

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

CP (IB) No. 2079/KB/2019

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Anup Jhunjunwala

...Financial Creditor

Versus

**ADEA Powerquips Private Limited
[CIN: U40104WB2010PTC154698]**

...Corporate Debtor

Order reserved on: 12 July, 2022

Order pronounced on: 23 August, 2022

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For the Financial Creditor : Ms. Urmila Chakraborty, Advocate

Mr. Anurag Bagaria, Advocate

Ms. Riya Debnath, Advocate

For the Corporate Debtor : Mr. Reetobroto Mitra, Advocate

Mr. Debjyoti Saha, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Anup Jhunjunwala, seeking to

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initiate Corporate Insolvency Resolution Process (“CIRP”) against ADEA Powerquips Private Limited (“Corporate Debtor”).

3. The Corporate Debtor was incorporated on 18 November 2010, having CIN: U40104WB2010PTC154698, under the Companies Act, 1956. It’s registered office is 53B, Mirza Ghalib Street, 2nd Floor, Kolkata-700016. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 20 November 2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make a payment of a sum of Rs.29,80,662/- (Rupees Twenty Nine Lakh Eighty Thousand Six Hundred and Sixty Two only) along with an interest of 12% p.a. from 16 August 2018 to 17 October 2019. The date of default is 17 October 2019.

Submission of learned Counsel appearing for the Financial Creditor

5. A loan was given to the Corporate Debtor by the Financial Creditor of Rs.27,00,000/- (Rupees Twenty Seven Lakh only) on 16 August 2018, 23 August 2018, 08 October 2018, 21 November 2018, 17 December 2018, 24 December 2018 and 11 January 2019.
6. The Financial Creditor is a shareholder of the Corporate Debtor and is holding 21,06,158 equity shares of the Corporate Debtor. The Financial Creditor was the Managing Director of the Corporate Debtor and during the period of 2018-19, the Financial Creditor in its own capacity granted a temporary loan of Rs.27,00,000/- (Rupees Twenty Seven Lakh only) with an interest of 12% per annum.
7. In December, 2018, the Financial Creditor sold 4,14,000 equity shares out of 25,20,158 equity shares in the Corporate Debtor to Modern Malleables groups and their nominees were inducted as additional directors of the Corporate Debtor.
8. A new Board of Directors of the Corporate Debtor was formed, the Financial Creditor was the Managing Director of the Corporate Debtor till 16 September 2019.

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9. The Financial Creditor on several occasions requested the Corporate Debtor to refund the loan and also sent an email on 16 August 2019.
10. *Vide* email dated 23 August 2019, the Corporate Debtor served a notice dated 22 August 2019 to the Financial Creditor, intimating the Financial Creditor of the Annual General Meeting to be held on 16 September 2019. The Corporate Debtor also acknowledged the loan taken from the Financial Creditor but incorrectly represented that the Financial Creditor agreed to convert the loan into equity shares of the Corporate Debtor.
11. The Financial Creditor objected to the contents of the notice dated 22 August 2019 and thereafter requested the Corporate Debtor to refund the loan amount Rs.27,00,000/- (Rupees Twenty Seven Lakh only *vide* letter dated 11 October 2019. The Corporate Debtor in its reply dated 24 October 2019 stated that the Board of the Corporate Debtor had unanimously converted the loan of the Financial Creditor into equity shares.
12. The Financial Creditor in its letter dated 12 November 2019 denied giving his consent for conversion of his temporary loan into equity shares.
13. Further, the Corporate Debtor has not paid the monthly salary of the Financial Creditor as is discernible from the letter dated 16 August 2019, 12 September 2019 by the Financial Creditor.
14. The loan given by the Corporate Debtor has been admitted and acknowledged the loan of Rs.27,00,000/- (Rupees Twenty Seven Lakh only) in the Audited Financial Creditor in its Balance Sheets for the Financial Year 2018-19.
15. The Financial Creditor has placed the following documents on record:
 - a. Copies of Bank Statements from the period from 15 August 2018 to 31 January 2019;
 - b. Copy of DIR-12;

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- c. Copies of correspondences with the Corporate Debtor;
 - d. Copy of the Audited Balance Sheet of the Corporate Debtor for the Financial Year 2018-19.
16. The learned Counsel for the Financial Creditor has placed reliance on two judgments of the Hon'ble NCLAT viz. *Jayanthi G. Ravi v. Chemizol Addictive P Ltd.*¹ and *Shailesh Sangani v. Joel Cardoso & Anr.*² wherein the Hon'ble NCLAT held that the loan given by the shareholder/director is a financial debt.
17. The learned Counsel for the Financial Creditor led us through the minutes of the meeting held on 22 August 2019 wherein it was resolved that the loan given by the Directors would be converted into equity share. Further, under point 11, it has been stated that the Corporate Debtor has been facing financial losses due to poor management in past.
18. The Financial Creditor has proposed the name of Mr. Jay Narayan Gupta, registration number IBBI/IPA-001/IP-P00371/2017-2018/10628, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.
19. Court Notice had been served on the Corporate Debtor on 11 December 2019 via Post and on 04 December 2019 via email. The Corporate Debtor entered appearance on 07 February 2020.
20. Corporate Debtor filed its reply on 15 January 2021. The learned Counsel appearing on behalf of the Corporate Debtor submitted that:

¹ C.A. (AT) (Ins.) No. 553/2020

² 2019 SCC OnLine NCLAT 52

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- a. The Financial Creditor along with his sons was in the Board of Management of the Corporate Debtor, but due to illegal acts that were prejudicial to the Corporate Debtor, the sons of the Financial Creditor were removed from the Board.
- b. In a Board Resolution passed on 24 May 2019, it was resolved that all the payments to the Financial Creditor and his sons would be withheld.
- c. The Financial Creditor resigned from the Corporate Debtor and his resignation was approved on 16 September 2019.
- d. The Board of Directors of the Corporate Debtor in a meeting held on 22 August 2019, resolved to convert the loan of the Financial Creditor into equity shares of the Corporate Debtor subject to the members approval in the Annual General meeting to be held on 16 September 2019.
- e. In the Annual General Meeting held on 16 September 2019 , the loan of the Financial Creditor was converted into equity shares and the Financial Creditor was allotted 2,70,000 equity shares of the Corporate debtor, the Financial Creditor accepted the conversion without any protest at the said meeting.
- f. The Financial Creditor has also initiated proceedings under section 9 of the Code which is registered as C.P. (IB) No. 2058/KB/2019 and the sole intention of the Financial Creditor is to extort money from the Financial Creditor.

Analysis and Findings

21. Heard the learned Counsel appearing for the Financial Creditor and the learned Counsel appearing for the Corporate Debtor and perused the record.

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22. On perusal of the records, it is seen that no Agreement or prior approval for such loan has been annexed to the Petition, to reflect that the Corporate Debtor had taken a commercial debt.
23. But on perusal of the Minutes of the Board of Meetings of the Corporate Debtor, the Corporate Debtor has admitted that loan was disbursed by the Financial Creditor to the Corporate Debtor and the Board of Directors resolved to convert such loan into equity shares. The same has been reflected in the audited Balance Sheet of the Corporate Debtor under the category of unsecured loan from Directors. The same amount has on 16 September 2019 been converted to equity shares. Hence, it is clear that the Financial Creditor has given loan to the Corporate Debtor which was then converted in equity shares.
24. From the minutes of Board Meeting held on 22 August 2019, it is pertinent to note that loans taken from two Directors i.e. Mr. S.K. Bhattacharya (ex-director) and the Financial Creditor were converted to equity shares.
25. In the letters dated 11 October 2019 the Financial Creditor has stated that he had objected to the conversion of shares in the Board Meeting held on 16 September 2019. On perusal of the records submitted by the Financial Creditor, it is clear that he had received the agenda for the Annual General Meeting *via* email on 23 August 2019.
26. Hence, the Financial Creditor was well aware of Item No. 8 that was to be discussed in the Annual General Meeting, but the Financial Creditor did not raise any objection with regard to the Item No. 8 after receipt of the notice.
27. This Adjudicating Authority is a summary court and hence, we cannot venture into a detailed proceeding, the main points in a section 7 petition is to check whether there is a debt and default with the aid of the documents annexed with the pleadings. In the present case, the debt

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has been converted into equity shares, hence there is no debt at the present.

28. In view of the above observations, **CP (IB) No. 2079/KB/2019 filed under section 7 of Insolvency and Bankruptcy Code, 2016** is dismissed. The applicant herein is however at liberty to resort to other remedies that may be available to him under the law.

29. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on 23rd day of August, 2022

GGRB_LRA