

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-744(ND)/2022

IN THE MATTER OF:

Advani Private Limited

Room No. 522, 5th Floor,
Tobacco House, 1, Old House Corner,
Kolkata, West Bengal - 700001

...Petitioner/Financial Creditor

VERSUS

M/s. Starlit Powers Systems Limited

Registered Office at:
A-1/51, LGF, Safdarjung Enclave,
New Delhi - 110029

Corporate office at :

A-1/20, LGF, Safdarjung Enclave,
New Delhi - 110029

...Respondent

Section: 7 of IBC, 2016

Order Delivered on: 20.03.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Adv. Pulkit Deora, Adv. Aphune K. Kezo a/w
Adv. Swati Saluja

For the Respondent : Adv. Parmod Kumar Sachdeva



ORDER

PER: SHRI. ASHOK KUMAR BHARDWAJ, MEMBER (J)

Advani Private Limited (for brevity, the '**Petitioner/Financial Creditor**') has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s. Starlit Power Systems Limited (the '**Respondent**').

2. The Respondent namely, M/s Starlit Power Systems Limited is a Company incorporated on 04.03.2008 under the provisions of Companies Act, 1956 with CIN L37200DL2008PLC174911 having its registered office at A-1/51, LGF, Safdarjung Enclave, New Delhi - 110029, which is within the jurisdiction of this Tribunal. As per the master data annexed with the Petition, the Authorized Share Capital of the Respondent Company is Rs.12,00,00,000/- and its Paid-up Share Capital is Rs.10,06,48,660/-

3. As has been stated in petition, the Respondent is involved in manufacturing of lead acid batteries for diverse purposes such as automotive, e-mobility, solar, inverter and UPS. The Company is also engaged in recycling and refining of lead based products. The Petition espouses thus:

- The Respondent approached M/s. Advani Private Limited (hereinafter referred to as Financial Creditor) Room No. 522, 5th



Floor, Tobacco House, 1, Old House Corner, Kolkata for its working capital requirement and had projected a need for Rs. 1,00,00,000/-.

- The Petitioner had accepted the request of the Respondent and gave the money in installments as per the requirements projected by the Respondent at an interest rate of 12% per annum on mutually agreed terms and conditions which were reduced to writing in the Agreement dated 09.04.2019 with the Respondent.
- In compliance with the payment schedule as mentioned in the Agreement, Petitioner made subsequent payment of Rs. 89,20,000/-.
- As per the terms of agreement, at the time of borrowing the said loan amount, the Respondent had promised to Petitioner to pay principal along with interest which the Respondent till date has failed to return. The Creditor reminded the CD through repeated telephone call, WhatsApp, SMS message and also held many personal meetings with the Directors, staff and authorized personnel of the Respondent to realize its principal and interests and to ensure that the liability is eventually duly and completely discharged, but to no avail.

4. The particulars of the total unpaid dues and the date of default as mentioned in Column II of Part IV of the petition reads thus: -



2	AMOUNT CLAIMED IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED	<p>The amount claimed to be in default is Rs. 1,07,50,337/- (Rupees One Crore Seven Lac Fifty Thousand Three Hundred Thirty-Seven Only) which includes Rs. 89,20,000/- (Rupees Eighty Nine Lac Twenty Thousand Only) as Principal, Rs. 18,30,337 (Rupees Eighteen Lac Thirty Thousand Three Hundred Thirty-Seven Only) as interest for the period from 03.05.2019 to 30.09.2021.</p> <p>Date of Default: 01.05.2021 (Two years from the date of first disbursement i.e. 02.05.2019 in terms of the Agreement dated 09.04.2019 entered between parties)</p> <p>Copy of the Bank Account Statement and Calculation of Interest attached herewith and marked as Annexure No.-I (B) & I(E) Page No.</p>
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5. From the perusal of the Part IV of the Petition, it can be seen that the Petitioner has claimed Rs.1,07,50,337/- which includes Rs. 89,20,000/- as Principal and Rs. 18,30,337/- as interest for the period from 03.05.2019 to 31.03.2021. The date of default as claimed in the petition is 01.05.2021.

6. The Financial Creditor has relied upon the following documents to prove the existence of financial debt.

- a) Copy of request letter for unsecured loan toward working capital from Respondent.
- b) Copy of sanction letter dated 09th April, 2019.
- c) Copy of request letter received from Respondent for release of loan.
- d) Copy of bank statement.
- e) Copy of interest calculation sheet.



f) Copy of legal notice dated 20.10.2021 & 08.03.2022.

7. In the wake of the aforementioned, the Financial Creditors/ Petitioners have prayed for initiation of CIRP against the Respondent.

8. In terms of our order dated 13.01.2023, we observed that the Petitioner herein had not specifically mentioned any date of default in Part IV of the application filed by it and being not a bank or any NBFC, it could not have granted working capital loan in normal course. Having so observed, we directed the Petitioner to place on record the documents espousing its eligibility to advance loan in terms of Section 186 of Companies Act, 2013. In terms of the aforementioned order, we had also directed the Petitioner to file its audited balance sheet and annual returns in Form MGT-7 for the Financial Year 2017-18 and 2018-19 along with statement of its paid-up share capital, free reserves and security premium account qua the said years.

9. In compliance of the aforementioned order dated 13.01.2023, the Petitioner filed additional affidavit dated 23.01.2023, espousing therein –

i) The Petitioner had advanced financial debt to the Respondent on 09.04.2019, and the amount was disbursed on different dates commencing from 02.05.2019, for a term of two years from the date of first disbursement i.e., 02.05.2019.



ii) The Corporate Debtor committed default in payment of debt on 01.05.2021.

iii) The Financial Debt was advanced to Respondent/Corporate Debtor in due deference to the provisions of Section 186(2) of the Companies Act, 2013, which provides that a Company may give loan to the extent of the amount not exceeding 60% of its paid-up share capital, free reserves and security premium account or to the extent of 100% of its free reserves and security premium account.

iv) At the time of advancement of financial debt by the Petitioner to the Respondent/Corporate Debtor, the paid-up share capital, free reserves and security premium account of the Petitioner amounted to Rs. 619.22 lakhs and its free reserves and security premium account together amounted to Rs. 607.30 lakhs, thus the advancement of loan by the Petitioner was in consonance with the provision of Section 186(2) of the Companies Act, 2013.

10. The Petitioner has also placed on record the copies of audited report and audited balance sheets for the Financial Year 2017-18 and 2018-19, copies of ATR filed on Form MGT – 7 qua the said years as Annexure A-2 and A-3 of the additional affidavit. In the additional affidavit filed by it, the Petitioner has specifically averred that the Board of Directors at their meeting dated 05.04.2019, in consideration of the



provisions of the Sections 179 and 186 of the Companies Act, 2013 accepted the request of the Respondent and accorded consent to grant financial debt of a maximum amount of Rs.1,00,00,000/-, to the Respondent/Corporate Debtor, upon certain terms. In para 10 of the affidavit, the Petitioner also gave details of paid-up share capital, free reserves and security premium account for the financial years 2017-18 and 2018-19, which reads thus:

ADVANI PRIVATE LIMITED			
Sl. No.	FY	2017-2018	2018-2019
1.	Paid up Capital	11.92	11.92
2.	Free Reserve	(-) 86.84	(-) 78.27
3.	Security Premium	685.57	685.57

Thus, the requirement of the order dated 13.01.2023, is met and satisfied by the Petitioner.

11. In response to the notice issued by this Adjudicating Authority vide order dated 19.10.2022, the Respondent espoused thus: -

- The Corporate Debtor is a company having its registered office at A-1/51, LGF, Safdarjung Enclave New Delhi-110029. It was Incorporated on 04.03.2008, its Authorized Capital amounts to Rs.12,00,00,000/-. The Paid-up share Capital of the CD is Rs.10,06,48,660. It is involved in the manufacturing of lead batteries for diverse applications such as automotive, e-Mobility, solar, inverter and UPS. The company is also engaged in recycling and refining the of lead--based products.
- The Corporate Debtor has been operating in a bona-fide manner and has tried to generate as much business as possible, given the market conditions & opportunity. Further, the Corporate Debtor availed a credit loan facility (Term Loan and Working



capital) worth Rs.325 lakhs on 07.02.2012 from Punjab National Bank, New Delhi which subsequently increased to about Rs.2497 Lakhs as on 31.03.2018.

- In furtherance of availing the credit facility from the bank, the Respondent raised capital of about Rs 295 lakh and got itself listed with the Bombay Stock Exchange on 22.10.2014.
- The Respondent was always consistent in making the payments of installments/ bank dues till it started facing difficult Business conditions.
- The credit facilities of the Respondent were restructured in March 2018 by its Bank after prolonged discussions and fulfilment of several conditions like immediate change in the management. The Master Restructuring Agreement dated 31.03.2018 was executed accordingly. But despite the execution of such Restructuring Agreement, the Registered office of the CD continued to remain under the physical possession of the Bank pursuant to the action initiated under the SARFAESI Act and not only this but also that the bank failed to withdraw any of the proceedings initiated before the DRT thereby hindering and obstructing the takeover of the CD by the new management for which withdrawals and release of immovable properties was absolutely necessary to secure the trust and confidence of the new management, new investors and for fresh infusion of capital.
- During such critical and hard time suffered by the CD, its promoters infused capital amounting to more than Rs.10 Crores by the way of Unsecured loan for the period beginning from 2014 to 2022. The extract of the same has been produced hereunder:

Financial Year	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22
Closing Balance (in Lakhs)	21.8	1.71	1.51	195.2	175.18	881.03	787.93	950	995.59	1007.52



- In the backdrop, the CD approached the FC to take an unsecured loan of Rs.1,00,00,000/- for its Working Capital requirement. The financial Creditor accepted the request of the Respondent and sanctioned the loan as per sanction letter dated 09.04.2019. The period for disbursement of loan was two years and the rate of interest for the same payable by CD was 12%. The disbursement commenced from 02.05.2019.
- The CD undertook to repay the entire Working Capital Loan availed from the FC after two years from the date of the disbursal of the 1st installment in terms of the sanction letter. That the severe financial conditions which affected the operations of the Respondent have led to delay in repaying the dues of the various creditors. The amount due to the Petitioner is about Rs.1,05,67,303/- as per books of accounts of CD, as on 31.03.2022.
- The restructuring of the CD could not be ratified by the bank due to some internal procedural wrangling in the bank, despite signing of the Master Restructuring Agreement with it.
- The bank has in the past more than 4 years, since the master restructuring agreement dated 31.03.2018, unilaterally and arbitrarily stopped operations of the loan account on different occasions and for number of days including 115 days from 06.09.2018 till 01.01.2019, 19 days from 30.09.2020 till 19.10.2020, 06 days from 31.12.2020 till 06.01.2021, 10 days from 19.01.2021 till 29.01.2021, 20 days from 16.04.2021 till 07.05.2021 and from 09.08.2021 till date. These sudden stoppages of the accounts led to financial losses and loss of Goodwill for the CD in front of its employee, vendors, suppliers and buyers. No distributor or customer wishes to deal in or buy Respondents product -Battery- which carries a warranty by the CD for service and replacement for typically 1 to 3 years if he feels the company operates in fits and starts and its survival is in question.



- The Bank continued adversarial approach towards CD. The Respondent kept on repeatedly sending letters to the Bank requesting it to withdraw cases out of which only one of them was withdrawn on 04.07.2019.
- While Respondent was undergoing the aforesaid hardships, the unprecedented wave of the Covid-19 Pandemic broke out led to further downfall of the CD.
- The condition of CD since past 3 years has been extremely trying and the stress in demand and supply chain on account of COVID 19 continues to affect the industry.
- The repeated efforts were made by the Respondent to discharge its liabilities however, the same has been of no avail.
- The dual impact of disruption caused on account of Covid-19 and arbitrary acts of the bank had led to mounting losses and stress on the CD. Despite that it however continued its positive efforts towards revival and in the same spirit it again submitted a restructuring proposal 20.12.2021 the ambit of RBI guidelines whereby it proposed to convert part of the unsustainable debt into convertible debentures which can be later converted to equity with a recompense and buy back clauses by the company once the revival plan is given effect to. The sustainable portion of the debt the company would continue to service provided there are no disruptions causes to the functioning of the account. The restructuring scheme proposed was prudent as it would allow the bank to eventually recoup its money and possibly also profit in the equity. The scheme was also as per the Govt. of India and RBI intent and guidelines to ensure that employment generating MSME units specially in the areas of technology as is the case with the company are revived and nurtured.

12. As can be seen from the aforementioned, the CD has admitted both the amount of debt and default in its payment. The CD has also



explained its financial conditions in detail i.e., it is not in a position to discharge the loan. From the detailed reply filed by the CD, it need to be referred to CIRP for its revival.

13. In the given facts and circumstances, the present Petition being complete and there being categorical acceptance of amount of debt and default by the CD, **the present Petition deserves to be admitted in terms of Section 7(5) of the IBC. Ordered accordingly. A moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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.”



14. As proposed by the Financial Creditor, this Bench appoints Mr. Khushwinder Singhal as IRP having Registration No. IBBI/IPA-002/IP-N00888/2019-20/12833 (Email: kvsinghal@gmail.com) subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP, Mr. Khushwinder Singhal (E-mail: kvsinghal@gmail.com) having Registration No. IBBI/IPA-002/IP-N00888/2019-20/12833 is directed to take charge of the CIRP of the Respondent with immediate effect and to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to ratification by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

16. A copy of this Order shall be communicated by the Registry/Court Officer of this Adjudicating Authority to the Financial Creditor, the Respondent and the IRP mentioned above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer of this Adjudicating Authority to the IBBI for their record.

Sd/-
(L. N. GUPTA)
MEMBER (T)



Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)