CASE LAW UPDATE

CS Makarand Joshi

IBC

SHRI. DEV DEEPAK DOSHI - PETITIONER VS. M/S. DURA PUF (SILVASSA) PRIVATE LIMITED, RESPONDENT

In the matter of *Shri. Dev Deepak Doshi - Petitioner vs. M/s. Dura PUF (Silvassa) Private Limited, Respondent* in the order passed dated 2 June 2025 by the National Company Law Tribunal Mumbai

Facts of the Case

- This Company Petition is filed by Shri. Dev Deepak Doshi – Petitioner and Financial Creditor (FC) - an individual who was appointed as a Director of **M/s. Dura PUF (Silvassa) Private Limited -** Corporate Debtor (Respondent/CD) on 1 August 2006.

- The FC provided necessary Financial Assistance to the CD as and when needed.

- The FC advanced a Loan amount of Rupees Two Crores Twenty Lakhs only (approx.) (₹ 2,19,43,097/-) to the CD in various tranches which was repayable on demand.

- During February 2023, the FC had disagreements with the other Directors of the CD regarding certain key business decisions. Because of these differences, the FC was excluded from participating in the regular business affairs and decision-making processes of the CD. Faced with continued oppressive conduct by the other Directors, the FC contemplated resigning from the position of Director around October 2023.

- On 11 November 2023, the FC issued a Loan Recall Notice to the CD demanding repayment of the outstanding dues. The said notice was duly received by the CD. However, despite acknowledging the liability, the CD failed to make any payment towards the outstanding amount.

- As the oppressive acts continued and the loan amount remained unpaid, the FC resigned from directorship on 1 March 2024.

- The FC issued two further notices to the CD on 31 December 2023 and 5 March 2024 respectively, demanding repayment of the loan.

- Despite issuance of notices, the CD failed to make any payment to the FC, resulting in the filing of the Petition u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code).

Arguments of the Petitioner/FC

- It was submitted that the Financial Statements of the CD reflect that an amount of Rupees Two Crores Sixteen Lakhs (approx.) (₹ 2,15,98,097/-) was due and payable to the FC as of 31 March 2023. The statements further confirm that the said loan is classified as "payable on demand".

- The FC asserted that the petition was maintainable and that the Corporate Insolvency Resolution Process (CIRP) should be initiated against the CD for the committed default.

- The FC's claim is substantiated by multiple pieces of documentary evidence, including bank statements demonstrating the transfer of funds, the ledger account maintained in the CD's books under the FC's name, and, most importantly, the CD's Balance Sheet as on 31 March 2023, which records the outstanding amount under "Long Term Borrowings" in the name of the FC.

Arguments of the Respondent/CD

- The CD submitted that the petition filed by the FC was non-maintainable. There was no written Agreement/Contract or document between the parties to demonstrate the nature of the transaction and the terms of the alleged financial debt. The FC failed to bring on record even a single document to demonstrate the alleged financial debt.

- The CD was a close-knit family business, and directors advanced funds from time to time as required for working capital.

- There was no specific date of repayment agreed between the parties.

- The FC unilaterally determined the date of default as 11 November 2023, by issuing a demand notice. The CD, however, contended that the said notice was motivated by the FC's dissatisfaction with the management and functioning of the CD. It was further argued that the notice was addressed to the Board of Directors and not specifically to the Respondent. The CD asserted that mere receipt of such a letter does not constitute an event of default.

- The claim made by the FC was without any interest component. Therefore, there is no "time value of money," and the amount cannot be termed as *Financial Debt* u/s Section 5(8) of IBC.

- Consequently, the alleged debt does not bear the commercial effect of a borrowing, as the funds were neither utilized by the CD for its working capital requirements nor were they obtained from the FC for the purpose of meeting such operational needs.

- The FC failed to demonstrate the actual date of default of the alleged financial debt, which is a settled position of law that, without which, actual default cannot be ascertained.

- The contents of the reminder letters (31 December, 2023, and 5 March, 2024) demonstrate that the FC was aggrieved due to alleged oppressive acts of the other directors of the CD.

- The CD contended that the present proceeding is a fit case for adjudication through a Civil Trial, where the terms of the alleged transaction, if any, could be properly examined and determined. The CD further submitted that the FC has circumvented this appropriate legal recourse by directly invoking the remedy available under Section 7 of the IBC.

Held

- The NCLT held that the existence of financial debt can be proved through various documents, not just a written financial contract. Referring to ***Agarwal Polysacks Ltd. vs. K. K. Agro Foods & Storage***, it was noted that financial statements or records with an information utility are sufficient. In this case, the debt was established through the FC's bank statements, the CD's ledger, and notably, the CD's Balance Sheet as on 31 March 2023, which reflected the amount under "Long Term Borrowings" in the FC's name. The NCLT also relied on ***Vidyasagar Prasad vs. UCO Bank & Anr.***, where the Hon'ble *Supreme Court* held that balance sheet entries amount to an acknowledgement of debt.

- The NCLT rejected the CD's argument that the absence of interest disqualifies the loan as 'financial debt'. Citing ***Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd.,*** it clarified that under Section 5(8) of the IBC, interest is not mandatory and even an interest-free loan can have a "commercial effect of borrowing". The CD's own admission that the funds were for working capital, along with their classification as "Long Term Borrowings" in the balance sheet, confirmed the loan as financial debt.

- The NCLT defined 'default' as non-payment of debt when due. It was held that the FC's loan recall notice dated 11 November 2023 made the debt immediately payable. Concluding that all conditions u/s 7 of the IBC were met, the NCLT confirmed the Petitioner as a 'Financial Creditor' and that a 'Default' had occurred.

- The NCLT referred to the Hon'ble Supreme Court's ruling in ***M/s. Innoventive Industries Ltd. vs. ICICI Bank***, which mandates that once the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.

SEBI

ADJUDICATION ORDER SECURITIES EXCHANGE BOARD OF INDIA IN THE MATTER OF LCC INFOTECH LIMITED (LCC)

Adjudication Order Securities Exchange Board of India in the matter of LCC Infotech Limited (LCC)

Facts of the case

- Securities and Exchange Board of India (hereinafter referred to as "SEBI") initiated the instant adjudication proceedings under section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") against LCC Infotech Limited (hereinafter referred to as "LCC"/"Noticee") for the alleged violation of regulation 31(1) read with regulation 4(1) (e) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "LODR Regulations")

- The Show Cause Notice (SCN) dated May 21, 2025, issued by SEBI to Noticee, alleged Undisclosed Share Sale by Mr. Siddhart Lakhotia. It was observed that, during the perusal of a Draft Letter of Offer ('DLOF') submitted to SEBI in the year 2024, Mr. Siddharth Lakhotia, one of the promoters of LCC, sold 10,000 equity shares on January 01, 2018. It was alleged that sale of equity shares on January 01, 2018, was not reflected in the shareholding patterns filed by LCC under Regulation 31(1) of the LODR Regulations. It was further alleged that this omission persisted for eight consecutive quarters, specifically from the quarter ended March 31, 2018, to the quarter ended December 31, 2019.

- SEBI further alleged that Noticee **filed an incorrect shareholding pattern** for the aforementioned eight quarters, **leading to a violation of Regulation 31(1)** of the LODR Regulations. Reg. 31(1)(b) of LODR Regulations obligates a listed entity to submit a statement showing holding of securities and shareholding pattern to the stock exchange(s) on a quarterly basis in the specified format **and Regulation 4(1)(e)** further requires that all disseminations made under the LODR Regulations must be adequate, accurate, explicit, timely, and presented in a simple language.

Contentions of The Noticee

- **Inadvertent and unintentional omission of the name of a promoter:** Noticee admitted that the disclosures made under the shareholding pattern for the quarter ended March 31, 2018, to December 31, 2019, did not account for Mr. Siddhart Lakhotia's share sale. The Noticee has attributed the said lapse to inadvertent and unintentional omission and contended that on July 4, 2018, BSE Ltd. issued a compulsory delisting order against the company, followed by a delisting order from NSE on August 8, 2018. They stated that during this period, shareholding details were blocked by NSDL and CDSL, which made the data unavailable to the company. Consequently, the sale of 10,000 shares by Mr. Siddhart Lakhotia was "inadvertently missed out" in the shareholding patterns. Noticee appealed to these delisting orders before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT, through its order, changed the company's status from "delisted" to "suspended". The Noticee argued that because data was not available during this period of delisting/suspension, the details of the share sale were missed.

- Noticee further stated that corrective actions have been taken wherein it had rectified the discrepancy in the shareholding statement which had occurred from the quarter ended March 31, 2018 to the quarter ended December 31, 2019.

Contentions of SEBI

- Inadvertent and unintentional omission of name of promoter: The Adjudicating Officer (AO), SEBI's stated that despite the delisting orders and their ramifications, LCC **remained listed** (as its status was changed to "suspended" by SAT, not fully delisted) and thus it was **incumbent on the Noticee to comply** with all LODR Regulations, including Regulation 31, "in letter and spirit". The AO emphasized the legal principle that "When a law prescribes a manner in which a thing is to be done, it must be done only in that manner". Furthermore, the AO pointed out that the **violations began on April 1, 2018**, whereas the first compulsory delisting order from BSE was passed only on **July 4, 2018**. This implied that LCC had **no justification for the wrongful statement** submitted for the period *prior* to the commencement of the stock exchange action, and therefore, LCC's submission could not be fully accepted.

AO also noted that LCC had **previously incurred monetary penalties for violations of LODR and Listing Agreement** via SEBI orders dated November 12, 2024, and November 29, 2004, indicating a repetitive nature of defaults

PENALTY: The Adjudicating Officer (AO) imposed a **penalty of ₹ 1,00,000/- (Rupees One Lakh only)** on the Noticee. This penalty was levied under **Section 15HB of the SEBI Act, 1992**, for the violation of Regulation 31(1) read with Regulation 4(1)(e) of the SEBI LODR Regulations after considering the absence of quantifiable gain and the repetitive nature of the default.

Companies Act, 2013

M/S RELISYS MEDICAL DEVICES LTD VS. D. RAJU REDDY, NCLAT DELHI

In the matter of *M/s Relisys Medical Devices Ltd vs. D. Raju Reddy, NCLAT* Delhi bench, order dated 23 May 2018.

Facts of the case

- Relisys Medical Devices Ltd, the appellant herein (hereinafter called as company/petitioner), is a company incorporated under the Companies Act 1956 and D. Raju Reddy (hereinafter called as respondent) is the non-resident shareholder of the company.
- On 1 December 2011, the company issued 1,92,441 Compulsory Convertible

Debentures (CCDs) of ₹ 10 each at a premium of ₹ 60 each to the respondent. At this time, the fair value of equity shares of the company was ₹ 64.22/-.

- On 6 August, 2013, the appellant company converted 1,92,441 CCDs into 4,29,419 equity shares of ₹ 10/- each at a premium of ₹ 21.37 each and allotted the shares to 1st respondent. This allotment was made at a valuation of ₹ 31.37/- each which was less than the fair value of shares at the time of issue of CCDs.

- As per the Foreign Exchange Management Act (FEMA) regulations, the conversion into shares of the company cannot be done at a price lower than the fair value of shares at the time of issue of the convertible securities. Therefore, this conversion was in violation of FEMA regulations.

- In order to rectify this non-compliance, the company filed a compounding application before the Reserve Bank of India (RBI). The RBI instructed the company either to unwind the excess shares allotted; or to bring in additional funds equivalent to the shares allotted and thereafter apply for compounding for the contraventions stated.

- Therefore, the company obtained a no-objection certificate from the respondent for rectification of the register in the form of cancellation of 219658 equity shares of ₹ 10 each excess allotted to him. Thereafter, the company filed a petition for the rectification of the register of members.

- However, the Hyderabad bench of NCLT rejected the petition because rectification of the register of members by cancelling the excess allotment of shares leads to a reduction of paid-up capital. and there is a prescribed procedure for reduction of share capital in the Memorandum of Association and Articles of Association of the company and the Companies Act, 2013 (the Act) which was not followed by the company.

- Therefore, the company is before the appellate Tribunal in an appeal against the NCLT order.

Petitioner's contentions

- The Tribunal is not justified in dismissing the application by contending that a Company cannot be the applicant seeking rectification of its register of members.

- The Tribunal has committed a serious error by assuming that the company has not followed the procedure prescribed under its Memorandum and Articles of Association, the Act and FEMA for increasing its authorized capital when there is no shred of any document to suggest the company has not followed the procedure so prescribed.

- The only violation committed by the appellant under FEMA was to allot shares at ₹ 31.37 instead of ₹ 64.22 and that there was no other violation under FEMA and it is as a result of such undervaluation of shares that excess shares of 219658 were allotted to the respondent.

- The rectification of the register of members by cancelling the excess shares allotted is merely an accounting entry whereby the amount paid up on the excess shares sought to be cancelled is credited to the securities premium account and there is no return of capital and it does not tantamount to a reduction of capital as contemplated under Section 66 of the Act.

- The appellant submitted that if this Tribunal permits, the appellant will take the necessary steps legally required for cancelling the excess shares allotted and comply with other legal formalities as well as whatever directions this Tribunal gives.

Respondent's contentions

- Rectification of the register of members by cancelling the excess allotment of shares leads to a reduction of paid-up capital.

- There is a prescribed procedure for the reduction of share capital in the Memorandum and Articles of Association of the company and the Act, which the petitioner company has failed to follow.

- Also, the company has failed to make good, the non-compliance under applicable provisions of FEMA regulations 2000.

Held

- This case deals with where the CCDs have been converted into shares at the wrong share premium. The money has already been received by the company and the allocation of the same between paid-up share capital and securities premium must be done.

- It is noted that the security premium account for all practical purposes is to be treated as if the security premium account were the paid-up share capital of the company as per Section 52 of the Act.

- Securities premium amount has been determined to be wrongly short, and consequently, paid-up capital has been allocated of more amount than required. Therefore, the change in composition between the security premium account and paid-up share capital will not amount to a reduction in capital as both the components are treated as paid-up capital. Further reading of Section 100 of the Companies Act, 1956 (corresponding to section 66 of the Act), shows that this case is not covered under any of sub-clauses (a), (b) and (c) of Clause (1).

- As the appellant has opted to unwind the excess shares allotted, therefore, this will make a case of rectification of the wrongful calculation of share capital and securities premium and not a reduction of share capital because the security premium account is also to be treated as paid-up share capital. This is a case where security premium amounts will be increased and an equal amount of paid-up capital will be decreased and there will be no change in the overall amount allocated to paid-up share capital and security premium account.

- The petitioner was directed to cancel the excess allotment of 2,19,658 shares to the respondent. Instead, the total amount received through CCDs to be used to issue 2,09,761 equity shares of ₹ 10/- each at a premium of ₹ 54.22 as on 6 August, 2013. The premium amount shall be transferred to the Securities Premium Account. Further, revised balance sheets post 6 August, 2013 must be refiled and certified by a Chartered Accountant. The company must also comply with all applicable legal formalities under the Companies Act and other relevant laws.

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