

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA No. 2551/2022

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

Agritrade Power Holding Mauritius Limited

..... Applicant

Vs.

Ashish Arjunker Rathi,
Interim Resolution Professional of
SKS Power Generation (Chattisgarh) Limited

..... Respondent

In the matter of

CP (IB) No.893/MB/C-IV/2021

Bank of Baroda

...Financial Creditor

Vs.

**SKS Power Generation (Chattisgarh)
Limited**

...Corporate Debtor

Order Pronounced on: 17.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : Mr. Shyam Kapadia a/w Ms.
Aditi Tiwari, Advocates.

For the Respondent(s) : Mr. Pradeep Sancheti, Ld. Sr.
Counsel a/w Ms. Pallavi Bali,
Advocate.

Per. Prabhat Kumar, Member (Technical)

ORDER

1. Present Application has been filed by Agritrade Power Holding Mauritius Limited against rejection of its claim by the Respondent/Resolution Professional of SKS Power Generation (Chattisgarh) Limited (“Corporate Debtor”).

1.1. The Applicant has submitted that it is holder of 38,05,576 compulsory convertible debentures with face value of Rs.1000/- each carrying interest @ 11.5% per annum. The total interest payable on such debentures till 28.04.2022 amount to Rs.1,36,72,81,334.92. Accordingly, the Corporate Debtor owed a sum of Rs.5,17,28,57,334.92 as financial debt to the Applicant. The Applicant submitted Form-C to the Respondent on 13.05.2022 and furnished clarification/information from time to time. On 17.05.2022 the Applicant came to know that its name is not included in the list of Creditors and found it is still under examination. Finally vide email dated 22.06.2022 the Applicant’s claim was rejected by the Respondent stating that:-

“The books of accounts of EIEPL reflect the CCDs as ‘Other Equity’ and not as debt, indicating that the same has been considered as an equity or quasi-equity instrument and not as a debt instrument. Further, the books of account of SPGCL also record the CCDs as ‘Other Equity’ and not debt.”

1.2. The Applicant has submitted that the Respondent has committed mistake of law in distinguishing the order of “SGM Webtech Pvt. Ltd. Vs. Boulevard Projects Private Limited, CP(IB) 978 (PB)/ 2018” passed by the Principal Bench of this Tribunal wherein it was held that CCD’s, till the time they do not

mature, are to be considered as debentures, and consequently qualified debt. It was also pleaded that characterisation in the books of account of the Company cannot be conclusive of the nature of transaction.

- 1.3. In view of this, the Applicant prayed for issuance of direction to the Respondent to admit the claim of the Applicant as a financial debt.
2. The Respondent has filed reply dated 07.10.2022 stating that the claim of the Applicant is not maintainable as barred by limitation since books of the Corporate Debtor did not acknowledge liability arising from CCDs as a financial debt and has been shown as equity. It has also filed compilation dated 13.03.2023 through its Counsel, inclusion thereto, of the text of relevant provisions of FEMA and Regulations made thereunder along with IND AS 32. During the course of hearing, the Ld. Counsel reiterated stand taken by the Respondent.
3. The Applicant has filed rejoinder dated 08.11.2022 further reiterating its stand and negating the contention of Respondent.
4. We have heard both the Counsel and perused the material on records.
 - 4.1. The Copies of Debenture Certificates are enclosed with the Application alongwith the terms and conditions of CCDs. On reading of these terms it is noticed that (i) that the CCDs carry interest @ 11.5% per annum; (ii) it was mandatorily convertible at mandatory conversion date which is stated earlier of (a) expiry of period of 10 years from the date of this certificate; or (b) In the case of (a) any winding up, liquidation or dissolution of the Company (or any analogous event) the last date permitted under applicable laws for the conversion

of the investor's CCDs; (c) in the case of happening of any initial public offering, the last date permitted under applicable laws for the conversion of the investor CCDs; (iii) the conversion price is Rs.1000/- only; (iv) the conversion could take place before mandatory conversion date at the option of debenture holder; and (v) the aggregate principal amount of the CCDs were to be converted.

- 4.2. Financial Debt means a debt along with interest, if any, which is disbursed against consideration for the time value of money. In the present case, the subscription to CCDs was made against interest @ 11.5% per annum and such interest constitute disbursement against the consideration of time value and money. It is undisputed fact that the CCDs are debt so long as they are not converted into equity of the Company. Accordingly, till the date of occurrence of mandatory conversion date, it was a nature of debt and disbursed as such.
- 4.3. We observed that mandatory conversion date arises on the winding up, dissolution or liquidation of the Company (any analogous event). We feel that the resolution process contemplated under IBC is an analogous event. Accordingly, the mandatory conversion date arises on the date of commencement of resolution process. In view of mandatory conversion date occurring on an analogous event, we feel that the Company's obligations towards principal component of CCDs ceases to exist on that day and accordingly, no debt to the extent of Principal amount of CCDs can be said to exist at commencement of CIRP. In view of this discussion, we feel that the decision of Principal Bench of this Tribunal in the case of

“**SGM Webtech Pvt. Ltd.**” (*supra*) is distinguishable on facts of the present case.

- 4.4. We are in agreement with the contention of the Applicant that accounting entry cannot determine the category of a transaction and its nature has to be ascertained from the understanding between the parties. It is no doubt that the CCDs are mandatorily convertible into equity and interest on such CCDs is payable in cash till the date of such conversion. Accordingly, the declaration of such CCDs as other equity, the Financial Statement of the Corporate Debtor is not a conclusive evidence of the characterization of amounts due in relation to CCDs.
- 4.5. Since, the terms and conditions of the CCDs contemplated compulsory conversion of only principal amount, interest accrued thereupon till the date of conversion is certainly an obligation or liability of the Corporate Debtor. A debt is defined to include obligation and liability. Since, the interest on debt is also a financial debt, we hold that the amount of accrued interest till the mandatory conversion date of CCDs i.e. CIRP commencement date is a financial debt and deserves to be admitted as such.
5. In view of the foregoing discussion, the present Application i.e. IA- 2551/2022 is partly **allowed**.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)