

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**C.A. No. 01 of 2014  
(TP No. 154/HDB/2016)**

**U/s 117C of the Companies Act, 1956**

**In the matter of**

ICICI Securities Limited  
Having its Registered Office at  
ICICI Centre, H.T. Parekh Marg,  
Churchgate,  
Mumbai – 400 020,  
Maharashtra

... Applicant/Debenture holder

Versus

Deccan Chronicle Holdings Limited,  
Having its registered office at  
36, Sarojini Devi Road,  
Secunderabad,  
Andhra Pradesh-500003.

... Respondent

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OF THE ORIGINAL

**Date of order: 22.09.2017**

**CORAM:**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

**Counsels / Parties Present**

For the Petitioner : Shri Nikhil Khadikar & Khamar Kantamaneni, Advocates

For the Respondent : Shri. A.S. Prashanath, Advocate

**Per: Rajeswara Rao Vittanala, Member (J)**

**ORDER**

1. The Present Company Application bearing C.A.No.1 of 2014 (TP No.154/HDB/ 2016), is filed by ICICI Securities Limited (Applicant/Debenture Holder) U/s 117C of Companies Act, 1956, against the Deccan Chronicle Holdings Limited, by inter-alia seeking to direct the respondent (Deccan Chronicles Holding Limited) to redeem and make re-payment of the Debentures issued vide Debenture Certificate dated 03.07.2012 along with interest due there on in accordance with terms & conditions of the amended

2. The brief facts of the case, which are relevant to the issue in question, are as follows::

(a) ICICI Securities Limited (Debenture Holder/Applicant) is a company registered under the Companies Act, 1956 as amended, and having its Registered Office at ICICI Centre, H. T. Parekh Marg, Churchgate, Mumbai-400020, Maharashtra.

(b) Deccan Chronicles Holdings Limited (Respondent) is a Company incorporated and registered under the provisions of the Companies Act, 1956, as amended and has its Registered Office at 36, Sarojini Devi Road, Secunderabad, Andhra Pradesh – 500003.

(c) The Respondent (DCHL) signed a term sheet on 08.05.2012 whereby the Debenture Holder has made an application for subscription of 1,250 redeemable, unsecured, listed, non-convertible debentures for Rs.10,00,000 each. The Debenture Holder could exercise redemption on maturity (366 days), or on the date of put option, if the option was exercised by the Debenture Holder.

(d) Pursuant to execution of the term sheet and disbursement of funds by the Debenture Holder, DCHL/Respondent was required to issue the non-convertible debentures to the Applicant/Debenture Holder. However, the Rating agency CARE did not re-affirm the rating of the non-convertible debentures, which was expected to be completed post DCHL's quarterly results on 15.05.2012. Since, the rating on the non-convertible could not be re-affirmed, and DCHL had failed to allot the non-convertible debentures to the Debenture Holder despite passage of significant amount of time, the Debenture Holder demanded refund of the entire sum of Rs.125,00,00,000/- (Rupees One Twenty Five Crore only) from DCHL, with an intention to close the transaction.

(e) However, DCHL indicated its inability to refund the entire amount of Rs.125 Crore and proposed to partly refund application money of Rs.80,00,00,000/- (Rupees Eighty Crore Only) and offered to issue secured, redeemable, unlisted non-convertible debentures to the Debenture Holder for the balance amount of Rs.45,00,00,000/- (Rupees Forty five Crore Only). The security for these non-convertible debentures was proposed in the form of a second charge over a corporate jet model 400 XP/ RK511 New 2007 Hawker Aircraft owned by DCHL, which was registered with Directorate General of Civil Aviation ("DGCA") on 13.04.2007, with the Registration No. VT-TVR/3522 ("Aircraft"). DCHL has already created a first charge on the Aircraft, in favour of ICICI Bank Limited, vide an agreement dated





- (f) That the Board Director of DCHL, vide Board Resolution dated 18.06.2012, approved the issuance and allotment of 450 secured, redeemable, unlisted non- convertible debentures (“NCD’s”) of Rs.10,00,000/- (Rupees Ten Lakhs Only) each to the Debenture Holder with a maturity period of 366 days aggregating to Rs.45,00,00,000/- (Rupees Forty Five Crore Only) in accordance with the arrangement between the parties, DCHL partly refunded a sum of Rs.80,00,00,000/- (Rupees Eighty Crore Only) to the Debenture Holder on 29.06.2012.
- (g) Subsequently, the Debenture Holder and DCHL entered an amended term sheet dated 03.07.2012 capturing the amended terms and conditions of the transaction including the creation of a second charge over the Aircraft (“Amended Term Sheet”). According to the terms and conditions, the maturity date was 366 days from the date of allotment and the Debenture Holder could claim redemption on maturity or on the date of put option if the option was to be exercised by the Debenture Holder.
- (h) Accordingly, NCDs were allotted to the Applicant/Debenture Holder vide the Debenture Certificate No.1 dated 03.07.2012. The Terms and Condition of debentures as also date of redemption of debentures as follows:

Issuer	Deccan Chronicles Holdings Limited (“Issuer” or “Company”)
Subscriber	ICICI Securities Limited
Instrument	Redeemable secured unlisted non-convertible debentures (“NCDs”)
Issue Size	Rs. 45, 00,00,000/- (Rupees Forty Five Crores only )
Security	Second Charge by way of hypothecation over the Aircraft to secure entire amounts due hereunder which shall be subservient to the first charge created in favour of ICICI Bank Limited
Rating	Not required
Maturity	366 days
Redemption Date	366 days from the date of allotment
Indicative Coupon	12.75 % per annum.
Put Option	At the end of 91 days, 181 days, and 271 days from date of allotment
Redemption	On maturity or on date of put option if the option is exercised by subscriber
Purpose	General Corporate purposes of the Issuer
Coupon payable	On maturity or on date of put option if the option is exercised by Subscriber
Face value	Rs. 10,00,000 ( Rupees Ten Lakhs Only) per NCD
Issue and redemption price	At par
Listed	Shall not be listed



Documentation	<p>The Issuer shall ensure that all the consents and resolutions required to issue the NCDs are in place prior to the allotment. The Issuer should also ensure that any and all regulations pertaining to the Issue are complied with.</p> <p>Main Documents:</p> <ol style="list-style-type: none"> <li>(1) Original Term Sheet dated May 08, 2012</li> <li>(2) Amendment to the term sheet dated July 03, 2012</li> <li>(3) Board resolution approving the allotment of NCDs</li> <li>(4) Shareholder resolutions under Section 293 (1) (a) and 293 (1) (d) of the Companies Act, 1956</li> <li>(5) Deed of hypothecation</li> <li>(6) Application to DGCA for amendment to registration certificate showing Subscriber's name as beneficiary of hypothecation charge</li> <li>(7) NOC from the first charge holder ICICI Bank</li> <li>(8) Insurance policy showing the Subscriber as loss payee</li> <li>(9) E form 8 to be filed on the website of Ministry of Company Affairs.</li> </ol>
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- (i) Pursuance to issue of Debenture certificate, the Debenture Holder and the DCHL entered into a deed of hypothecation dated 17.08.2012, ("Hypothecation Deed"). It was agreed between the parties that the outstanding amount payable by DCHL to the Debenture Holder, shall be secured by way of a second charge over the Aircraft, which shall be secured by way of a second charge over the Aircraft, which shall be subject to the first charge created in favour of ICICI Bank Limited.
- (j) The Debenture Holder addressed a letter dated 31.03.2013 to DCHL informing it that Debenture Holder was exercising the put option in accordance with Amended Term Sheet and Debenture Certificate. Accordingly Debenture Holder requested DCHL to make entire outstanding payment of Rs.45,00,00,000/- (Forty Five Crore Only) along with interest till date.
- (k) The Petitioner filed a Civil Suit being CS (OS) No.204/2014, before the Hon'ble Court of Delhi, seeking permanent and mandatory injunction



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For Dy. Regr./Asst. Regr./Court Officer/  
National Company Law Tribunal, Hyderabad Bench

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केस संख्या

CASE NUMBER

निर्णय का तारीख

DATE OF JUDGEMENT

प्रति नैपाल किया गया तारीख

COPY MADE READY ON

CA No. 01 of 2014 (TP)

15/11/2016

22.9.2017

26.9.2017

interest of the Debenture Holder. However, the suit was subsequently withdrawn.

(1) When the Debenture holder failed to pay the said amount of Rs.45,00,00,000/- (Forty Five Crore Only) along with interest, the present petition is filed by seeking relief as prayed for.

3. Heard, Shri Nikhil Khadikar and Shri Khamar Kantamaneni, learned Counsels for the Applicant and Shri A.S. Prashanth learned Counsel for the Respondent and have carefully perused all pleadings.
4. The case was originally instituted before the then Company Law Board, Chennai and on transfer to this Bench, the case is listed before this Bench on various dates viz., 05.08.2016, 23.08.2016, 16.09.2016, 06.10.2016, 25.10.2016, 15.11.2016, 24.11.2016, 25.11.2016, 09.12.2016, 14.12.2016, 20.12.2016, 03.01.2017, 31.01.2017, 14.02.2017, 09.03.2017, 03.04.2017, 18.04.2017, 26.04.2017, 13.09.2017, 18.09.2017 and 22.09.2017. The case is adjourned on the above dates, at the request of the parties.
5. Shri Khamar Kantamaneni and Shri Nikhil Khadikar, learned Counsels for the Applicant submit that though the Applicant entitled for the relief as prayed for, but in the light of initiation of CIRP by the Tribunal vide order dated 19.07.2017 passed in CP No. CP(IB)/41/7/HDB/2017 filed by Canara Bank Vs. Deccan Chronicles Holdings Limited appointing IRP, the applicant/debenture holder may be permitted to approach the IRP with its claim.
6. Shri A.S. Prashant learned Counsel for the Respondent has also submitted that in the light of the initiation of CIRP against DCHL, the Applicant may be directed to the IRP by making their claim.
7. Since the CIRP already was initiated against DCHL and its entire management of respondent Company is under the control of IRP appointed by the Tribunal, the DCHL on its own cannot decide anything and it would not serve any purpose in directing the respondent to redeem debentures in question. It is IRP, who can consider the claim of applicant/debenture holder, in accordance with the law.
8. In the light of the facts of the circumstances of the case, it would be just, proper and appropriate to dispose of the CA No.01 of 2014 by permitting Applicant/Debenture holder to make its claim along with material documents before the IRP appointed in CP No. CP(IB)/41/7/HDB/2017 immediately after receiving copy of this order since the IRP has already started the process. With the above direction, CA is disposed of. No orders as to costs.

Sd/-

RAVIKUMAR DURAISAMY

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (JUDICIAL)