and Micro Finance Institution ('NBFC-MFI'), primarily operating in Northern India with a focus on financial inclusion.
- 4.** In the case at hand, the Debenture Holder is Japan ASEAN Women Empowerment Fund ('JAWEF'), a blended fund aiming to empower women in the ASEAN region through investments in a diversified portfolio, mainly comprising microfinance debt and subordinate debt instruments. JAWEF is officially enrolled with SEBI according to the SEBI (Foreign Portfolio Investors) Regulations of 2019. It was established in 2016 with the endorsement of the Japanese government, under the management of Blue Orchard Finance Ltd., an

international impact investment firm headquartered in Zurich, Switzerland.

- 5.** It has been averred in the application that the applicant had been appointed as a Debenture Trustee in respect of certain Non-Convertible Debentures ('NCDs'). On 31.07.2017, the parties entered into a Debenture Trustee Agreement, wherein the Respondent agreed to pay the Applicant remuneration, along with all reasonable costs, charges, expenses, and any arrears carrying interest, for as long as the Applicant holds the office of the Debenture Trustee. A true copy of this agreement dated 31.07.2017 has been attached as Annexure A-3 with the application.
- 6.** Concurrently, a Debenture Trust Deed ('DTD') was executed by the parties on the same date, outlining the terms and conditions of the NCD issue and delineating the mutual rights, duties, obligations, and liabilities of both the Applicant and the Respondent.
- 7.** On 08.08.2017, JAWEF ('Debenture Holder') was issued the aforementioned 200 NCDs, each with a face value of Rs.10 Lakhs, totalling Rs. 20 Crores, as outlined in the Information Memorandum dated 31.07.2017.

- 8.** To ensure the fulfilment of the Respondent's obligations, including the redemption of principal amounts, coupons, remuneration of the Applicant, and all associated costs, charges, expenses, and other payments related to the NCDs ('Secured Obligations'), the Respondent established a first-ranking and exclusive charge through hypothecation over its receivables. Consequently, the parties also executed a Deed of Hypothecation on 31.07.2017.
- 9.** As stated in the Information Memorandum and Schedule II to the DTD, the semi-annual Coupon Payment Dates were designated as 8th February and 8th August of each calendar year until the Maturity Date, which was set as 08.08.2022, marking 60 months from the date of allotment, i.e., 08.08.2017. Additionally, the Coupon Reset Date and Exercise Date were established as 08.08.2020. However, on 26.08.2020, at the request of the Respondent, various amendments were made in the DTD and the Information Memorandum.
- 10.** On January 8, 2021, the terms of the Debt Transfer Document (DTD) and Information Memorandum underwent another amendment at the request of the respondent.

Consequently, the due date for the initial payment instalment of Rs. 6.66 Crores was further adjusted to January 15, 2021. Following this amendment, the first instalment of the Principal Amount, as outlined in the revised DTD dated January 8, 2021, was expected by January 15, 2021. Despite the repeated extensions of payment deadlines, the party failed to fulfil its obligations. As this default persisted beyond the stipulated cure period of 7 days, it constituted a 'Payment Default' in accordance with Article 5.2 (i) of the DTD.

- 11.** In response, on January 18, 2021, the Debenture Holder invoked the Put Option outlined in Clause 2.9 of the DTD. The debenture holder demanded the redemption of the Non-Convertible Debentures (NCDs) on the Exercise Date, which was set for February 8, 2021. This redemption required the complete payment related to the Debentures, encompassing the Outstanding Principal Amount, applicable Coupon amounts, and any other additional dues. True Copy of the Put Option Notice, dated January 18, 2021, sent by the Debenture Holder to the party in question, is attached as Annexure A — 9 to the application.

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12. Following that, on February 25, 2021, the Debenture Holder sent a 'Reservation of Rights' letter to the Respondent, wherein it reiterated the defaults made by the Respondent. Alongside, in Paragraph 6 of the letter, the Debenture Holder suggested certain amendments, which the Respondent accepted by countersigning the letter and via an email dated March 10, 2021. Additionally, through this letter, the Debenture Holder explicitly retained the right to declare an event of default if:

- a. any of the conditions set out in Para 6 of the said letter were not complied with by the Respondent; or
- b. in the Debenture Holder's discretion, it is of the view that the security created in favor of the Applicant in is jeopardy; or
- c. any of the creditor(s) of the Respondent have accelerated their respective payment(s), whether through the issuance of an acceleration/enforcement/default notice or otherwise, including by declaration of any amounts of the Respondent owed to such creditor to be due and payable prior to its specified maturity, as a result on any actual default, or upon an event of default and/or in the event of any security provided by the company to such creditor is invoked or

enforced or any actions for the invocation or enforcement of such security is taken or resorted to by such creditor; or

d. on the occurrence of any other event of default(s), or the Respondent is unable to perform its obligations under transaction documents, and upon the occurrence of any of the aforesaid conditions.

13. After recurrent defaults by the Respondent, on April 16, 2021, the Debenture Holder issued a notice to the Respondent outlining the various breaches and defaults in adhering to the covenants and fulfilling obligations under the Transaction Documents. These breaches constituted events of default according to the clauses of the DTD. In this notice, the Debenture Holder demanded immediate payment from the Respondent of a total of Rs. 20,45,58,056/- (Rupees Twenty Crore Forty-Five Lac Fifty-Eight Thousand Fifty-Six Only). This amount comprised of Rs. 19,99,89,299/- (Rupees Nineteen Crores Ninety-Nine Lakh Eighty-Nine Thousand Two Hundred and Ninety-Nine Only), representing the Outstanding Principal Amount, and Rs. 45,68,757/- (Rupees Forty-Five Lakh Sixty-Eight Thousand Seven Hundred and Fifty-Seven Only), representing the outstanding coupon

amount. Furthermore, the Respondent was instructed to pay default interest at a rate of 3% per annum, in addition to the coupon rate, on the outstanding principal amount from January 15, 2021 (the date of default), until both the principal and the coupon were fully settled. The notice also demanded payment for any other applicable costs, charges, additional interest, or liquidated damages.

- 14.** With no response forthcoming from the Respondent, the Debenture Holder took action on May 21, 2021, by submitting an application to the Reserve Bank of India (RBI). This application sought urgent intervention and immediate directions against the Respondent under the Reserve Bank of India Act, 1934, concerning the Debentures issued by the Respondent and the outstanding amount of Rs. 20,91,67,401.28 (Rupees Twenty Crores, Ninety-One Lakhs, Sixty-Seven Thousand, Four Hundred and One and Twenty-Eight Paise). In the letter, the Debenture Holder emphasized that despite their persistent efforts to recover the outstanding amount from the Respondent, no response had been received from senior officials, including the CEO and Managing

Director, and in fact, several senior officials of the Respondent's management had resigned.

15. The applicant claims that the Debenture Holder and the applicant, acting as the Debenture Trustee, provided full cooperation to the Respondent. They agreed to extend payment deadlines, including the Exercise date, Coupon Payment date, and Coupon Reset date. Additionally, the Applicant allowed flexibility regarding the Principal Amount payment, allowing the Respondent to pay it in two instalments: Rs. 6.66 Crores by January 15, 2021, and the remaining Rs. 13.34 Crores by August 8, 2022. However, the Respondent continuously defaulted on payment deadlines, displaying a blatant disregard for contractual obligations and causing severe prejudice to the Debenture Holders, who had made substantial investments.

16. As of September 2, 2021, the total outstanding amount from the Respondent to the Debenture Holder stood at Rs. 21,84,18,974.18 (Rupees Twenty-One Crore Eighty-Four Lakh Eighteen Thousand Nine Hundred Seventy-Four and Eighteen Paise). This amount included the Outstanding Principal Amount, outstanding coupon amount, default

interest at a rate of 3% per annum over and above the coupon rate on the outstanding principal amount from January 15, 2021 (the date of default), and other costs, charges, additional interest, and liquidated damages. A detailed breakdown of these amounts is provided in Annexure A-13 attached to the application.

- 17.** Left with no alternative, the Debenture Holder, acting through the Applicant, is compelled to exercise the available remedies under Section 71(10) of the Companies Act, 2013, read with Rule 73 of the NCLT Rules, 2016, and is seeking urgent and expeditious relief.
- 18.** The respondent in his reply has admitted its liability and clarified that due to the insurgence of Covid-19 pandemic, it failed in making the repayments. The respondent further stated that though it is not in a position to pay the entire default amount at once but it provided a schedule for repayment of the debt which is as follows:
 - i.** The Petitioner would give up its claim to penal interest;
 - ii.** The Respondent would pay to the Petitioner:
 - a.** Rs. 1 crore by 31st March, 2022;

- b.** Rs. 1.5 crore by 30th June, 2022;
- c.** Rs. 1.5 crore by 30th September, 2022;
- d.** Rs. 1.5 crore by 31st December, 2022;
- e.** Rs. 3 crore by 31st March, 2023;
- f.** Rs. 3 crore by 30th June, 2023;
- g.** Rs. 3 crore by 30th September, 2023;
- h.** The entire remaining balance by 31st December, 2023.

19. The respondent further argued that any directive mandating payment or deposit of the specified sum or freezing of bank accounts would effectively lead to the closure or insolvency of the respondent company. It contended that such actions would also contravene the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, in conjunction with Sections 237 and 239 of The Insolvency & Bankruptcy Code, 2016 (as amended). This is because the respondent operates as a Financial Service Provider (FSP) with assets below Rs. 500 crores. Furthermore, the respondent asserts that the debentures are secured by

hypothecation of receivables/book debts and do not carry any additional security beyond what is specified in the Deed of Hypothecation (pages 211-238 of the Petition). Therefore, it argued that the relief sought in the Petition should not be granted by this Tribunal.

20. On 22.02.2024, the Ld. Counsel representing the petitioner stated that the respondents have not adhered to the payment schedule given by them. This Adjudicating Authority directed the petitioner's counsel to seek fresh instructions in furtherance of the matter.

21. During the hearing on 14.03.2024, this Adjudicating Authority noted that there was no representation on behalf of the Respondents on that day. There was also no appearance on behalf of the respondent on 20th March, 2023, 16th September, 2023 and on 22nd February, 2024. Thus, the respondent was set ex-parte. However, since the reply was already filed by the respondent, therefore we have proceeded to examine the matter on the basis of the averments made in the said reply.

22. Section 71(10) of the Companies Act, 2013 reads as under:

“(10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.”

23. We have heard the submissions of the Learned Counsel for the Petitioner and perused the Petition and Reply and the documents filed thereunder.

24. It is seen that the Petitioner is the debenture trustee as per the debenture trustee agreement attached along with the Petition. It is also seen that the first instalment of the principal amount of Rs. 6.66 Crore became due on 15.01.2021. The respondent in his reply while admitting liability, submitted a payment schedule but failed to adhere to it. The requirement enshrined under section 71 (10) is thus met in view of the fact that the respondent has failed to redeem the debentures on their maturity despite having given

a categoric schedule of repayment plan as already discussed by us hereinabove.

25. Considering the facts & circumstances along with the documents on record, we hereby order that in terms of Section 71(10) of the Companies Act, 2013, the Respondent i.e., M/s. Margdarshak Financial Services Limited shall make repayment of the aforesaid debentures along with interest and other charges due thereon, in accordance with the terms and conditions of the Debentures i.e. an amount of Rs.21,84,18,974.18 [Rupees Twenty-One Crore Eighty-Four Lakh Eighteen Thousand Nine Hundred Seventy-Four and Eighteen Paise] as on 02.09.2021 *as per Annexure A-13* of the application as mentioned in prayer Clause (c) within 60 days from the date of this order.

26. Accordingly, CP 67/ALD/2021 stands allowed.

-Sd-

(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date: 2nd May, 2024