



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT II

Item No. 1
C.P. (IB) 694(MB)2024

CORAM

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **01.05.2025**

NAME OF THE PARTIES: **L&T Finance Limited**
Vs.
Tikona Infinet Private Limited

Appearance:

For Petitioner : None

For Respondent : None

U/s 7 of (IBC)

ORDER

The matter is taken up for pronouncement of order in respect of **C.P. (IB) 694(MB)2024**. Order pronounced vide separate sheet. **C.P. (IB) 694(MB)2024** is **admitted**.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)
//Subham//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI - BENCH-II**

CP (IB) No. 694/MB/2024

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

L&T FINANCE LIMITED

[CIN No. L67120MH2008PLC181833]

Registered Office: Brindavan Plot No. 177

C.S.T Road, Kalina, Santacruz (East)

Mumbai-400098, Maharashtra, India.

...Financial Creditor

vs

TIKONA INFINET PRIVATE LIMITED

[CIN: U74899MHI975PTC265837]

Registered Office: 3A, 03rd Floor

Corpora, L.B.S. Marg, Bhandup West

Mumbai-400078, Maharashtra.

...Corporate Debtor

Pronounced: 01.05.2025.

CORAM:

SHRI ANIL RAJ CHELLAN

HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR

HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

Financial Creditor :

Sr. Adv. Mustafa Doctor a/w Adv. Nausher Kohli a/w
Adv. Murtaza Kachwalla a/w Adv. Aarti Sonawane, Adv.
Adity Chaudhary a/w Adv. S. M. Algaus a/w Mr. Satvik
Tejasvi a/w Tanu Kankariya i/b. M/s. Argus Partners



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

Corporate Debtor : Adv. Shyam Kapadia a/w. Adv. Yash Momaya a/w Adv. Munaf Virjee a/w Adv. Rushabh Parekh a/w. Adv. Tirtha Mukherjee and Ms. Aakruti Jayendran i/b. AMR Law.

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. BACKGROUND

1.1 This Company Petition No. C.P. (IB) 694/MB/2024 (Application) was filed on 01.08.2024 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AAA Rules) by L&T Finance Limited (Financial Creditor), for initiating Corporate Insolvency Resolution Process (CIRP) of Tikona Infinet Private Limited (Corporate Debtor).

1.2 The total amount of default alleged is Rs.1,16,01,25,183/- (One Hundred and Sixteen Crore One Lakh Twenty-Five Thousand One Hundred and Eighty-Three Rupees) as on 30.06.2024, in respect of Series 'E' Compulsorily Convertible Debentures (Series 'E' CCDs). The claim is based on an alleged default in payment of coupons at an agreed Internal Rate of Return (IRR) with respect to Series 'E' CCDs.

1.3 The date of default mentioned in Part-IV of the Application is 30.06.2024. However, as per the pleadings, it appears that pursuant to a Share



Subscription Agreement (SSA) dated 28.08.2017, entered into, *inter-alia*, between L&T Infrastructure Finance Company Limited (the predecessor-in-interest of the Financial Creditor) and the Corporate Debtor, and consequent amendment to the Articles of Association (AOA) of the Corporate Debtor to give effect to the SSA, the right to receive coupon may be exercised by the holder of Series 'E'CCDs, at its sole option, on and from the third anniversary of the Effective Date. The Effective Date as per SSA is 30.08.2018. Therefore, the right to receive coupons would commence from 30.08.2021. As per the Applicant, the coupons have not been paid by the Corporate Debtor and have committed default in payment of coupons that first began on 30.08.2021.

2. CONTENTIONS OF FINANCIAL CREDITOR

2.1 The Corporate Debtor is a company involved in the business of providing secured wireless broadband services to home and enterprise customers in India.

2.2 The SSA was entered into between the Corporate Debtor; L&T Infrastructure Finance Company Limited (the predecessor-in-interest of the Financial Creditor); Anand Rathi Financial Services Limited; Mr. Prakash Bajpai; Mr. Ajay Sarupria; Mr. Rajesh Tiwari; Green Lotus Limited; Global Long Short Partners Mauritius-I Limited; Global Long Short Partners Mauritius-IV Limited; and Indivision India Partners and Oak India Investments, on 28.08.2017, by virtue of which, the predecessor-in-interest of the Financial Creditor subscribed to:



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

- a. 100 Series C Nominal Equity Shares;
- b. 3,61,968 Series C Compulsorily Convertible Debentures ("CCDs");
- c. 216 Series D Nominal Equity Shares;
- d. 1,57,244 Series D CCDs;
- e. 289 Series E Nominal Equity Shares;
- f. 60,560 Series 'E' CCDs; and
- g. 4,25,307 Normal Equity Shares,

of the Corporate Debtor, on the terms and conditions, more particularly stated in the SSA.

2.3 For subscribing to the aforementioned instruments, L&T Infrastructure Finance Company Limited agreed to pay an amount of Rs.164,82,70,680/- (One Hundred Sixty-Four Crore Eighty-Two Lakh Seventy Thousand Six Hundred and Eighty Rupees), including an amount Rs.17,28,11,160/- towards subscription of Series 'E' CCDs. As per Paragraph 3 of Part E of Schedule 3 to the SSA, L&T Infrastructure Finance Company Limited was entitled to receive coupon payments on the Series 'E' CCDs, to the maximum extent permissible under the applicable law. The Series 'E' CCDs were subscribed to by L&T Infrastructure Finance Company Limited by payment of the total amount of Rs.17,28,11,160/- (Seventeen Crore Twenty-Eight Lakh Eleven Thousand One Hundred and Sixty Rupees) in the following tranches:

<u>Date</u>	<u>No. of Series 'E' CCDs subscribed</u>	<u>Amount (Rs.)</u>
December 13, 2013	21,828/-	6,28,12,280.00/-



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

April 19, 2014	21,126/-	5,99,97,840.00/-
August 19, 2014	10,564/-	3,00,01,760.00/-
November 12, 2014	7,042/-	1,99,99,280.00/-
TOTAL	60,560	17,28,11,160. 00/-

2.4 Under the corporate restructuring of L&T Infrastructure Finance Company Limited, all its rights and claims are now vested in the Financial Creditor and are enforceable by it. The rights and obligations of the Financial Creditor as the subscribers of the subscriptions made by it to the securities of the Corporate Debtor are governed by the Shareholders Agreement dated 25.08.2017 (SHA), as amended from time to time. Pursuant to the execution of SHA, the clauses thereof were incorporated in the Corporate Debtor's AOA, as amended from time to time.

2.5 As per Article 105 of the AOA of the Corporate Debtor and Paragraph 3 of Part E of Schedule 3 of SSA, the Financial Creditor, as the holder of Series 'E' CCDs, has the right to receive coupon payments on the same, to the maximum extent permitted under the applicable law, on or from the third anniversary of the Effective Date and until the Financial Creditor receives its Agreed Series 'E' IRR (*as defined under the AOA of the Corporate Debtor*). This liability of the Corporate Debtor is unqualified. The Effective Date as per SSA is 30.08.2018. Therefore, the right to receive coupon payment by the Financial Creditor commences from 30.08.2021, till it receives its Agreed Series 'E' IRR. The Financial Creditor invested in the Series 'E' CCDs, *inter alia*, on the Corporate Debtor's undertaking to pay coupons thereon, as per the



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

terms of the SHA and AOA of the Corporate Debtor. Since the coupon payment became due on and from 30.08.2021, and is unpaid as on date, the debt is an existing one.

2.6 The Corporate Debtor failed to honour the coupon payments on Series 'E' CCDs held by the Financial Creditor. As a sequitur, the Financial Creditor issued a Demand Notice dated 04.03.2024, calling upon the Corporate Debtor to pay the coupon entitlement of the Financial Creditor under the Series 'E' CCDs amounting to Rs.1,09,63,00,000/- as on 29.02.2024, within 7 (seven) days from the date of receipt thereof. Since the Corporate Debtor failed to pay the coupon entitlement of the Financial Creditor within the stipulated 7-day period mentioned in the Demand Notice, the Corporate Debtor's first default occurred on 11.03.2024.

2.7 In response to the Demand Notice, the Corporate Debtor addressed a letter dated 18.03.2024, whereby the Corporate Debtor stated that it was not obligated to pay any coupon payment as demanded under the Demand Notice inasmuch as it does not have any Distributable Cash as per Section 11.02 of the SHA (*pari materia* to Article 104 of AOA of the Corporate Debtor).

2.8 On account of the Corporate Debtor's failure and refusal to make payments under the coupon entitlement, the Financial Creditor issued a Default Notice dated 18.03.2024, once again calling upon the Corporate Debtor to pay the outstanding debt of Rs.110,79,00,000/-, by 26.03.2024, which was due and payable as on 18.03.2024. The Financial Creditor further



stated that Section 11.03(a) of the SHA (*pari materia* to Article 105(a) of the AOA of the Corporate Debtor) states that the holders of Series 'E' CCDs have Coupon Right, notwithstanding anything contained in the SHA. Hence, the Coupon Right of the Financial Creditor is not subject to Section 11.02 of the SHA (*pari materia* to Article 104 of the AOA of the Corporate Debtor).

2.9 Since the Corporate Debtor failed to pay the coupon entitlement of the Financial Creditor within the stipulated date mentioned in the Default Notice, the Corporate Debtor once again defaulted on 26.03.2024. After much delay, *vide* a letter dated 24.05.2024, the Corporate Debtor replied to the Default Notice, and once again denied its liability to make any payment to the Financial Creditor under the SHA and the SSA.

2.10 Thereafter, the Financial Creditor addressed a letter dated 26.06.2024 and responded to the aforementioned letter dated 24.05.2024 of the Corporate Debtor. It refuted the allegations raised by the Corporate Debtor in the letter dated 24.05.2024. It once again called upon the Corporate Debtor to honour its payment obligation of the coupon entitlement as per the agreement between the parties. By a letter dated 15.07.2024, the Corporate Debtor responded to the letter of 26.06.2024 of the Financial Creditor and once again denied its liability to make any payment to it under the SHA and the SSA.

2.11 The Applicant pleads that it is evident from the above facts and circumstances that the Corporate Debtor first defaulted in repaying the coupon



entitlement on 11.03.2024 and thereafter on 26.03.2024 and continues to be in default till date. The default of the coupon entitlement in respect of Series E CCDs is a continuing one. In view of the above, the Corporate Debtor is liable to pay the entire outstanding amount to the Financial Creditor, aggregating to Rs. 116,01,25,183/- due and payable by the Corporate Debtor as on 30.06.2024.

3. REPLY BY CORPORATE DEBTOR

3.1 The Corporate Debtor is a fixed broadband internet service provider and is engaged, *inter alia*, in the business of providing managed network services and networking solutions to enterprise customers in India. It is also engaged, *inter alia*, in providing enterprise communication solutions, cloud contact centres and home broadband solutions in India.

3.2 The Corporate Debtor entered into the SHA on 25.08.2017 with L&T Infrastructure Finance Company Limited (now known as L&T Finance Ltd. i.e., the Financial Creditor) and others. The SHA has been amended from time to time pursuant to the First Amendment Agreement of 11.12.2017 to the Fifth Amendment Agreement dated 21.07.2021. Further, the SSA was executed, *inter alia*, between the Corporate Debtor and the Financial Creditor on 28.08.2017. A Memorandum of Understanding ('MoU') was also executed between Mr. Prakash Bajpai and the Financial Creditor on 04.08.2020. For the sake of brevity, the SHA, the SSA, the MoU and the AOA of the Corporate Debtor are collectively referred to as the "Transaction Documents". Pursuant



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

to the terms and conditions of the SHA and SSA, the Financial Creditor subscribed to 10,05,684 Equity Securities of the Corporate Debtor, which includes 60,560 Series 'E' CCDs, that are compulsorily convertible debentures.

3.3 From the documents available on record, it is evident that (i) the Financial Creditor's status aligns with that of an investor, rather than a financial creditor. The term of Series E CCDs has expired on 12.11.2024, with these instruments converted into nominal equity shares. The obligation to pay the coupon on Series 'E' & Series 'F' CCDs under the SHA was structured on "*payable when able*" basis, contingent on the availability of "Distributable Cash" as defined in the SHA, explicitly tying coupon payments to the surplus cash available after meeting other priority financial commitments. However, in the event that the Corporate Debtor had no surplus cash, there is no enforceable obligation on the Corporate Debtor to pay the same in any manner.

3.4 As per records, the Series 'E' CCDs were issued by the Corporate Debtor and allotted to the Financial Creditor in two tranches as follows:

- (a) 50,382 Series 'E' CCDs were allotted on 24.08.2018 at an issue price of Rs.1,297.58/- per CCD (First Closing); and
- (b) 10,178 Series E CCDs were allotted on 11.09.2018 at an issue price of Rs.1,297.58/- per CCD (Second Closing).



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

These securities were issued on a cash-payable basis at a nominal value of Rs.1,297.58/- per security, with the full amount of Rs.1,297.58/- paid per security at the time of the application, and hence, no premium was charged or paid in respect of these securities. Therefore, the Financial Creditor has inaccurately claimed in the present Application that the Series 'E' CCDs of the Corporate Debtor were subscribed to by the Financial Creditor for a total sum of Rs.17,28,11,160/- and the calculation provided by the Financial Creditor in Annexure 6 of the Application is also flawed and cannot be relied upon.

3.5 The Financial Creditor has inaccurately characterised its investment in Series 'E' CCDs as 'debt' owed by the Corporate Debtor. However, under the Transaction Documents, the Financial Creditor is explicitly identified as an 'Investor' rather than a lender/creditor. According to the terms of the securities, these CCDs are compulsorily convertible into equity shares on 12.11.2024, thereby establishing that they constitute an equity interest. Consequently, CCDs cannot be treated as financial debt, and any claim by the Financial Creditor to the contrary is inconsistent with the agreed contractual framework and the nature of the instrument itself. It is critical to emphasise that the Transaction Documents do not impose any mandatory obligation or liability on the Corporate Debtor to redeem or repay the principal or face value of the Series 'E' CCDs to the Financial Creditor under any circumstances.

3.6 As per SSA, Series 'E' CCDs have been defined in Section 1.01, under Article I, as compulsorily convertible debentures of the "**Company proposed**



to be issued to the relevant Existing Shareholder(s) pursuant to the SSA with a face value equal to the Series E Issue Price that are convertible into Series E Nominal Equity Shares.

Further, it is pertinent to note that as per Section 4.01(a)(iv) of the SHA, each Series 'E' Convertible shall be convertible on 12.11.2024, without payment of additional consideration by the holder thereof.

3.7 As per the Statutory Auditor's Report and the Statement of Profit and Loss for the financial year ending on 31.03.2023 and 31.03.2024 of the Corporate Debtor audited by Mr. Samir Parmar, Partner of KNAV & Co. LLP (Firm Registration No. 120458W/W100679), **"the Series E Convertibles have been classified as equity instruments in the balance sheet of the Corporate Debtor and not as financial liabilities"**, as per the requirements of Indian Accounting Standards viz., Ind AS 32 (Financial Instruments: Presentation).

3.8 Thus, the Series 'E' CCD holders are entitled to equity-like benefits that align their rights with those of equity shareholders rather than debt holders. As outlined in the SSA, the holders of Series 'E' CCDs are granted participation rights in the liquidation proceeds of the Corporate Debtor, similar to the equity stakeholders. The conversion ratio of the Series 'E' CCDs into equity shares is fixed and pre-determined in the Transaction Documents. Furthermore, the value and number of shares resulting from the conversion of these CCDs are subject to adjustments for corporate actions such as stock splits, stock dividends and other similar events. These adjustments ensure that the



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

economic rights of the holders remain proportional and protected, much like the rights enjoyed by the equity shareholders. Judicial precedents have unequivocally held that Compulsorily Convertible Debentures are equity-linked instruments and do not qualify as a financial debt under the Code.

3.9 The payment of coupon on Series 'E' CCDs, as per the SSA and SHA, is explicitly contingent upon the availability of 'Distributable Cash' and the achievement of the 'Agreed Series E IRR', unlike interest which is fixed and periodic obligation reflecting the cost of borrowing, coupon payments under the Transaction Documents are discretionary and tied to the Corporate Debtor's performance and profitability. These payments are not tied to any time-based repayment schedule but function as a return linked to financial surplus, further underscoring their equity-like nature. The Transaction Documents impose no obligation on the Corporate Debtor to redeem or repay the principal amount of the Series 'E' CCDs. Accordingly, the claim for coupon payments cannot qualify as financial debt, and in the absence of financial debt, the present application under Section 7 of the Code is legally untenable. Even assuming, without admitting, that the Financial Creditor validly exercised its Coupon Right on 04.03.2024, the absence of Distributable Cash, as certified by the statutory auditors, precludes any liability of the Corporate Debtor to make such payments within the arbitrary 7-day timeline stipulated by the Financial Creditor.

3.10 As on date, the Financial Creditor is no longer the holder of any Series 'E' CCDs but merely holds 5,80,377 Nominal Equity Shares and 4,25,307



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

Normal Equity Shares in the Corporate Debtor, which amounts to 5.76% of the total share capital of the Corporate Debtor. While the Financial Creditor holds only 3.96% of the Series 'E' and Series 'F' CCDs, other similarly situated holders collectively owning the remaining balance possess equivalent rights and have exercised the same coupon rights. However, they have not initiated any recovery proceedings against the Corporate Debtor, reflecting their accurate interpretation of the Transaction Documents, unlike the Financial Creditor herein.

3.11 The Financial Creditor has already claimed for Agreed Series 'E' IRR through the bonus shares. The Transaction Documents established two alternatives and inter-dependent mechanisms for the holders of Series 'E' CCDs to achieve the Agreed Series 'E' IRR, which are as follows: (a) Bonus Issuance upon Liquidity Event or Mandatory Conversion, as provided under Section 4 of the SHA; and (b) Coupon Payments, as governed by Section 11.02 of the SHA. The Financial Creditor filed a Commercial Arbitration Petition (L) No. 33549 of 2024, before the Hon'ble Bombay High Court, under Section 9 of the Arbitration and Conciliation Act, 1996, which culminated in the parties entering into Consent Terms dated 14.11.2024. Notably, in Para 59 of the Commercial Arbitration Petition, the Financial Creditor expressly calculated its aggregate holding, including the Series 'E' CCDs, on a fully diluted basis at 2.50% of the share capital of the Corporate Debtor as of 31.08.2024. This calculation accounted for the Agreed Series 'E' IRR, which was to be



addressed through the issuance of equity and not by payment of any coupon or financial debt.

3.12 The Consent Terms at Para 2 therein specifically acknowledge the Financial Creditor's claim to a higher shareholding percentage through the issuance of bonus shares to achieve the Agreed Series 'E' IRR. Therefore, once the Bonus Shares are issued to meet the Agreed Series 'E' IRR, any further claim for coupon payments towards the same IRR would result in an impermissible duplication of benefits, contrary to the express terms of the SHA and the commercial understanding between the parties. Accordingly, the present claim under Section 7 of the Code is not maintainable as being contrary to the consent terms entered into between the Financial Creditor and the Corporate Debtor.

3.13 The Corporate Debtor has also raised a dispute with the NeSL, which is reflected in the NeSL certificate annexed by the Applicant/Financial Creditor to the present Application. The certificate evidences that the Corporate Debtor has disputed the alleged debt and default claimed by the Financial Creditor. Consequently, the Financial Creditor does not possess a valid NeSL certificate certifying any debt due or default committed by the Corporate Debtor. Even on this ground, the Application deserves to be dismissed.

4. REJOINDER BY FINANCIAL CREDITOR

4.1 The Financial Creditor's status does not align with that of a mere investor; rather, it is a financial creditor. The conversion of the CCDs into



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

Equity Shares is a subject matter of arbitration. It is denied that the obligation to pay coupon on Series 'E' CCDs and Series 'F' CCDs under the SHA, was structured on a "*payable when able*" basis or that it was contingent on the availability of "Distributable Cash" or explicitly tying Coupon Right to the surplus cash available after meeting other priority financial commitments. There is nothing in the SHA, SSA, or the AOA to suggest that the Corporate Debtor shall not be obligated to honour the Coupon Right if there is no Distributable Cash.

4.2 Article 105 of the AOA states that the Series 'E' CCD holders are entitled to receive Coupon Right on and from the third anniversary of the Effective Date, until such time they receive their Agreed Series 'E' IRRs. It is stated that the Financial Creditor was convinced to subscribe to the Series 'E' CCDs on the promise of it being assured the Coupon Rights as the time value of money on the amounts so paid. The transaction thus fulfils the test of "commercial effect of borrowing" under Section 5(8) of the Code, having time value of money.

4.3 It is denied that the amount of Rs.17,28,11,160/- was never paid to the Corporate Debtor or that the Corporate Debtor had no obligation or involvement in the said transactions. It is further denied that the Financial Creditor has erroneously referred to CCDs issued by Tikona Digital Networks Private Limited (Tikona Digital), as alleged. It is stated that between the years 2010 and 2014, the Financial Creditor had subscribed to certain securities of Tikona Digital. At the request of the promoters of the Corporate Debtor, LTF



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

agreed to sell the said securities held by it in Tikona Digital to Bharti Airtel Limited (BAL) and a part of the consideration paid by BAL to LTF was utilised to directly subscribe to the securities of the Corporate Debtor, as more particularly stated in Paragraph 1 of Part-IV of the Application. These facts are evident from the recitals to the SHA.

4.4 The Applicant denies the Corporate Debtor's assertion that the Financial Creditor subscribed to Series 'E' CCDs of the Corporate Debtor for the same amount. This contention of the Corporate Debtor is negated by the provisions of Schedule Z of the SHA, annexed by the Corporate Debtor, at Exhibit B to the Reply. It is further submitted that as per the definition of Agreed Series 'E' IRR under the SHA, SSA and the AOA, the holders of Series 'E' CCDs are required to be provided 25% IRR on the Tikona Series 'E' Capital (as also defined thereunder). The Tikona Series 'E' Capital is the amount invested in Tikona Digital prior to the BAL transaction with respect to the issuance of Tikona Series E Convertibles. Hence, it cannot be said that the Corporate Debtor bears no liability or obligation emanating from the amount invested in Tikona Digital.

4.5 Mere terminology of the Financial Creditor as an 'Investor' in the SSA, SHA and AOA, does in no way change the character of the Financial Creditor as a lender/creditor. The entire debt forming the basis of the captioned Company Petition is based on the Coupon Rights of the Financial Creditor arising out of the Series 'E' CCDs that were held by it. The Coupon Right arising out of the Series 'E' CCDs is a time value of money within the agreed



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

contractual framework and is a financial debt under Section 5(8) of the Code. Even if the Series 'E' CCDs may have been classified as equity instruments in the balance sheets of the Corporate Debtor and not as financial liabilities, the same does not have any impact on the treatment of Coupon Rights arising out of the Series 'E' CCDs as a financial debt under law as the Coupon Rights clearly stipulate an effect of borrowing.

4.6 The Applicant denies that judicial precedents have unequivocally held that CCDs are equity-linked instruments and do not qualify as financial debt under the Code, as alleged. CCDs can be hybrid instruments and can have the effect of debt inherent in them. The determination of the nature of the instrument shall depend on the facts and circumstances of each case. While it may be correct that certain CCDs are structured for mandatory conversion into equity shares at a specified date or upon certain events without any obligation for repayment of principal do not qualify as financial debt. However, in cases of certain CCDs, if there is an obligation to pay interest or any component of time value of money apart from the conversion of the instrument, the same is to be treated as a debt under the Code. CCDs with an obligation to pay coupon will create a debt obligation. Herein it is reiterated that the Coupon Right of the Financial Creditor is notwithstanding anything contained in the SHA or the AOA, and therefore it is not contingent upon the "Distributable Cash", as alleged by the Corporate Debtor.

4.7 While the Series 'E' CCDs have been converted into equity shares, subject to the outcome of the arbitration between the parties, the debt in the



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

form of Coupon Right had accrued prior to 12.11.2024 i.e., prior to conversion of the CCDs into equity shares. Since the dispute in respect of the conversion is a subject matter of arbitration, the same has no bearing on the present Application. The obligation of the Corporate Debtor to pay coupon on the Series 'E' CCDs is a separate and distinct subject matter under this Application. The Corporate Debtor cannot now wriggle out of its obligations to make payment of Coupon Right to the Financial Creditor. While the Financial Creditor holds 5,80,377 Nominal Equity Shares and 4,25,307 Normal Equity Shares in the Corporate Debtor, the entitlement of the Financial Creditor for additional shares is pending before the arbitrator.

4.8 The Corporate Debtor has pleaded in its reply that other similarly placed holders of Series 'E' and 'F' CCDs have not initiated recovery proceedings against the Corporate Debtor in respect of the coupons. In this regard, the Applicant wishes to state that the Applicant is unaware of the same and it is clarified that the Financial Creditor does not hold any Series 'F' CCDs and the rights of the Series 'F' CCDs do not concern or affect the Coupon Rights of the Financial Creditor in respect Series 'E' CCDs. The obligation of the Corporate Debtor to honour the Coupon Rights of the Financial Creditor is independent of the Coupon Rights of the other CCD holders. Whether such other CCD holders invoke the Coupon Rights or not is irrelevant and does not restrict the Financial Creditor from claiming its Coupon Rights. Failure or neglect on the part of other holders of Series 'E' and 'F' CCDs does not in any



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

manner affect or dilute the rights of the Financial Creditor, and the same has no bearing on the merits of the present Application.

4.9 The Applicant denies that the coupons and bonus shares to achieve the Agreed IRR were alternatives to each other. Further, the Corporate Debtor had expressly refused to convert the Series 'E' CCDs, taking into account the Agreed Series 'E' IRR thereby compelling the Financial Creditor to file the Commercial Arbitration (L) Petition No. 33549 of 2024 (Arbitration Petition) against the Corporate Debtor and its promoters before the Hon'ble Bombay High Court. It is submitted that the claim in respect thereof is a subject matter of arbitration and has no bearing on the merits of the Petition. Clause 19 of the Consent Terms dated 14.11.2024, categorically states that all rights and contentions in respect of the present Application are specifically kept open and the same shall be decided in accordance with law, uninfluenced by the execution of the Consent Terms. The reference of the dispute regarding conversion of the convertibles to arbitration cannot be an impediment to the filing of this Application. A pre-existing dispute is not considered a contention for the maintainability of an Application under Section 7 of the Code.

4.10 It is denied that once bonus shares are issued to meet the Agreed Series 'E' IRR, any further claim for coupon payments towards the same IRR would result in an impermissible double duplication of benefits, contrary to the express terms of the SHA and the commercial understanding between the parties. The claim for the coupon is independent of the claims of the Financial Creditor in the arbitration. The Corporate Debtor has already denied the



issuance of bonus shares to the Financial Creditor as a consequence of the conversion of Series 'E' CCDs, due to which the dispute in respect thereof is being referred to arbitration. At the same time, the Corporate Debtor has denied its liability to honour the coupon rights of the Financial Creditor. Therefore, there would be no duplication of benefits in the instant case if the coupon payments are honoured.

4.11 While the Coupon Right is optional (at the option of the Financial Creditor), albeit not conditional, it is pertinent to note that the Financial Creditor has exercised its right in respect of the coupon. Thus, there is a debt which has become due and payable by the Corporate Debtor.

4.12 It is denied that Section 11.02 of the SHA (*pari materia* to Article 104 of the AOA) establishes a conditional obligation on the Corporate Debtor to utilise "Distributable Cash" if available for payments to holders of Series 'E' CCDs or other CCDs in the prescribed priority or manner, as alleged. In view of the express absence of reference to Article 104 in Article 105, all reference to make Section 11.02 a pre-condition to the Coupon Right is denied. Article 105 of the AOA is not made subject to Article 104, and hence, the reference or invocation thereof by the Corporate Debtor is erroneous and liable to be disregarded. The availability of distributable cash has no nexus with the payment of coupon, as is clear from Article 105 of the AOA.

4.13 As per Section 11.03 of Article XI of the SHA, the Financial Creditor is entitled to exercise its Coupon Right to the maximum extent permitted under



applicable law, from the third anniversary of the Effective Date, i.e., 30.08.2018 until such time the Financial Creditor receives the Agreed Series 'E' IRR. Therefore, the Financial Creditor could invoke the Coupon Right anytime from 30.08.2021, and because the Financial Creditor has not received the Agreed Series 'E' IRR till date, such right is a continuing one. Therefore, the objection of the Corporate Debtor to the Financial Creditor not exercising its rights prior to the letter dated 04.03.2024 is irrelevant and has no bearing on the merits of the Application.

5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents and pleadings of both parties, considered the Written Submissions and heard both the Ld. Counsel for the Financial Creditor and the Corporate Debtor.

5.2 This Application is in respect of Series 'E' CCDs, issued by the Corporate Debtor to the Financial Creditor. The terms and conditions governing the Series 'E' CCDs are contained in the SHA read with SSA and the AOA. The Financial Creditor claims that an amount of Rs.116,01,25,183/- is payable by the Corporate Debtor in relation to the Coupon Rights as contained in the SHA and the AOA, which are identical for all practical purposes. As per the Financial Creditor, it had the sole option on and from the third anniversary of the effective date, i.e., 30.08.2018, and until such time as it receives the Agreed Series 'E' IRR to exercise its Coupon Right.



Accordingly, the Financial Creditor exercised its right to receive its Coupon Right by its letter dated 04.03.2024, which is the debt in this Application.

5.3 On the other hand, the Corporate Debtor has disputed the claim of the Financial Creditor to receive Coupon Right on the ground that the right to receive monetary payment / Coupon Right is contingent upon the Corporate Debtor having Distributable Cash as certified by the Statutory Auditor. In the present case, the Statutory Auditor has issued certificates for the Financial Years ending 31.03.202; 31.03.2022; 31.03.2023; and 31.03.2024, certifying that the Corporate Debtor did not have any Distributable Cash for each of the Financial Years.

5.4 The right to receive the Coupon Right is a matter of dispute between the parties. We may, therefore, examine the relevant terms and conditions in the Transaction Documents related to Series E CCDs.

5.5 The SHA and AOA contain *pari materia* provisions. While the Financial Creditor relied upon AOA, the Corporate Debtor relied upon SHA, on the reason that Clause 17.02 of the SHA, states that it has been expressly agreed that, if any provisions of the AOA conflict with any provisions of the SHA, the SHA shall prevail. We may, therefore, reproduce the relevant provisions contained in both the SHA and AOA.

Provisions of SHA

“ARTICLE XI -DIVIDEND AND OTHER DISTRIBUTION



Section 11.01. Distributable Profits. Notwithstanding anything contained in Section 10.02(a) on and from the Effective Date until 12 November 2020, the Company shall not declare or distribute any dividends to the Shareholders. Provided that, upon the occurrence of a Liquidity Event, the Company shall be permitted to declare or pay dividends for the purpose of distributing the Liquidation Proceeds to the holders of Convertibles entitled to receive the Liquidation Proceeds as per Section 14.01.

Section 11.02. Utilization of Distributable Cash

- (a) On and from 12 November 2020, the Company undertakes that it shall not make any acquisitions, investments or any Growth Capital Expenditure until the Distributable Cash has been utilized to pay out the Investors their full entitlement in accordance with Section 11.02(b). For the purpose of this Section 11.02(a) the term "Growth Capital Expenditure" shall mean and 8484 include any capital expenditure to be incurred by the Company which is not a Maintenance Capital Expenditure.*
- (b) On and from 12 November, 2020, if the Company has any Distributable Cash, then the Company shall utilize the Distributable Cash for payment to the holders of Convertibles and Partly-Paid up Equity in the manner set forth below (less any amounts previously paid to the applicable holders as a Tikona Distribution):*
- (i) The Distributable Cash shall be distributed pro rata to the holders of the Series F Convertibles (or the Series FI Nominal Equity Shares/Equity Shares into which the Series F Convertibles are*



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

converted) and the holders of the Series E Convertibles (or the Series E Nominal Equity Shares/Equity Shares into which the Series E Convertibles are converted) until the holders of the Series F Convertibles (or the Series F Nominal Equity Shares/Equity Shares into which Series F Convertibles are converted) recover, in the aggregate the Agreed Series F IRR and the holders of the Series E Convertibles (or the Series E Nominal Equity Shares/Equity Shares into which Series E Convertibles are converted) recover, in the aggregate the Agreed Series E IRR.

(ii) Upon completion of (i) above, the Distributable Cash shall be distributed pro rata to all the holders of the Series D Convertibles (or the Series D Nominal Equity Shares into which the Series D Convertibles are converted) based on their relative ownership of the Series D Convertibles (or the Series D Nominal Equity Shares into which the Series D Convertibles are converted), until the holders of the Series D Convertibles (or the Series D Nominal Equity Shares into which Series D Convertibles are converted) recover, in the aggregate, the Agreed Series D IRR.

(iii) Upon completion of (ii) above, the Distributable Cash shall be distributed pro rata to all the holders of the Series A Convertibles, Series B Convertibles and Series C Convertibles (or the Equity Shares into which such Convertibles are converted) based on their relative ownership of such Convertibles (or the Equity Shares into which such Convertibles are converted), until all holders of the



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

Series A Convertibles, Series B Convertibles and Series C Convertibles (or the Equity Shares into which such Convertibles are converted) recover INR 990 per Convertible; provided, that after the holders of the Series A Convertibles, Series B Convertibles and Series C Convertibles (or the Equity Shares into which such Convertibles are converted) receive the said amounts, the holders of Class I Partly Paid-Up Equity shall pro rata participate in the distribution of the Distributable Cash, along with Series A Convertibles, Series B Convertibles and Series C Convertibles, until the holders of Class 1 Partly Paid-Up Equity, recover INR 10 per share of Class 1 Partly Paid-up Equity and holders of Series A Convertibles, Series B Convertibles and Series C Convertibles recover INR 10 per Convertible.

- (iv) *Upon completion of (iii) above, the Distributable Cash shall be distributed pro rata to the holders of the Series C Convertibles (or the Equity Shares into which Convertibles are converted), until the holders of the Series C Convertibles (or the Equity Shares into which Convertibles are converted) recover the aggregate Tikona Series C Capital (taking into account distributions in respect of the Series C Convertibles (or the Equity Shares into which Series C Convertibles are converted) pursuant to Section 11.02(b)(iii).*
- (v) *Upon completion of (iv) above, the remaining Distributable Cash shall be distributed pro rata to the holders of the Series A Convertibles, Series B Convertibles, Series C Convertibles (in each*



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

case, or the Equity Shares into which Convertibles are converted), and Class 1 Partly Paid-Up Equity (to the extent of INR 10) based on the Tikona Series A Capital, Tikona Series B Capital, Tikona Series C Capital and Tikona Class 1 Capital, respectively (but in 85 85 each case only to the extent such capital was invested in Tikona prior to the first date Tikona Series D Capital was invested in Tikona), until such holders recover, in the aggregate, the Additional Return.

- (vi) Upon completion of (v) above, the remaining Distributable Cash shall be distributed pro rata to their shareholding among all the holders of the Convertibles (or the Equity Shares into which Convertibles are converted) and the holders of the Partly Paid-Up Equity.*
- (c) The Company shall determine the amount of Distributable Cash available with it and distribute the Distributable Cash in the manner set forth in this Section 11.02 for each Financial Year no later than 30 days from the end of each such Financial Year. The Company shall procure a written certificate from the statutory auditor of the Company certifying that the Distributable Cash available with the Company, which shall be distributed in accordance with this Section 11.02.*
- (d) Subject to Applicable Law, between the Effective Date and completion under the NR Share Purchase Agreement, Distributable Cash shall be distributed to the Shareholders on the basis of the following principles:*



- (i) *the Distributable Cash shall be distributed as if each of the Shareholders had subscribed to the relevant share of their Convertibles pursuant to the Subscription Agreement or the IFC Subscription Agreement, as the case may be, as on the date of the Liquidity Event; and*
- (ii) *the Distributable Cash shall be distributed so as to achieve the commercial understanding set forth in this Section 11.02.*

Section 11.03. Coupon on Series F Convertibles and Series E Convertibles

(a) *Notwithstanding anything contained in this Agreement, the IFC Subscription Agreement and/or the Subscription Agreement, the holders of Series F Convertibles and Series E Convertibles shall have the right to receive coupon payments on the Series F Convertibles and Series E Convertibles to the maximum extent permitted under Applicable Law ("Coupon Right").*

(b) *Subject to Section 16.01(k), the Coupon Right may be exercised by a holder of Series F Convertibles and Series E Convertibles, at their sole option, on and from the 3rd anniversary of the Effective Date and until such time as the holders of Series F Convertibles and Series E Convertibles receive their Agreed Series F IRR and Agreed Series E IRR (in each case, less any amounts previously paid as dividend or other distribution pursuant to Article XI and less any amounts previously paid to the applicable holders as a Tilcon Distribution), respectively in accordance with Section 11.02."*



Provisions of AOA

“DIVIDEND AND OTHER DISTRIBUTION

103. Distributable Profits.

Notwithstanding anything contained in Article 52lg), on and from the Effective Date until 12 November 2020, the Company shall not declare or distribute any dividends to the Shareholders. Provided that, upon the occurrence of a Liquidity Event, the Company shall be permitted to declare or pay dividends for the purpose of distributing the Liquidation Proceeds to the holders of Convertibles entitled to receive the Liquidation Proceeds as per Article 88.

104. Utilization of Distributable Cash.

(a) On and from 12 November 2020, the Company undertakes that it shall not make any acquisitions, investments or any Growth Capital Expenditure until the Distributable Cash has been utilized to payout the Investors their full entitlement in accordance with Article 104lb). For the purpose of this Article 104la), the term "Growth Capital Expenditure" shall mean and include any capital expenditure to be incurred by the Company which is not a Maintenance Capital Expenditure

(b) On and from 12 November 2020, if the Company has any Distributable Cash, then the Company shall utilize the Distributable Cash for payment to the holders' of Convertibles and Partly-Paid up Equity in the manner set forth below (less any amounts previously paid to the applicable holders as a Tikona Distribution):

(i) The Distributable Cash shall be distributed pro rata to the holders of the Series F Convertibles (or the Series FI Nominal Equity Shares/Equity Shares into which the Series F Convertibles are converted) and the holders of the Series E Convertibles (or the Series E Nominal Equity Shares/Equity Shares



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

into which the Series E Convertibles are converted) until the holders of the Series F Convertibles (or the Series FI Nominal Equity Shares/Equity Shares into which Series F Convertibles are converted) recover, in the aggregate the Agreed Series F 1RR and the holders of the Series E Convertibles (or the Series E Nominal Equity Shares/Equity Shares into which Series E Convertibles are converted) recover, in the aggregate the Agreed Series E IRR.

(ii) Upon completion of (i) above, the Distributable Cash shall be distributed pro rata to all the holders of the Series D Convertibles (or the Series D Nominal Equity Shares into which the Series D Convertibles are converted) based on their relative ownership of the Series D Convertibles (or the Series D Nominal Equity Shares into which the Series D Convertibles are converted), until the holders of the Series D Convertibles (or the Series D Nominal Equity Shares into which Series D Convertibles are converted) recover, in the aggregate, the Agreed Series D IRR.

(iii) Upon completion of (ii) above, the Distributable Cash shall be distributed pro rata to all the holders of the Series A Convertibles, Series B Convertibles and Series C Convertibles (or the Equity Shares into which such Convertibles are converted) based on their relative ownership of such Convertibles (or the Equity Shares into which such Convertibles are converted), until all holders of the Series A Convertibles Series B Convertibles and Series C Convertibles (or the Equity Shares into which such Convertibles are converted) recovers INR 990 per Convertible; provided, that after the holders of the Series A Convertibles, Series B Convertibles and Series C Convertibles (or the Equity Shares into which such Convertibles are



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

converted) receive the said contributions, the holders of Class 1 Partly Paid-Up Equity shall pro rata participate in the distribution of the Distributable Cash, along with Series A Convertibles, Series B Convertibles and Series C Convertibles, until the holders of Class 1 Partly Paid-Up Equity, recover INR 10 per share of Class 1 Partly Paid-up Equity and holders of Series A Convertibles, Series B Convertibles and Series C Convertibles recover INR 10 per Convertible,

(iv) Upon completion of (iii) above, the Distributable Cash shall be distributed pro rata to the holders of the Series C Convertibles (or the Equity Shares into which Convertibles are converted), until the holders of the Series C Convertibles (or the Equity Shares into which Convertibles are converted) recover the aggregate Tikona Series C Capital (taking into account distributions in respect of the Series C Convertibles (or the Equity Shares into which Series C Convertibles are converted) pursuant to Article 104(b) (iii).

(v) Upon completion of (iv) above, the remaining Distributable Cash shall be distributed pro rata to the holders of the Series A Convertibles, Series B Convertibles, Series C Convertibles (in each case, or the Equity Shares into which Convertibles are converted), Class 1 Partly Paid-Up Equity (to the extent of INR 10) based on the Tikona Series A Capital, Tikona Series B Capital, Tikona Series C Capital and Tikona Class 1 Capital, respectively (but in each case only to the extent such capital was invested in Tikona prior to the first date Tikona Series D Capital was invested, (in Tikona prior to the first date Tikona Series D capital was invested in Tikona) , until such holders recover, in the aggregate, the Additional Return.



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

(vi) Upon completion of (v) above, the remaining Distributable Cash shall be distributed pro rata to their shareholding among all the holders of the Convertibles (or the Equity Shares into which Convertibles are converted) and the holders of the Partly Paid-Up Equity.

(c) The Company shall determine the amount of Distributable Cash available with it and distribute the Distributable Cash in the manner set forth in this Article 104 for each Financial Year no later than 30 days from the end of each such Financial Year. The Company shall procure a written certificate from the statutory auditor of the Company certifying that the Distributable Cash available with the Company, which shall be distributed in accordance with this Article 104.

(d) Subject to Applicable Law, between the Effective Date and completion of purchase of TIL Equity Shares pursuant to certain share purchase agreement executed between Trilegal and the Non-Resident Investors, Distributable Cash shall be distributed to the Shareholders on the basis of the following principles:

(i) the Distributable Cash shall be distributed as if each of the Shareholders had subscribed to the relevant share of their Convertibles pursuant to any subscription agreement, as on the date of the Liquidity Event; and

(ii) the Distributable Cash shall be distributed so as to achieve the commercial understanding set forth in this Article 104.

Article 105- Coupon on Series F Convertibles and Series E Convertibles

Notwithstanding anything contained in these Articles, any subscription agreement entered into by and amongst the Company and the Shareholders (other than IFC) for subscription of relevant Equity Securities and / or any subscription agreement executed between the Company and IFC for subscription of Series F Convertibles, Series F Nominal Equity Shares and



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

Series F Nominal Equity Shares holder of Series F Convertibles and Series E Convertibles shall have the right to receive coupon payments on the Series F Convertibles and Series E Convertibles to the maximum extent permitted under Applicable Law (“Coupon Right”).

Subject to Article 118(k), the Coupon Right may be exercised by a holder of Series F Convertibles and Series E Convertibles, at their sole option, on and from the 3rd anniversary of the Effective Date and until such time as the holders of Series F Convertibles and Series E Convertibles receive their Agreed Series FIRR and Agreed Series EIRR (in each case, less any amounts previously paid as dividend or other distribution pursuant to Article 103 to Article 105 and less any amounts previously paid to the applicable holders as a Tikona Distribution) respectively in accordance with Article 103.”

5.6 As per the terms of the SSA, the Series ‘E’ CCCDs are convertible into equity shares in accordance with the terms of the SHA. Further, under the SHA, as amended from time to time, and more particularly mentioned in Section 4 thereof, the Series ‘E’ CCDs are mandatorily and compulsorily convertible into equity shares either on the occurrence of certain defined events or on the occurrence of the Outside Conversion Date i.e., 12.11.2024. There is no dispute among the parties as regards the mandatory/compulsory conversion of Series ‘E’ CCDs into equity shares.

5.7 The Financial Creditor claims that, based on Article 105 (a) and (b) of the AOA (*pari materia* with Section 11.03 of the SHA), it exercised its Coupon Right by a letter dated 04.03.2024, in which it demanded Coupon Payment of Rs.109.63 Crores. However, the Corporate Debtor responded with its letter dated 18.03.2024, disputing the Financial Creditor’s right to exercise and receive this payment. The Corporate Debtor argues that the exercise of Coupon Right, as per Section 11.03 (b) of the SHA, is subject to the conditions set forth in Section 11.2 of the same Article. Since the Corporate Debtor has



determined that it does not have Distributable Cash in accordance with Section 11.02 of the SHA, it is not obligated to make any coupon payment. Thus, there are ongoing disputes between the parties regarding the declaration of dividends and other distributions, specifically concerning coupon payments.

5.8 In view of the rival contentions of the parties, the primary issue arising for our consideration is whether coupon payment is payable by the Corporate Debtor as per the Transaction Documents.

5.9 It is noticed that the SHA was executed on 25.08.2017, followed by SSA on 28.08.2017. The provisions of SHA and SSA were incorporated w.e.f. 29.12.2017, in the AOA of the Corporate Debtor, pursuant to the Special Resolution passed at the EOGM held on 29.12.2017. All these documents/changes came into effect in a period of one week to reflect the arrangement entered into between the parties. While the SHA was amended from time to time, the aforesaid provisions relating to coupon payment have not undergone any change. Further, it has been expressly agreed in Clause 17.02 of the SHA that, if any provisions of the AOA of the Corporate Debtor conflict with any provisions of the SHA, the SHA shall prevail.

5.10 A bare reading of the relevant provisions of SHA (Sections 11.01, 11.02, and 11.03) *pari materia* to AOA (Articles 103, 104, and 105) shows important distinctions. Section 11.01 (Article 103) deals with the declaration of dividends, which is not relevant to the issue under consideration. Section 11.02 (Article 104) focuses on the utilisation of Distributable Cash, while Section 11.03 (Article 105) pertains to the Coupon on Series 'F' CCDs and Series 'E' CCDs. The Financial Creditor argues that the Coupon Right specified in Section 11.03 (Article 105) is not limited by the provisions contained in Section 11.02 (Article 104). However, the Corporate Debtor contends that the coupon payment is indeed subject to the stipulations of Section 11.02 and that the obligation to pay Coupon on Series 'E' CCDs and Series 'F' CCDs was structured on a "*payable when able*" basis or that it was contingent on the availability of "Distributable Cash" or explicitly tying Coupon



Right to the surplus cash available after meeting other priority financial commitments.

5.11 On a closer look at these provisions, it is observed that Section 11.03 (Article 105) begins with a non-obstante clause that states “Notwithstanding anything contained in this Agreement”. Additionally, there is no indication that Section 11.02 (Article 104) should be read in conjunction with Section 11.03 (Article 105). In other words, Section 11.03 (Article 105) and Section 11.02 (Article 104) are mutually exclusive and do not influence one another. Another distinction observed is that the Distributable Cash specified in Section 11.02 (Article 104) **is to be distributed by the Corporate Debtor**, if available, for each Financial Year no later than 30 days from the end of each such Financial Year **to all the holders of Convertibles and Shareholders** in the manner specified therein. Whereas the Coupon Right specified in Section 11.03 is available only to holders of Series F Convertibles and Series E Convertibles. This right can be exercised, **at their option**, on and from the third anniversary of the Effective Date and until such time as the holders of Series ‘F’ CCDs and Series ‘E’ CCDs receive their Agreed Series ‘F’ IRR and Agreed Series ‘E’ IRR. Even under the SA, the Coupon Right is exclusively granted to holders of Series ‘F’ CCDs and Series ‘E’ CCDs. Having regard to the above, we are of the view that the Coupon Right is an additional benefit granted to the holders of Series ‘F’ CCDs and Series ‘E’ CCDs, and the Distributable Cash mentioned in Section 11.02 (Article 104) does not affect the Coupon Right specified in Section 11.03 (Article 105).

5.12 The Corporate Debtor further argued that other similarly placed holders of Series ‘E’ CCDs and Series ‘F’ CCDs have not initiated recovery proceedings against the Corporate Debtor. On the contrary, the Financial Creditor stated that whether such other CCD holders invoke the Coupon Rights or not is irrelevant and does not restrict it from claiming its Coupon Rights. We also concur with the view that failure or neglect on the part of other holders of



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

Series 'E' and Series 'F' CCDs does not in any manner affect or have any bearing on the claim of the Financial Creditor.

5.13 It has been pointed out that the Coupon Right may be exercised by a holder of Series 'F' CCDs and Series 'E' CCDs, at their sole option, on and from the third anniversary of the Effective Date and until such holders receive their Agreed IRR (in each case, less any amounts previously paid as dividend or other distribution). It is also the case of the Financial Creditor that the Transaction Documents establish mechanisms for the holders of Series 'E' CCDs to achieve the Agreed Series 'E' IRRs. However, the Ld. Counsel for the Corporate Debtor has brought to our notice that the commercial understanding regarding the continuance of the provisions for the Agreed IRR to the Financial Creditor is the subject matter of the Commercial Arbitration (L) Petition No. 33549 of 2024 (Arbitration Petition) before the Hon'ble Bombay High Court, which has a bearing on this Application.

5.14 It is observed that the aforesaid Arbitration Petition culminated in the parties entering into Consent Terms dated 14.11.2024. The Hon'ble Bombay High Court, in its Order dated 14.11.2024, expressly took the Consent Terms (Consent Terms) on record, which provide as under:

"19. The Petitioner has filed a Company Petition No. 694 of 2024 ("Company Petition") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") before the National Company Law Tribunal, Mumbai Bench, in respect of its claimed debt being the coupon right attached to Series E Convertibles held by the Petitioner in Respondent No. 1, which is presently pending. All rights and contentions in respect of the Company Petition are specifically kept open and the same shall be decided in accordance with law, and uninfluenced by the execution of the present Consent Terms."

5.15. In view of the specific para 19 referred hereinabove, the present Company Petition is to be decided uninfluenced by the Arbitration Petition and



the Consent Terms. Therefore, we do not see merit in the contention of the Corporate Debtor that the Consent Terms unequivocally bind the Financial Creditor to the agreed arbitration mechanism for resolving disputes related to the Agreed Series 'E' IRR or expressly acknowledge the computation of entitlement to the Agreed Series IRR through bonus share issuance only. On the contrary, the pleadings in the Arbitration Petition reveal that there is no contention by the Corporate Debtor that the Agreed Series 'E' IRR has been given to the Financial Creditor. Thus, there cannot be a case that the Coupon Right exercised by the Financial Creditor exceeds the Agreed IRR or the Financial Creditor has not exercised the Coupon Right within the specified time.

5.16. The Corporate Debtor has not brought on record anything to show that the Financial Creditor has been provided Agreed Series 'E' IRR or has not exercised the Coupon Right within the specified time. Further, we do not see any linkage with the Distributable Cash as ascertained by the Statutory Auditor, and it has no relevance for the purpose of determining the Coupon Rights payable to the Financial Creditor.

5.17. In view of the above discussion, we are of the view that the Distributable Cash mentioned in Section 11.02 (Article 104) has no relevance or linkage for determining the Coupon Right specified in Section 11.03 (Article 105) and Coupon Payment is an absolute obligation on the Corporate Debtor until such time the Agreed Series 'E' IRR is received by the Financial Creditor.

5.18. This takes us to the next contention of the Corporate Debtor that no financial debt exists. The Corporate Debtor states that the Financial Creditor made subscription to the CCDs issued by Tikona Digital, and the entire CCDs issued by Tikona Digital were sold by the Financial Creditor to BAL, pursuant to a Share Purchase Agreement dated 23.03.2017, executed among BAL, the Corporate Debtor, and other shareholders of Tikona Digital Networks Private



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

Limited. Thereafter, Series 'E' CCDs were issued to the Financial Creditor at the 'Series E Issue Price' of Rs.1,297.58/- per CCD, as per Section 1.01 (Definitions) of the SSA. This totals an investment amount of Rs.7,85,81,445/- . These investments were governed by the terms outlined in the Transaction Documents. The Corporate Debtor, therefore, asserts that the Financial Creditor's status aligns with that of a mere investor rather than a financial creditor.

5.19. On the contrary, the Financial Creditor states that between the years 2010 and 2014, L&T Infrastructure Finance Company Limited (LTF) (now the Financial Creditor), had subscribed to certain securities of Tikona Digital. At the request of the promoters of the Corporate Debtor, LTF agreed to sell the said securities held by it in Tikona Digital to BAL, and a part of the consideration paid by BAL to LTF was utilised to directly subscribe to the securities of the Corporate Debtor, as more particularly stated in paragraph no. 1 of Part-IV of the present Application.

5.20. Be that as it may, it is evident from the pleadings that the Corporate Debtor, based on certain disbursements made by the Financial Creditor to the Corporate Debtor, issued Series 'E' CCDs to the Financial Creditor, which are governed by the Transaction Documents. While there are disputes as regards the amount of disbursements, there is no contention that no disbursement has taken place from the Financial Creditor to the Corporate Debtor in respect of the CCDs, and hence, the dispute as regards the amount of disbursement or investment value is irrelevant for the purpose of deciding this Application.

5.21. As per the Transaction Documents, these CCDs are mandatorily and compulsorily convertible into equity shares either on the occurrence of certain defined events or on the occurrence of the Outside Conversion Date, i.e., 12.11.2024. Thus, it is contended that no "financial debt" exists, as the CCDs are equity instruments. To substantiate the above, the Ld. Counsel for the Corporate Debtor has drawn our attention to the Statutory Auditor's Report and



the Statement of Profit and Loss for the Financial Year ending 31.03. 2023, and 31.03.2024, of the Corporate Debtor, prepared by Mr. Samir Parmar, Partner of Knave & Co. LLP, classifying the Series 'E' Convertibles as equity instruments in the balance sheet of the Corporate Debtor and not as financial liabilities, as per the requirements of the Indian Accounting Standards, viz., Ind AS 32 (Financial Instruments: Presentation).

5.22. Further, the Corporate Debtor has relied upon the following decisions:

- (a) *Narendra Kumar Maheshwari v. Union of India* [(1990) Supp SCC 440] (Narendra Kumar).
- (b) *IFCI Ltd. v. Sutanu Sinha* [(2024) 248 Comp Cas 217] (IFCI);
- (c) *Shubham Corpn. (P) Ltd. v. Kotoju Vasudeva Rao* [(2024) SCC Online NCLAT 635] (Shubham Corpn.).

5.23. The Financial Creditor has not disputed the fact that the CCDs were to be converted into equity. However, it is contended that the conversion does not relieve the Corporate Debtor of its obligations towards Coupon Rights that have accrued to the Financial Creditor and became due and payable to the Financial Creditor prior to the conversion to equity, and therefore, constitute financial debt.

5.24. In the case of *Narendra Kumar* (Supra), the Hon'ble Supreme Court at para 98 observed that "*A compulsorily Convertible debenture does not postulate any repayment of the principal. Therefore, it does not constitute a debenture in its classic sense.*" In the case of *Shubham* (Supra) also the question was whether the compulsorily convertible debentures, which do not carry any obligation to repay, should be treated as debt or as equity while admitting the claim under IBC. The subject matter of these cases is compulsorily convertible debentures without any coupon or interest. However, in the present case, the dispute relates to the Coupon Payment only, which accrued prior to the conversion and is not related to the principal in respect of



the CCDs. Therefore, the aforesaid decisions do not apply to the facts of the present case.

5.25. In the case of *IFCI* (Supra), the Hon'ble Supreme Court was considering compulsorily convertible debentures, where the liability to make Coupon Payments was of the sponsor company. In other words, the liability to pay the Coupon Right was not with the corporate debtor therein but by another company referred to therein as the sponsor company. The fact that the corporate debtor therein had no liability to pay back the Coupon Right on the debentures, and the debentures are compulsorily convertible, led to the finding that it is in the nature of an equity instrument and not to be treated as a debt. The facts of the present case are thus distinguishable as the dispute relates to the Coupon Payment alone.

5.26. It is pertinent to observe that CCDs can be hybrid instruments and can have the effect of debt inherent in them. The determination of the nature of the instrument shall depend on the facts and circumstances of each case. While it may be correct that certain CCDs are structured for mandatory conversion into equity shares at a specified date or upon certain events without any obligation for repayment of principal, it can still qualify as financial debt so long as the payment of the Coupon is an absolute obligation on the Corporate Debtor.

5.27. The Corporate Debtor vehemently contended that the Financial Creditor's claim for coupon payments on the Series 'E' CCDs fails to meet the statutory requirements for financial debt as defined under Section 5(8) of the Code. According to it, the defining characteristic of financial debt is that it must arise "against the consideration for the time value of money" and include a clear obligation for repayment of principal and/or interest. However, the payment of coupon on the Series 'E' CCDs, as per the SSA and the SHA is explicitly contingent upon the availability of "Distributable Cash" and the achievement of the "Agreed Series E IRR." Unlike interest, which is a fixed and periodic obligation reflecting the cost of borrowing, coupon payments under



the Transaction Documents are discretionary and tied to the Corporate Debtor's performance and profitability. It was contended by the Corporate Debtor that these payments are not tied to any time-based repayment schedule but function as a return linked to financial surplus, further underscoring their equity-like nature. Additionally, the entitlement to coupon payments is merely ancillary to the primary purpose of the Series 'E' CCDs, which is their mandatory conversion into equity shares upon the occurrence of specified events, including the mandatory conversion date. According to the Corporate Debtor, the Transaction Documents impose no obligation on it to redeem or repay the principal amount of the Series 'E' CCDs, and therefore, the claim for coupon payments cannot qualify as financial debt.

5.28. However, we do not agree with the above contention of the Corporate Debtor for the reason that the entire debt forming the basis of the captioned Company Petition is based on the Coupon Rights of the Financial Creditor arising out of the Series 'E' CCDs that were held by it. The disbursements into the Series 'E' CCDs constitute the disbursements against the consideration of the time value of money and the Coupon Rights arising out of the Series 'E' CCDs are solely tied to ensuring that the holders achieve their Agreed Series 'E' IRRs, which have a component of time value of money within the agreed contractual framework.

5.29. Even if the Series 'E' CCDs may have been classified as equity instruments in the balance sheets of the Corporate Debtor and not as financial liabilities, the same does not have any impact on the treatment of Coupon Rights arising out of the Series 'E' CCDs as a financial debt under law. It is also pertinent to observe that mere terminology of the Financial Creditor as an 'Investor' in the SSA, SHA, and AOA does in no way change the character of the Financial Creditor as a lender/creditor.

5.30. It has been submitted that the claim for Coupon Right is simultaneously being agitated by the Financial Creditor in the Arbitration



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

Petition. Once bonus shares are issued to meet the Agreed Series 'E' IRR, any further claim for Coupon Payments toward the same IRR would result in an impermissible duplication of benefits, contrary to the express terms of the SHA and the commercial understanding between the parties. It is, however, noticed from the Arbitration Petition that there is already a dispute regarding the entitlement of Agreed Series 'E' IRR to the Financial Creditor through any mode or means. The mere raising of a dispute in Arbitration cannot be a valid ground not to recognise a financial debt that has arisen before the conversion of CCDs.

5.31. Based on the foregoing discussions, we are of the considered view that the amount to be paid under the Coupon Right is a financial debt under Section 5(8) of the Code. The Applicant has also established the default in payment of the financial debt beyond the threshold limit as per section 4 of the Code and is well within the limitation for filing the present Application. Therefore, the present Application is complete in terms of Section 7(5) of the Code, which deserves to be admitted.

ORDER

6. This Application bearing C.P. (IB) No. 694/MB/2024 under Section 7 of the IBC, filed by L& T Finance Limited, the Financial Creditor, for initiating CIRP in respect of Tikona Infinet Private Limited, the Corporate Debtor, is **admitted**.
7. We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:
 - I. We prohibit-
 - a) institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

C.P. (IB) No. 694 (MB) 2024

- b) transferring, encumbering, alienating or disposing of by the Corporate Debtor 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 Corporate Debtor in respect of its property, including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Dhiren Shantilal Shah**, a registered Insolvency Professional having Registration Number- **IBBI/IPA-001/IP-P00220/2017-18/10419** and e-mail- dss@dsshah.in, having valid Authorisation for Assignment up to 30.06.2026 as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the Financial Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the Corporate Debtor.
- IX. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of e-mail and WhatsApp.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and records.



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P. (IB) No. 694 (MB) 2024

- XI. Compliance report of the order by the Designated Registrar is to be submitted today.**

**Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**