

① to 25

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-II, CHENNAI**

**MA/91(CHE)/2021 in IBA/1099/2019**

*(filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code,  
2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016)*

*In the matter of **M/s. ReGen Powertech Private Limited***

M/s.TVH Energy Resources Private Limited,  
Represented by its authorized signatory,  
Mrs.Radha,  
No.21, C.V.Raman Road,  
Alwarpet,  
Chennai 600 018.

*... Applicant*

**-Vs-**

- 1. Mr. Ebenezar Inbaraj,**  
Resolution Professional of  
M/s. ReGen Powertech Private Limited,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai - 600 018.
- 2. Ms. Renuka Devi Rangaswamy**  
Interim Resolution Professional (IRP)  
M/s.ReGen Infrastructure and Services Private Limited,  
No.9, Arthi Illam, Jothi Nagar, 3<sup>rd</sup> Street,  
Uppilipalayam,  
Coimbatore - 641015.

*... Respondents*

**Along with**

**MA/92(CHE)/2021 in IBA/1424/2019**

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016  
r/w Rule 11 of National Company Law Tribunal Rules, 2016)*

*In the matter of **M/s. ReGen Infrastructure & Services Pvt. Ltd.***

**M/s.TVH Energy Resources Private Limited,**  
Represented by its authorized signatory,

Mrs.K.Radha,  
No.21, C.V.Raman Road,  
Alwarpet,  
Chennai 600 018.

... Applicant

-Vs-

- 1. Ms. Renuka Devi Rangaswamy**  
Interim Resolution Professional (IRP)  
M/s.ReGen Infrastructure and Services Private Limited,  
No.9, Arthi Illam, Jothi Nagar, 3<sup>rd</sup> Street,  
Uppilipalayam,  
Coimbatore – 641015.
- 2. Mr.Ebenezar Inbaraj,**  
Resolution Professional of  
M/s. ReGen Powertech Private Limited,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai - 600 018.

... Respondents

**Along with**

**MA/93(CHE)/2021 in IBA/1424/2019**

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016  
r/w Rule 11 of National Company Law Tribunal Rules, 2016)

In the matter of **M/s. ReGen Infrastructure & Services Pvt. Ltd.**

**M/s. iEnergy Wind Farms (Theni) Private Limited,**  
A Company incorporated under  
The Companies Act, 1956.  
Having its Registered Office at,  
Plot No.167, MS Royal Gate Nathammedu,  
Thirunindravur, Chennai 602 024.  
Represented by its General Manager,  
Mr. Shirabi Prakash,

... Applicant

-Vs-

- 1. ReGen Infrastructure and Services Private Limited**  
"Sivanandam", 1st Floor,  
New No.1 Pulla Avenue,  
Shenoy Nagar,  
Chennai – 600 030.



2. **Ms. Renuka Devi Rangaswamy**  
Resolution Professional  
ReGen Infrastructure and Services Private Limited  
No.9, Arthi House, Jothi Nagar, 3<sup>rd</sup> Street,  
Uppilipalayam Post,  
Coimbatore – 641015.
3. **ReGen Powertech Private Limited (RPPL)**  
"Sivanandam", 1st Floor,  
New No.1 Pulla Avenue,  
Shenoy Nagar,  
Chennai – 600 030.
4. **Mr. Ebenezar Inbaraj,**  
Resolution Professional of  
M/s. ReGen Powertech Private Limited,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai - 600 018.

... Respondents

· Along with

**IA/517(CHE)/2021 in IBA/1424/2019**

*(Application filed under Sections 60(2) & 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016)*

*In the matter of M/s. Regen Infrastructure and Services Pvt. Ltd.*

**Sulochana Cotton Spinning Mills Pvt. Ltd.**  
424, 426 (Old No.483, 484), Kamaraj Road,  
Tiruppur – 641604, Tamil Nadu

.... Applicant

-Vs-

1. **M/s. Regen Infrastructure and Services Pvt. Ltd.,**  
Represented by its Resolution Professional  
Ms. Renuka Devi Rangaswamy  
No.9, Arthi Illam, 3<sup>rd</sup> Street, Jothi Nagar,  
Uppilipalayam, Coimbatore – 641015, Tamil Nadu
2. **Regen Powertech Private Limited**  
Represented by its Resolution Professional  
Mr. Ebenezar Inbaraj  
Sivanandam, 1<sup>st</sup> Floor, New No.1,



Pulla Avenue, Shenoy Nagar,  
Chennai - 600030

..... Respondents

**Along with**

**IA/518(CHE)/2021 in IBA/1099/2019**

*(Application filed under Sections 60(2) & 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016)*

*In the matter of M/s. Regen Powertech Private Limited*

**Sulochana Cotton Spinning Mills Pvt. Ltd.**  
424, 426 (Old No.483, 484), Kamaraj Road,  
Tiruppur – 641604, Tamil Nadu

.... Applicant

-Vs-

**1. M/s. Regen Powertech Private Limited**

Represented by its Resolution Professional  
Mr. Ebenezar Inbaraj  
Sivanandam, 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai - 600030

**2. Regen Infrastructure and Services Pvt. Ltd.**

Represented by its Resolution Professional  
Ms. Renuka Devi Rangaswamy  
No.9, Arthi Illam, 3<sup>rd</sup> Street, Jothi Nagar,  
Uppilipalayam, Coimbatore – 641015,  
Tamil Nadu

..... Respondents

**Along with**

**IA/548(CHE)/2021 in IBA/1424/2019**

*(Application filed under Sections 60(2) & 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016)*

*In the matter of M/s. Regen Infrastructure and Services Pvt. Ltd.*

**Ms. Renuka Devi Rangaswamy**

Resolution Professional of  
M/s. Regen Infrastructure and Services Pvt. Ltd.  
No.9, Arthi Illam, 3<sup>rd</sup> Street, Jothi Nagar,



Uppilipalayam, Coimbatore – 641015,  
Tamil Nadu

.... Applicant

-Vs-

**M/s. Regen Powertech Private Limited**  
Represented by its Resolution Professional  
Mr. Ebenezar Inbaraj  
Sivanandam, 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai - 600030

..... Respondents

**Along with**

**IA/617(CHE)/2021 in IBA/1099/2019**

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of M/s. ReGen Powertech Private Limited*

**Echanda Urja Private Limited,**  
Having its registered office at 618,  
Maker Chambers V, Nariman Point,  
Mumbai - 400 021.  
and also, Office at  
4/64, 1<sup>st</sup> Floor, 4<sup>th</sup> Cross Street,  
Ganga Nagar, Kodambakkam  
Chennai – 600024.

... Applicant

-Vs-

- 1. ReGen Powertech Private Limited,**  
Acting through the RP Ebenezar Inbaraj,  
397, Precision Plaza, No.23, 3rd Floor,  
Teynampet, Annasalai,  
Chennai - 600 018.
- 2. Committee of Creditors,**  
ReGen Powertech Private Limited.
- 3. ReGen Infrastructure and Services Private Limited,**  
Acting through the RP Renuka Devi Rangaswamy,  
"Sivanandam", 1st Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

4. **Committee of Creditors,**  
ReGen Infrastructure and Services Private Limited.

... Respondents

**Along with**

**IA/664(CHE)/2021 in IBA/1424/2019**

(Application filed under Section 60(2) of the Insolvency and Bankruptcy Code, 2016)

*In the matter of M/s. Regen Infrastructure and Services Pvt. Ltd.*

**GAIL (India) Limited**  
SWAN, 323, Kodigehalli Main Road,  
Sahakar Nagar,  
Bengaluru – 560092

...Applicant

-Vs-

1. **Regen Infrastructure and Services Private Limited (RISPL)**  
Sivanandam, 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar, Chennai - 600030

2. **Ms. Renuka Devi Rangaswamy**  
Interim Resolution Professional  
Regen Infrastructure and Services Pvt. Ltd. (RISPL)  
Aarthi House, No.9, Jyothi Nagar, 3<sup>rd</sup> Street,  
Uppilipalayam Post, Coimbatore – 641015

3. **Regen Powertech Private Limited (RPPL)**  
Sivanandam, 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar, Chennai – 600030

4. **Mr. Ebenezar Inbaraj**  
Interim Resolution Professional  
Regen Powertech Private Limited (RPPL)  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampets, Anna Salai,  
Chennai - 600018

..... Respondents

**Along with**



## **IA/694(CHE)/2021 IN IBA/1099/2019**

*(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rules 32 and 11 of National Company Law Tribunal Rules, 2016)*

*In the matter of **M/s. Regen Powertech Private Limited***

### **M/s. Giriraj Enterprises,**

Represented by its CEO, Mr. Prafulla Premchand Khinvasara,  
1 Modibaug Commercial, Ganeshkhind Road,  
Shivajinagar, Pune – 411 016.  
Maharashtra

*.... Applicant*

**-Vs-**

### **1. Re-Gen Powertech Private Limited**

Represented by Resolution Professional,  
Mr. Ebenezar Inbaraj,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai – 600 018.

### **2. M/s. ReGen Infrastructure and Service Private Limited,**

Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

*.... Respondents*

**Along with**

## **IA/695(CHE)/2021 in IBA/1099/2019**

*(filed under Section 25(1) and 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016)*

*In the matter of **M/s. ReGen Powertech Private Limited***

### **M/s. Damodar Jagannath Malpani (M/s. D. J. Malpani)**

Represented by Authorised Signatory,  
Mr. Prafulla Premchand Khinvasara,



Having its registered office at  
Malpani Estate, Kasara Dumala Akole Road,  
Sangamner -422605  
Ahmednagar District,  
Maharashtra.

... Applicant

-Vs-

1. **Re-Gen Powertech Private Limited**  
Represented by Resolution Professional,  
Mr. Ebenezar Inbaraj,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai – 600 018.
2. **M/s. ReGen Infrastructure and Service Private Limited,**  
Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

... Respondents

**Along with**

**IA/700(CHE)/2021 IN IBA/1099/2019**

*(Application filed under Section 25(1) & 60(5) of the Insolvency  
and Bankruptcy Code, 2016 r/w Rule 11 of the National Company  
Law Tribunal Rules, 2016)*

*In the matter of **M/s. Regen Powertech Private Limited***

**R.V. Consulting Services Private Limited,**  
Represented by Assistant General Manager,  
Mr. V Sudhakar Reddy,  
Having its registered office at  
Plot No.111, Road No.10, Jubilee Hills,  
Hyderabad, Telangana – 500 033.

....Applicant

-Vs-

1. **ReGen Powertech Private Limited,**  
Represented by Resolution Professional,  
Mr. Ebenezar Inbaraj,



No.397 Precision Plaza,  
No.23, 3<sup>rd</sup> Floor, Anna Salai,  
Teynampet, Chennai – 600 018.

- 2. ReGen Infrastructure and Services Private Limited,**  
Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

.... Respondents

**Along with**

**IA/709(CHE)/2021 in IBA/1424/2019**

*(filed under Section 60(2) of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of M/s. ReGen Infrastructure & Services Pvt. Ltd.*

**Premier Mills Private Limited,**  
RR Landmark,  
No.1E-1 Nava India Road,  
Coimbatore – 641028.

... Applicant

-Vs-

- 1. ReGen Infrastructure and Services Private Limited**  
"Sivanandam", 1st Floor,  
New No.1 Pulla Avenue,  
Shenoy Nagar,  
Chennai – 600 030.
- 2. Ms. Renuka Devi Rangaswamy**  
Resolution Professional  
ReGen Infrastructure and Services Private Limited  
No.9, Arthi House, Jothi Nagar, 3<sup>rd</sup> Street,  
Uppilipalayam Post,  
Coimbatore – 641015.
- 3. ReGen Powertech Private Limited (RPPL)**  
"Sivanandam", 1st Floor,  
New No.1 Pulla Avenue,  
Shenoy Nagar,  
Chennai – 600 030.

- 4. Mr. Ebenezar Inbaraj,**  
Resolution Professional of  
M/s. ReGen Powertech Private Limited,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai - 600 018.

... Respondents

**Along with**

**IA/713(CHE)/2021 in IBA/1099/2019**

*(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 32 and 11 of the NCLT Rules, 2016)*

*In the matter of M/s. Regen Powertech Private Limited*

**Orbit Exports Limited**

Represented by its Chief Financial Officer  
Mr. Mukesh Deopura  
122, Mistry Bhavan, 2<sup>nd</sup> Floor,  
Dinshaw Wachha Road,  
Near K.C. College, Mumbai -- 400020

.... Applicant

-Vs-

**1. Regen Powertech Private Limited**

Represented by Resolution Professional  
Mr. Ebenezar Inbaraj  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai - 600018

**2. Regen Infrastructure and Services Private Limited**

Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy  
Sivanandam, 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai - 600030

..... Respondents

**Along with**

**IA/714(CHE)/2021 IN IBA/1099/2019**

*(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rules 32 and 11 of National Company Law Tribunal Rules, 2016)*

*In the matter of M/s. Regen Powertech Private Limited*

**Mrs. Asha Biyani,**  
Having residence at  
No.28 Biyani House,  
Yashodam Enclave, Film City Road,  
Goregoan(East),  
Mumbai – 400 063.

... Applicant

-Vs-

1. **Re-Gen Powertech Private Limited**  
Represented by Resolution Professional,  
Mr. Ebenezar Inbaraj,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai – 600 018.
2. **M/s. ReGen Infrastructure and Service Private Limited,**  
Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

.... Respondents

**Along with**

### **IA/715(CHE)/2021 in IBA/1099/2019**

*(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rules 32 and 11 of National Company Law Tribunal Rules, 2016)*

*In the matter of M/s. Regen Powertech Private Limited*

**Mrs. Suchita Biyani,**  
28, Biyani House, Yashodham Enclave,  
Filmcity Road, Goregaon(East),  
Mumbai- 400063

... Applicant

-Vs-

1. **Re-Gen Powertech Private Limited**  
Represented by Resolution Professional,  
Mr. Ebenezar Inbaraj,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai – 600 018.

2. **M/s. ReGen Infrastructure and Service Private Limited,**  
Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

... Respondents

**Along with**

**IA/716(CHE)/2021 IN IBA/1099/2019**

(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rules 32 and 11 of National Company Law Tribunal Rules, 2016)

**In the matter of M/s. Regen Powertech Private Limited**

**Mrs. Radha Biyani,**  
No.28 Biyani House,  
Yashodam Enclave, Film City Road,  
Goregaon (East),  
Mumbai – 400 063.

.... Applicant

-Vs-

1. **Re-Gen Powertech Private Limited**  
Represented by its Resolution Professional,  
Mr. Ebenezar Inbaraj,  
No.397 Precision Plaza,  
No.23, 3<sup>rd</sup> Floor, Anna Salai,  
Teynampet, Chennai – 600 018.
2. **M/s. ReGen Infrastructure and Service Private Limited,**  
Represented by its Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

.... Respondents

**Along with**

**IA/717(CHE)/2021 in IBA/1099/2019**

(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 32 and 11 of the NCLT Rules, 2016)

**In the matter of M/s. Regen Powertech Private Limited**



**M/s. Vinod H Biyani**

Represented by its Partner  
Mr. Bharat Biyani  
Having its registered office at  
Row House, No.4, Rajnigandha Complex,  
Behind Gokuldharm Police Chowky,  
Goregoan (East), Mumbai – 400063.

... Applicant

-Vs-

**1. Regen Powertech Private Limited**

Represented by Resolution Professional  
Mr. Ebenezer Inbaraj  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai – 600018

**2. Regen Infrastructure and Services Private Limited**

Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600030

..... Respondents

**Along with**

**IA/718(CHE)/2021 IN IBA/1099/2019**

*(Application filed under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law  
Tribunal Rules, 2016)*

*In the matter of M/s. Regen Powertech Private Limited*

**Santradevi H Biyani,**

Having Residence at  
No.28 Biyani House,  
Yashodam Enclave, Film City Road,  
Goregaon (East),  
Mumbai – 400 063.

.... Applicant

-Vs-

1. **Re-Gen Powertech Private Limited**  
Represented by its Resolution Professional,  
Mr. Ebenezar Inbaraj,  
No.397 Precision Plaza,  
No.23, 3<sup>rd</sup> Floor, Anna Salai,  
Teynampet, Chennai – 600 018.

2. **M/s. ReGen Infrastructure and Service Private Limited,**  
Represented by its Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

.... Respondent

**Along with**

**IA/719(CHE)/2021 in IBA/1099/2019**

*(filed under Sections 25(1) and 60(5) of the Insolvency and Bankruptcy Code, 2016, r/w Rule 11 of National Company Law Tribunal Rules, 2016)*

*In the matter of M/s. ReGen Powertech Private Limited*

**DGN Faser Private Limited,**  
Represented by its Director Mr. Hitesh G.Patel  
Having Registered Office at  
R.S.No.565, Near Shree Ram Paper Mill,  
Surendranagar Lakhtar Road, Dedadara Wadhwan,  
Surendranagar – 363030  
Gujarat

... Applicant

-Vs-

1. **Re-Gen Powertech Private Limited**  
Represented by Resolution Professional,  
Mr. Ebenezar Inbaraj,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai – 600 018.

2. **M/s. ReGen Infrastructure and Service Private Limited,**  
Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

... Respondents

**Along with**

**IA/720(CHE)/2021 IN IBA/1424 & 1099/2019**

*(Application filed under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law  
Tribunal Rules, 2016)*

*In the matter of **M/s. Regen Infrastructure and Services Pvt. Ltd.**  
and*

*In the matter of **M/s. Regen Powertech Pvt. Ltd.***

**M/s. Clean Wind Power (Devgarh) Pvt. Ltd.,**  
Plot No.201, First Floor,  
Okhla Industrial Estate Phase – III,  
New Delhi – 110 020.

.... Applicant

-Vs-

1. **M/s. ReGen Infrastructure and Service Private Limited,**  
Represented by its Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
Aarthi House, No.9, Jyothi Nagar, 3<sup>rd</sup> Street,  
Upplippalayam Post,  
Coimbatore – 641 015.
2. **Re-Gen Powertech Private Limited (RPPL),**  
Represented by its Resolution Professional,  
Mr. Ebenezar Inbaraj,  
No.397 Precision Plaza,  
No.23, 3<sup>rd</sup> Floor, Anna Salai,  
Teynampet, Chennai – 600 018.

.... Respondent

**Along with**

**IA/721(CHE)/2021 IN IBA/1424 & 1099/2019**

*(Application filed under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law  
Tribunal Rules, 2016)*

*In the matter of M/s. Regen Infrastructure and Services Pvt. Ltd.  
and  
In the matter of M/s. Regen Powertech Pvt. Ltd.*

**M/s. Bhilwara Green Energy Ltd.,**  
Plot No.201, First Floor,  
Okhla Industrial Estate Phase – III,  
New Delhi – 110 020.

.... Applicant

-Vs-

- 1. ReGen Infrastructure and Service Private Limited,**  
Represented by its Resolution Professional  
Ms. Renuka Devi Rangaswamy,  
Aarthi House, No.9, Jyothi Nagar, 3<sup>rd</sup> Street,  
Upplippalayam Post,  
Coimbatore – 641 015.
- 2. Re-Gen Powertech Private Limited (RPPL),**  
Represented by its Resolution Professional,  
Mr. Ebenezar Inbaraj,  
No.397 Precision Plaza,  
No.23, 3<sup>rd</sup> Floor, Anna Salai,  
Teynampet, Chennai – 600 018.

.... Respondent

**Along with**

**IA/725(CHE)/2021 in IBA/1099/2019**

*(Application filed under Section 60(5) of the Insolvency and Bankruptcy  
Code, 2016 r/w Rule 32 and 11 of the NCLT Rules, 2016)*

*In the matter of M/s. Regen Powertech Private Limited*

**M/s. Rajesh Kasat & Co.**  
Having its registered office at  
37/7, Pratham, Prabhat Road,  
Lane No.6, Erandwane Shivaji Nagar,  
Pune - 411004

.... Applicant

-Vs-

**1. Regen Powertech Private Limited**  
Represented by Resolution Professional  
Mr. Ebenezar Inbaraj  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai - 600018

**2. Regen Infrastructure and Services Private Limited**  
Represented by Resolution Professional  
Ms. Renuka Devi Rangaswamy  
Sivanandam, 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai - 600030

..... Respondents

**Along with**

**IA/727(CHE)/2021 in IBA/1424/2019**

*(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of M/s. Regen Infrastructure Services Pvt. Ltd.*

**B. Vijayaragavan**  
Sole Proprietor of B.S. Apparel  
Having its registered office at  
No.23-27, SIDCO,  
Mudalipalayam,  
Tirupur - 641606

.... Applicant

-Vs-

**1. Regen Powertech Private Limited**  
Acting through the RP Ebenezar Inbaraj  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai - 600018

**2. Committee of Creditors of**  
Regen Powertech Private Limited

**3. Regen Infrastructure and Services Pvt. Ltd.**  
Acting through the RP  
Renuka Devi Rangaswamy  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai - 600030

**4. Committee of Creditors of**  
Regen Infrastructure and Services Pvt. Ltd.

...Respondents

**Along with**

**IA/728(CHE)/2021 in IBA/1099/2019**

(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

**In the matter of M/s. Regen Powertech Private Limited**

**B. Vijayaragavan**

Sole Proprietor of B.S. Apparel  
Having its registered office at  
No.23-27, SIDCO,  
Mudalipalayam,  
Tirupur – 641606

.... Applicant

-Vs-

**1. Regen Powertech Private Limited**

Acting through the RP Ebenezer Inbaraj  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai – 600018

**2. Committee of Creditors of**  
Regen Powertech Private Limited

**3. Regen Infrastructure and Services Pvt. Ltd.**

Acting through the RP  
Renuka Devi Rangaswamy  
"Sivanandam", 1<sup>st</sup> Floor, New No.1,  
Pulla Avenue, Shenoy Nagar,  
Chennai – 600030

**4. Committee of Creditors of**  
Regen Infrastructure and Services Pvt. Ltd.

..... Respondents

**Along with**



## **IA/810(CHE)/2021 in IBA/1424/2019**

*(filed under Section 60(2) of the Insolvency and Bankruptcy Code, 2016  
r/w Rule 11 of National Company Law Tribunal Rules, 2016)*

*In the matter of **M/s. ReGen Infrastructure & Services Pvt. Ltd.***

**M/s. Mytrah Vayu (Manjira) Private Limited,**  
8<sup>th</sup> Floor, Q City, Survey No.109,  
Gachibowli Nanakramguda Village, Seilingampally Mandal,  
Hyderabad, Telangana – 500032.

*... Applicant*

**-Vs-**

- 1. ReGen Infrastructure and Services Private Limited**  
"Sivanandam", 1st Floor,  
New No.1 Pulla Avenue,  
Shenoy Nagar,  
Chennai – 600 030.
- 2. Ms. Renuka Devi Rangaswamy**  
Resolution Professional  
ReGen Infrastructure and Services Private Limited  
No.9, Arthi House, Jothi Nagar, 3<sup>rd</sup> Street,  
Uppilipalayam Post,  
Coimbatore – 641015.
- 3. ReGen Powertech Private Limited (RPPL)**  
"Sivanandam", 1st Floor,  
New No.1 Pulla Avenue,  
Shenoy Nagar,  
Chennai – 600 030.
- 4. Mr. Ebenezar Inbaraj,**  
Resolution Professional of  
M/s. ReGen Powertech Private Limited,  
397, Precision Plaza, No.23, 3<sup>rd</sup> Floor,  
Teynampet, Anna Salai,  
Chennai - 600 018.

*... Respondents*

CORAM

**R. SUCHARITHA, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**



Present:-

*Learned Counsels argued in  
Favour of consolidation*

*:- P.S. Raman, Senior Advocate  
R. Murari, Senior Advocate  
E. Om Prakash, Senior Advocate  
P.V.S Giridhar, Advocate  
N.P. Vijaykumar, Advocate  
Ramasamy Meyappan, Advocate  
B. Dhanaraj, Advocate  
Vidhya Shankar, Advocate  
Pranav V. Shankar, Advocate  
K. Subbu Ranga Bharath, Advocate*

*Learned Counsels argued  
Against consolidation*

*:- P.H. Arvinth Pandian, Senior Advocate  
S.R. Rajagopal, Senior Advocate  
M.S. Krishnan, Senior Advocate  
Vipin Warriar, Advocate  
A.G. Sathyanarayana, Advocate*

*Order Pronounced on 1<sup>st</sup> November 2021*

**COMMON ORDER**

**Per: R. SUCHARITHA, MEMBER (JUDICIAL)**

Under consideration are Applications filed by the Applicants under Section 60(2), 60(5) of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC, 2016"*) read with Rule 11 and 32 of National Company Law Tribunal Rules, 2016 seeking consolidation and simultaneous CIRP in relation to the Corporate Debtors viz. M/s. Regen Powertech Private Limited (*hereinafter referred to as "RPPL"*) and M/s. Regen Infrastructure & Services Private Limited (*hereinafter referred to as "RISPL"*). Since the issue

involved in all the 25 Applications as arrayed in the Cause title pertains to consolidation and simultaneous CIRP of both RPPL and RISPL, all the aforesaid Applications are taken up together for disposal by way of a Common order.

**1. REGEN POWER TECH PRIVATE LIMITED  
(IBA/1099/2019)**

1.1. The Corporate Debtor viz. Regen Power Tech Private Limited was admitted into Corporate Insolvency Resolution Process (CIRP) by the order of this Tribunal dated 09.12.2019 passed in IBA/1099/2019 and one Mr. Ebenezer Inbaraj was appointed as the Interim Resolution Professional (IRP). Thereafter the IRP has caused a Public Announcement as per Regulation 12 of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 in "Times of India" (English) and "The Hindu" (Tamil) on 15.12.2019 and "Andhra Prabha" (Telugu) on 16.12.2019. It is seen that the IRP took control and custody of the Corporate Debtor and visited the factory premises and it was found that the workers were not paid salary for one and half months. Hence, it was submitted that the IRP had a detailed discussion with the workers and requested them to resume the work and thereafter the factory was brought back into the status of continuous functioning.



1.2. Based upon the claims received from the Creditors, the IRP constituted the Committee of Creditors as follows;

S. No	NAME OF THE FINANCIAL CREDITOR	TOTAL CLAIM FILED	DETERMINED CLAIM	% OF VOTING SHARE
1	State Bank of India	802,53,76,258	802,53,76,258	51.56
2	Canara Bank	288,23,63,476	288,23,63,476	18.52
3	Axis Bank	125,68,66,009	125,68,66,009	8.08
4	Indian Overseas Bank	77,26,59,307	77,26,59,307	4.96
5	Standard Chartered Bank	12,67,74,320	12,67,74,320	0.81
6	L&T Infra Investment Partners	70,13,51,231	56,86,97,721	3.65
7	L& T Finance Limited	238,17,94,723	193,13,02,279	12.41
	<b>Total claim of Financial Creditors</b>	<b>1,614,71,85,324</b>	<b>1,55,64,039,370</b>	<b>100</b>

1.3. The 1<sup>st</sup> meeting of the CoC was conducted on 10.01.2020 and in the said meeting the CoC did not approve the Resolution to confirm the IRP to act as a Resolution Professional in relation to the Corporate Debtor. It was submitted that on 02.03.2020, the IRP received an email from two Financial Creditors viz. L&T Infra Investment Partners and L&T Finance Limited informing the IRP that they are withdrawing their claim in respect of the Corporate Debtor, with a liberty to file a fresh claim at a later stage. Hence, the IRP had reconstituted the CoC and also filed a Report before this Tribunal on 05.03.2020.

1.4. In the 2<sup>nd</sup> CoC meeting held on 06.03.2020, the CoC passed a Resolution with a vote of 92.51% to appoint the IRP as an Resolution Professional in respect of the Corporate Debtor. Further, in the said meeting, the CoC has also approved the eligibility criteria for the prospective Resolution Applicants. Also the Form – G along with the timeline i.e. Expression of Interest for invitation of the prospective Resolution Applicants was published on 12.03.2020 in two newspapers “English Daily” (English) and “Dinamani” (Tamil). Thereafter, it is seen that due to Covid – 19 pandemic nationwide lockdown was imposed from 25.03.2020 onwards and hence the prospective Resolution Applicants have requested further time to submit their Expression of Interest and accordingly the CoC extended the time upto 30.04.2020. The EoI was further extended till 15.06.2020.

1.5. It is seen that due to the pandemic, the 3<sup>rd</sup> CoC meeting was conducted through Video Conferencing mode on 18.06.2020 and in the said meeting the difficulties faced by the RP due the pandemic was discussed. Thereafter, the 4<sup>th</sup> CoC meeting was conducted on 24.06.2020 and 25.06.2020 wherein the RP has apprised about the difficulty faced in opening the factory during the lockdown period and also it

was observed that there was no business operations from 25.03.2020 to May 2020. It is also seen that the RP has issued the Information Memorandum to the final list of Prospective Resolution Applicants on 30.06.2020. The CoC after considering the travel constraints on account of Covid – 19 lockdown has extended the last date for the submission of the Resolution plan till 19.08.2020, which was further extended upto 20.09.2020 and then upto 15.10.2020.

1.6. Thereafter, it is seen that the Prospective Resolution Applicants have submitted their Resolution Plan to the RP on 10.10.2020 and 11.10.2020 and the RP after verifying the same has forwarded the same to the CoC. The CoC made negotiations with the Prospective Resolution Applicants and after several rounds of negotiations, the CoC requested the Prospective Resolution Applicants to submit their revised Resolution Plans to the Resolution Professional. In the meantime, since the 180 days period of the CIRP in relation to the Corporate Debtor came to an end, the RP moved an application seeking exclusion of the lockdown period.

1.7. After much discussions and deliberations, the CoC finally fixed 07.01.2021 as the last date for the

submission of the revised Resolution Plan by the Prospective Resolution Applicants, which was extended in the 10<sup>th</sup> CoC meeting till 10.02.2021. One of the Prospective Resolution Applicants submitted the revised plan before the CoC and then in the 12<sup>th</sup> CoC meeting held on 04.03.2021, 05.03.2021 and 06.03.2021, the CoC discussed about the modifications on the Resolution Plan and finally the CoC with 94.08% has approved the Resolution Plan in the 13<sup>th</sup> CoC meeting held on 03.04.2021. While things stand thus, the RP has filed IA/460/CHE/2021 for approval of the Resolution Plan by this Adjudicating Authority.

2. **REGEN INFRASTRUCTURE AND SERVICES PRIVATE LIMITED (IBA/1424/2019)**

2.1. Regen Infrastructure and Services Private Limited ("RISPL") is a wholly owned subsidiary of M/s. Regen Powertech Private Limited ("RPPL"). It is seen that RISPL was admitted into Corporate Insolvency Resolution Process by this Tribunal vide its order dated 19.02.2020 passed in IBA/1424/2019 and one Ms. Renuka Devi Rangaswamy was appointed as Interim Resolution Professional, who was confirmed as the "Resolution Professional" in the 3<sup>rd</sup> meeting of the CoC held on 21.09.2020.



2.2. The Resolution Professional of RISPL has also moved an Application viz. IA/548/CHE/2021 seeking simultaneous CIRP in relation to both RPPL and RISPL. It is also seen from the 8<sup>th</sup> CoC Meeting in respect of RISPL, that the RP of RISPL has also received certain Resolution Plans from the prospective Resolution Applicants, however has passed a resolution to keep the said Resolution Plan on hold and to file an Application seeking simultaneous CIRP in relation to RPPL and RISPL.

**(i) MA/91/CHE/2021 – (TVH Energy Resources Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RPPL, before this Tribunal on 03.08.2021. The Applicant entered into an Operation and Maintenance (O&M) Agreement with RPPL on 09.11.2010 for a period of 10 years for service of 10 Nos. of WEC. Subsequently, RPPL assigned the O&M Agreement in favour of RISPL. Pursuant thereto, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(ii) MA/92/CHE/2021 – (TVH Energy Resources Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 03.08.2021. The Applicant entered into an Operation and Maintenance (O&M) Agreement with RPPL on 09.11.2010 for a period of 20 years for service of 10 Nos. of WEC. Subsequently, RPPL assigned the O&M Agreement in favour of RISPL. Pursuant thereto, both RPPL and RISPL went into CIRP and

the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(iii) MA/93/CHE/2021 – (iEnergy Wind Farms (Theni) Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 02.08.2021. The Applicant entered into an Operation and Maintenance (O&M) Agreement with RPPL on 18.03.2010 for a period of 20 years for service of 11 Nos. of WEC. Subsequently, RPPL assigned the O&M Agreement in favour of RISPL. Pursuant thereto, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(iv) IA/517/CHE/2021 – (Sulochana Cotton Spinning Mills Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 10.06.2021. The Applicant is the owner of 15 windmills supplied by RPPL and the services of the windmills are done by RISPL. It was submitted that both RPPL and RISPL is now under CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. It is stated that the Applicant is interested in submitting a consolidated Resolution Plan for both RPPL and RISPL and hence the Applicant has sought for consolidation and simultaneous CIRP of both RISPL and RPPL.



**(v) IA/518/CHE/2021 – (Sulochana Cotton Spinning Mills Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RPPL, before this Tribunal on 10.06.2021. The Applicant is the owner of 15 windmills supplied by RPPL and the services of the windmills are done by RISPL. It was submitted that both RPPL and RISPL is now under CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. It is stated that the Applicant is interested in submitting a consolidated Resolution Plan for both RPPL and RISPL and hence the Applicant has sought for consolidation and simultaneous CIRP of both RISPL and RPPL.

**(vi) IA/548/CHE/2021 – (Regen Infrastructure & Services Pvt. Ltd.)**

This is an Application filed by the RP of RISPL in respect of RISPL, before this Tribunal on 12.06.2021. It is stated in the Application that the RISPL and RPPL entered into a Memorandum of Understanding dated 31.01.2014 followed by execution of a Business Transfer Agreement (BTA) on 05.03.2014 towards transfer of business of Operations and Maintenance of Wind Energy Generators, Wind Projects and Power Evacuation Facilities for Customers, Utility Boards or own Projects for an agreed Consideration of Rs.310 Crore, settled in by issue and allotment of Equity Shares equivalent to the purchase price, however, it is stated that RPPL retained the business of development and procurement of technology for manufacture, sourcing and supply of WEC. It is seen that, subsequent to the BTA, the customers, RISPL and RPPL entered into a tripartite assignment agreement in respect of the Operation and Maintenance Contract originally entered by RPPL with its respective customers.

It is also stated that the RPPL has manufactured and supplied around 1557 Wind Energy Generators to various customers and all the Infrastructure and Intellectual Property Rights (IPR) to manufacture such Wind Energy Generators are owned by RPPL. It is further stated that refurbishment of WEG can be done only by RPPL as it is the sole holder of IPR's of the Generators sold. It is also stated that RISPL has received a huge sum of Liquidity Damages every year around Rs.15 Crore to 20 Crore solely because RPPL has not refurbished the failed WEG on time. It is stated that RISPL customers have terminated their O&M contract.

The RP of RISPL has stated that during a Joint Resolution Professional Meeting held on 31.03.2021, it was discussed about to appoint a Common Resolution Applicant for both the Corporate Debtors of RPPL and RISPL, however it was submitted that the successful bidder of RPPL has given the lowest quote for RISPL and many conditions in their Resolution Plan are detrimental to the interest of RISPL and its customers. However, the CoC of RPPL did not accede to such a request citing that fresh bid may cause the RPPL's Resolution Applicant to withdraw and also there is no guarantee of a Resolution Plan for RPPL and as such RPPL will be under the risk of undergoing liquidation.

It is also seen that the RP of RISPL has stated in the Application that there are four Resolution Plans which are received in respect of RISPL i.e. (i) ReNew Services (P) Ltd. Delhi, (ii) Sulochana Cotton Spinning Mills (P) Ltd., Tirupur, (iii) Giriraj Enterprises, Sangamanar and (iv) KKV Agro Powers Limited, Coimbatore, It is stated that though the Resolution Plan submitted by the aforesaid Resolution Applicants were circulated in the 7<sup>th</sup>

CoC meeting dated 26.04.2021, the CoC has sought to keep the Resolution Plans in abeyance.

Further, it is stated in the Application that in the 8<sup>th</sup> CoC meeting of RISPL held on 06.05.2021, the Applicant received 91.9% votes in favour of filing the present Application seeking conducting simultaneous CIRP of the RPPL and RISPL. The RP of RISPL has stated that simultaneous CIRP in respect of both RPPL and RISPL would favour the creditors as it would help them not only to retain their voting share in the CoC meeting but will also allow them to settle the claims present with both Corporate Debtors in a more amicable way. Further, it is stated that simultaneous CIRP will resolve any disputes pending between the Corporate Debtors and hasten the process of CIRP. Hence the Applicant has prayed for simultaneous CIRP in relation to both RPPL and RISPL.

**(vii) IA/617/CHE/2021 – (Echanda Urja Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 06.07.2021. The holding Company of the Applicant and RPPL entered into supply agreement for procurement and supply of Wind Turbine Generator and in pursuance of the same, RPPL has supplied 67 Nos. of Wind Turbine to the Applicant. Thereafter, the holding Company of the Applicant sold the entire business to the Applicant herein. Thereafter, the Applicant entered into an various Operation and Maintenance (O&M) Agreement with RPPL on 06.06.2011 for a period of 10 years. Subsequently, RPPL assigned the O&M Agreement in favour of RISPL. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal.



Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(viii) IA/664/CHE/2021 – (GAIL (India) Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 07.05.2021. Pursuant to an Agreement entered into between RPPL and Applicant, RPPL had supplied WEC to the Applicant. Thereafter, the Applicant entered into an Operation and Maintenance (O&M) Agreement with RPPL on 19.09.2011 for a period of 10 years. Subsequently, RPPL assigned the O&M Agreement in favour of RISPL. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(ix) IA/694/CHE/2021 – (Giriraj Enterprises)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 14.07.2021. The Applicant and RPPL entered into various supply agreements for procurement and supply of Wind Turbine Generator for which an Agreement had been entered into between RPPL and Applicant, RPPL has supplied 3 Nos. of Wind Turbine to the Applicant. Thereafter, the Applicant entered into a various Operation and Maintenance (O&M) Agreement with RISPL on 12.10.2018 for a period of 10 years. It is stated that the Applicant has paid all the O&M Charges under the Contract which the RISPL has raised. In the meantime, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(x) IA/695/CHE/2021 – (Damodar Jagannath Malpani)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 14.07.2021. Pursuant to an Agreement entered into between RPPL and Applicant, RPPL has supplied 3 Nos. of Wind Turbine to the Applicant. Thereafter, the Applicant entered into an Operation and Maintenance (O&M) Agreement with RISPL on 12.10.2018 for a period of 10 years. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(xi) IA/700/CHE/2021 – (RV Consulting Services Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 21.07.2021. The Applicant and RPPL had entered into an agreement dated 19.02.2010 for procurement of 1 Wind Energy Converters (WEC) with full set up for a price of Rs.9,13,87,160/-. Later the Applicant entered into Operation and Maintenance (O&M) Agreement with RISPL. In June 2020, the Applicant came to know about WEC failure and RISPL has not repaired or refurbished the WEC. However, it was submitted that the Applicant has paid the maintenance charges up to June 2020 until the stoppage of functioning of WEC. It was submitted that both RPPL and RISPL are now under CIRP and after much persistence the Applicant ordered spares for the WEC, however the same was not responded by the RISPL. Since, the Resolution Plan of RPPL has no clause to deal with O&M services of the Applicant, the Applicant submitted that only consolidated and simultaneous CIRP will serve the purpose of the Applicant.



**(xii) IA/709/CHE/2021 – (Premier Mills Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 25.07.2021. The Applicant and RPPL entered into a supply agreement for procurement and supply of Wind Turbine Generator and in pursuance of the same, RPPL had supplied 2 Nos. of Wind Turbine to the Applicant. Thereafter, the Applicant entered into an Operation and Maintenance (O&M) Agreement with RPPL on 12.10.2010 for a period of 10 years. Subsequently, RPPL assigned the O&M Agreement in favour of RISPL. In the meantime, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(xiii) IA/713/CHE/2021 – (Orbit Exports Limited)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 26.07.2021. Pursuant to an Agreement entered into between RPPL and Applicant, RPPL has supplied WEC to the Applicant. Thereafter, the Applicant had entered into an Operation and Maintenance (O&M) Agreement with RISPL on 31.12.2019 for a period of 10 years. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Since, the Resolution Plan of RPPL has no clause to deal with O&M services of the Applicant, the Applicant submitted that only and simultaneous CIRP will serve the purpose of the Applicant.

**(xiv) IA/714/CHE/2021 – (Asha Biyani)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 29.07.2021. Pursuant to an

Agreement entered into between RPPL and Applicant, RPPL has supplied WEC to the Applicant. Thereafter, the Applicant entered into an Operation and Maintenance (O&M) Agreement with RISPL on 03.08.2015 for a period of 20 years. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. It is stated that the Applicant has paid all the O&M Charges under the Contract which the RISPL has raised. Since, the Resolution Plan of RPPL has no clause to deal with O&M services of the Applicant, the Applicant submitted that only and simultaneous CIRP would serve the purpose of the Applicant.

**(xv) IA/715/CHE/2021 – (Suchita Biyani)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 30.07.2021. Pursuant to an Agreement entered into between RPPL and Applicant, RPPL has supplied WEC to the Applicant. Thereafter, the Applicant entered into an Operation and Maintenance (O&M) Agreement with RISPL on 03.08.2015 for a period of 20 years. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. It is stated that the Applicant has paid all the O&M Charges under the Contract which the RISPL has raised bills. Since, the Resolution Plan of RPPL has no clause to deal with O&M services of the Applicant, the Applicant submitted that only and simultaneous CIRP would serve the purpose of the Applicant.

**(xvi) IA/716/CHE/2021 – (Radha Biyani)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 30.07.2021. Pursuant to an Agreement entered into between RPPL and Applicant, RPPL had

supplied WEC to the Applicant. Thereafter, the Applicant had entered into an Operation and Maintenance (O&M) Agreement with RISPL on 03.08.2015 for a period of 20 years. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. It is stated that the Applicant has paid all the O&M Charges under the Contract which the RISPL has raised. Since, the Resolution Plan of RPPL has no clause to deal with O&M services of the Applicant, the Applicant submitted that only and simultaneous CIRP would serve the purpose of the Applicant.

**(xvii) IA/717/CHE/2021 – (Vinod H Biyani)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 30.07.2021. Pursuant to an Agreement entered into between RPPL and Applicant, RPPL had supplied WEC to the Applicant. Thereafter, the Applicant had entered into an Operation and Maintenance (O&M) Agreement with RISPL on 15.10.2018 for a period of 10 years. It is stated that the Applicant has paid all the O&M Charges under the Contract which the RISPL has raised. In the meantime, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Since, the Resolution Plan of RPPL has no clause to deal with O&M services of the Applicant, the Applicant submitted that only and simultaneous CIRP would serve the purpose of the Applicant.

**(xviii) IA/718/CHE/2021 – (Santradevi H Biyani)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 30.07.2021. Pursuant to an Agreement entered into between RPPL and Applicant, RPPL had supplied WEC to the Applicant. Thereafter, the Applicant entered

into an Operation and Maintenance (O&M) Agreement with RISPL on 15.10.2018 for a period of 10 years. It is stated that the Applicant has paid all the O&M Charges under the Contract which the RISPL has raised bills / invoices. In the meantime, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Since, the Resolution Plan of RPPL has no clause to deal with O&M services of the Applicant, the Applicant submitted that only and simultaneous CIRP would serve the purpose of the Applicant.

**(xix) IA/719/CHE/2021 – (DGN Faser Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 30.07.2021. The Applicant had purchased one WEC from Giriraj Enterprises. It is stated that the Applicant was given to understand that the said Giriraj Enterprises purchased the WEC from RPPL, since RPPL holds the exclusive licence for production and sale of Vensys Wind Turbine in India. It is stated that RPPL is the exclusive manufacturer of Vensys Wind Turbine, and various agreements were entered into between RPPL and Giriraj Enterprises for carrying on Operation and Maintenance Services. Pursuant to the same, it is seen that the Applicant entered into a fresh Comprehensive Operation and Maintenance Services with the RP of RISPL on 10.03.2021 for a period of 6 years. It is stated in the Agreement that RISPL alone enjoys exclusive right to provide services and no other service provider is allowed to carry out the services during the term of the Agreement. It is stated that the Applicant has paid all the O&M Charges under the Contract which the RP of RISPL has raised bills / invoices. Since, the Resolution Plan of RPPL has no clause to deal with O&M services of the Applicant, the Applicant submitted that only simultaneous CIRP would serve the purpose of the Applicant.

**(xx) IA/720/CHE/2021 – (Clean Wind Power (Devgarh) Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 03.07.2021. Pursuant to an Agreement entered into between RPPL and Applicant on 26.12.2012, RPPL had supplied a total of 34 WEC to the Applicant at its project site at Rajasthan for a value to the tune of Rs.292,74,00,000/-. The Applicant and RISPL entered into a work order dated 26.12.2012 wherein RISPL was liable to undertake civil works at site, erection, testing and commissioning of WEC. Further the Applicant and RISPL had entered into Land facilitation and Site Development Agreement dated 26.12.2012 in and by which the land is required to be identified, facilitated and procured by RISPL for installation of WEC which was provided by RPPL. Thereafter, the Applicant entered into an Operation and Maintenance (O&M) Agreement with RISPL on 30.03.2013 for a period of 10 years. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(xxi) IA/721/CHE/2021 – (Bhilwara Green Energy Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 03.07.2021. Pursuant to an Agreement entered into between RPPL and the Applicant, RPPL has supplied WEC to the Applicant. Thereafter, the Applicant had entered into an Operation and Maintenance (O&M) Agreement with RISPL on 31.10.2011 for a period of 10 years. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal.

Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(xxii) IA/725/CHE/2021 – (Rajesh Kasat & Co.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 30.07.2021. Pursuant to an Agreement entered into between RPPL and Applicant, RPPL had supplied WEC to the Applicant. Thereafter, the Applicant had entered into an Operation and Maintenance (O&M) Agreement with RPPL on 30.06.2016 for a period of 10 years. Subsequently, RPPL assigned the O&M Agreement in favour of RISPL. In the meantime, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(xxiii) IA/727/CHE/2021 – (B. Vijayaragavan)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 26.07.2021. The Applicant and RPPL had entered into various supply agreements for procurement and supply of Wind Turbine Generator and in pursuance of the same, RPPL had supplied 2 Nos. of Wind Turbine to the Applicant. Thereafter, the Applicant had entered into a Operation and Maintenance (O&M) Agreement with RISPL on 08.09.2017 for a period of 10 years. In the meantime both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.



**(xxiv) IA/728/CHE/2021 – (B. Vijayaragavan)**

This is an Application filed by the Applicant in respect of RPPL, before this Tribunal on 26.07.2021. The Applicant and RPPL had entered into various supply agreements for procurement and supply of Wind Turbine Generator and in pursuance of the same, RPPL had supplied 2 Nos. of Wind Turbine to the Applicant. Thereafter, the Applicant had entered into a Operation and Maintenance (O&M) Agreement with RISPL on 08.09.2017 for a period of 10 years. In the meantime, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.

**(xxv) IA/810/CHE/2021 – (Mytrah Vayu (Manjira) Pvt. Ltd.)**

This is an Application filed by the Applicant in respect of RISPL, before this Tribunal on 09.08.2021. The Applicant and RPPL had entered into a "Wrap Agreement" for the purpose of supply of equipments for the project worth Rs.85 Crore. Thereafter, the Applicant had entered into an Operation and Maintenance (O&M) Agreement with RPPL on 29.01.2013 for a period of 10 years. Subsequently, RPPL assigned the O&M Agreement in favour of RISPL. Pursuant thereto, both RPPL and RISPL went into CIRP and the Resolution Plan in respect of RPPL is now pending adjudication before this Tribunal. Hence the Applicant has prayed for consolidation of the CIRP in relation to both RPPL and RISPL.



### **3. ARGUMENTS ADVANCED IN SUPPORT OF CONSOLIDATION**

3.1. The Learned Senior Counsels Mr. P.S. Raman appearing on behalf of the Applicants in IA/694/CHE/2021 submitted that the Applicants have purchased 67 Wind Turbine Generators worth of Rs.610 Crore from RPPL based upon various Supply Agreements and thereafter the Applicant had also entered into a separate Agreement for Erection and Commission of the said Wind Turbine Generators with RISPL. Consequent thereto, the Applicants have entered into "Operations and Maintenance" Contract with RISPL for an initial period of 10 years. It was submitted by the Learned Senior Counsel that as per the Supply Agreement the warranties clause prohibit the Applicants to service their Wind Turbine Generators by a third party and it should be serviced only by providers and if done so, the warranty will become void. The Learned Senior Counsel placed reliance upon the Judgment of the NCLT Mumbai Bench in the matter of **State Bank of India Vs. Videocon Industries Ltd. (2018) SCC Online NCLT 13182** decided on 08.08.2019, wherein certain parameters were fixed by the NCLT Mumbai Bench while ordering for consolidation;

78. Before arriving at any conclusion on 'Consolidation', the existence of certain ingredients are necessary to be examined, viz ; (1) Common control, (2) Common directors, (3) Common assets, (4) Common liabilities, (5)

Inter-dependence, (6) Interlacing of finance, (7) Pooling of resources, (8) Co-existence for survival , (9) intricate link of subsidiaries 10) inter-twined of accounts, 11) inter-looping of debts, 12) singleness of economics of units, 13) cross shareholding, 14) Inter dependence due to intertwined consolidated accounts, 15) Common pooling of resources, etc. This is not an exhaustive list and cannot be. These are the elementary governing factors, *prima facie* to activate the process of 'consolidation'. At first glance the existence of these rudimentary points are required to be seen to examine whether in a particular case the question of 'consolidation' is worth consideration or not? It is also necessary to put it on record at this juncture when entering to start the investigation that it is a cumbersome exercise which require time and patience. Whether the case in hand can fit into these basic criterion is to be scrutinised in the following paragraphs.

79. The reason to venture into this cumbersome exercise is based upon the principles laid down by judicial authorities, mostly by U.K./ U.S.A. courts.

3.2. In terms of the aforesaid judgment it was argued by the Learned Senior Counsel for the Applicant that the aforesaid parameters fixed by the NCLT Mumbai Bench are all satisfied as to the facts of the present case and it is also seen from the Reply statement filed by the RP of RISPL that they have prepared a comparative chart of the parameters *vis-à-vis* the substance and elements as contained in both RPPL and RISPL, which is extracted hereunder;

SL. NO	ELEMENTS CONSIDERED FOR SIMULTANEOUS CIRP	PARTICULARS WITH RESPECT TO THE CORPORATE DEBTORS RISPL & RPPL
1	COMMON CONTROL	RISPL is 100% WoS Company of RPPL.  Common Registered Office Address, registered with MCA:  "Sivanandam, 1 <sup>st</sup> Floor, New No.1, Pulla Avenue, Shenoy Nagar, Chennai – 600 030".  Common Email Id: narayanan.sa@regenpowertech.com

2	COMMON DIRECTORS	Only Common Suspended Directors: Mr. Madhusudhan Khemka Mr. Sundaresh Ramanathan
3	COMMON ASSETS	(a) RPPL (H/Co) leased out certain Sub-station lands to RISPL for long lease where RISPL's Five Pooling Substations are getting operated. (b) RISPL Tools are used for E& C business which was illegally transferred to Regen O & M Services Ltd., a WoS Co. of RPPL. Many important Land Assets recorded in the Balance Sheet of RISPL is registered in the name of RPPL and illegally in possession with RPPL.
4	COMMON LIABILITIES	a) Generator Repair Liability /Consequential Liquidity damages b) RISPL Assets/Liabilities are transferred to RPPL's WoS Co., ROMSL by way of illegal Business Transfer. c) L&T Infra and ARCIL voting share at RISPL is at 91.20%. d) SBI's Voting Share is 62% at RPPL and 8.80% at RISPL. Both RPPL and RISPL and its WoS Cos/Step down WoS Cos Books are not reconciled; Dues to Vendors/Suppliers or Receivables unclear till date.
5	INTER DEPENDENCE AND INTRICATE LINK BETWEEN BUSINESS OF TWO COMPANIES	RISPL is dependent on RPPL as the IPR license to provide its O&M, Erection and Commissioning, and Power Evacuation services are wholly dependent on the know-how License and Technical Assistance Agreements dated 05.11.2007, 27.03.2011 and 17.09.2015 between RPPL and Vensys Energy AG.  Business Transfer Agreement dated 05.03.2014 shows that RPPL is dependent on RISPL for Operation and Maintenance, Land Procurement, Erection and Commissioning and Power Evacuation.  RPPL has stood guarantee for RISPL in various Assignment Agreements in favour of RISPL and their respective Customers.  RISPL is dependent on RPPL for its Generator Repair Facilities.
6	INTERLACING AND INTERLINKAGE OF FINANCES	RISPL is given Corporate Guarantee by RPPL for Loans from SBI and from ARCIL/L&T Infra Investment Partners.  RPPL Lands, long leased to RISPL, where RISPL 5 PSS are constructed, are mortgaged to RISPL Lenders L&Ts.
7	INTER TWINED ACCOUNTS	Corporate Debtors are interlaced and interlinked to such an extent that they were treated as a "single economic unit" as they prepared Consolidated Financial Statements until 31.03.2017 when RPPL became NPA.

8.	SINGLENESSE ECONOMIC UNIT	OF	The group is known by the brand name "Regen" and the entire group revolves around the services offered by the brand namely, Manufacturing, Supply, Land Procurement, E&C, O&M and Power Evacuation of Wind Energy generated through Regen-make Windmills.
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3.3. The Learned Senior Counsel for the Applicant in order to bolster his stand has placed reliance upon the decision of the Hon'ble NCLAT in the matter of **Radico Khaitan Ltd -Vs- BT & FC Pvt Ltd. & 6 Ors.** in *Company Appeal (AT)(Ins) No. 919 / 2020*, wherein by relying upon the decision of the NCLT Mumbai Bench in Videocon case the Hon'ble NCLAT has ordered for consolidation of CIRP in respect of two companies and set aside the order passed by the Adjudicating Authority which rejected the consolidation and held as follows;

18. We are of the view that Ld. Adjudicating Authority Mumbai Bench in the case of SBI Vs Videocon Industries Ltd. (Supra) rightly laid down certain parameters while ordering for consolidation of CIRP. The said order was cited before Ld. Adjudicating Authority Bengaluru Bench, However, while passing the impugned order there is no finding whether these parameters are fulfilled or not in this case. Now, we are considering whether Respondent Nos. 1 and 2 have fulfilled the criteria of consolidation of CIRP.

**(i) Common Control:** (a) The Respondent Nos. 1 and 2, both the companies are promoted by Mr. M.V Murlidher and his wife Padma Murlidher. Murlidhers family holds approximately 77% of total shareholding and 78% of total shareholding in Respondent Nos. 1 and 2 Company respectively, the shareholder of the Respondent No. 2 company together holds approximately 85% of the shareholding in the Respondent No. 1 Company. Thus, both Companies are promoted by the same family and

there is unity of ownership and interest. (Please See Page 423 and 431 of Appeal Paper Book)

(b) The Respondent No. 1 is controlling company of Respondent No. 2 (Please See Page 432 and 433 of Appeal Paper Book: Note to Accounts of M/s Bangalore Dehydration and Drying Equipment Company, forming part of and annexed to the accounts for the year ended 31st March 2012. 5. Related party discloser (i) Controlling Company M/s BT and FC Pvt. Ltd.)

**(ii) Common Directors:** Mr. M.V. Murlidher and Padma Murlidher both are Directors in Respondent Nos. 1 and 2 Company. Thus, the Directors of the both Companies are Common and there is common control of companies. (Please See Company Master Data of R-1 and R-2 at Page 528 and 529 of Appeal Paper Book)

**(iii) Common Assets:** The Respondent No. 2 Company owns a partial of land admeasuring 2 acres 36 gundas situated at No. 15, First Phase, Peenya Bengaluru and has constructed warehouse on the land. The Respondent No. 1 Company runs a bottling plant unit in the warehouse and owns the plant and machinery therein, therefore, there is inter-dependency between two Companies and the assets are common to such an extent that the Respondent No. 2 Company has provided its land and warehouse to the Respondent No. 1 Company to carry on its business activity.

**(iv) Common Liabilities:** (a) The Respondent No. 3 has made a claim of Rs. 13,45,11,636/- against the Respondent No. 1 Company as a borrower and the Respondent No. 2 Company has a guarantor as a collateral for the loan obtained by the Respondent No. 1 Company and the Respondent No. 2 Company has mortgaged Peenya land and warehouse situated therein. Further Respondent No. 2 has provided a corporate guarantee as security for the loan obtained by the Respondent No. 1 Company. (b) In so far as the loan obtained by the Respondent No. 1 Company from the Respondent No. 4 is concerned, the Respondent No. 2 as security had created paripasu charge over the Peenya land, placed 67% of its shares and provided a corporate guarantee. Therefore, the liabilities of the Companies are also common and Companies had made themselves jointly and severally liable for the loans. Respondent No. 1 and 2 have common creditors i.e. Respondent Nos. 3 and 4. Directors of both the Companies have given personal guarantees for the loans.

**(v). Inter-dependence:** The Respondent No. 1 Company was running a Distillery Unit in the Peenya land and warehouse building belonging to the Respondent No. 2 Company as stated by Respondent No. 6 (RP) in its Status Report filed before this Appellate Tribunal. Thus, the Respondent Nos. 1 and 2 are interdependence.

**(vi) Pooling of Resources:** Undisputedly the Directors are common using their contacts and relationship to run both the Companies. For the sanction of the loan facility for the Respondent No. 1 Company. The Respondent No. 2 Company has mortgaged Peenya land and warehouse and also stood as guarantor for the Respondent No. 1 Company.

**(vii) Intricate links between the Companies:** (a) The Respondent No. 2 is associated Company of the Respondent No. 1, this fact is admitted by the Respondent No. 3 while submitting its claim form before the RP (Please See Page 527 of Appeal Paper Book) and this fact is also mentioned in the Status Report ( See First Line of Page 6) filed by Respondent No. 7. Thus, it is clear that the Respondent No. 2 Company is associated company of Respondent No. 1. In the I&B Code, the word associate company has not been defined. Section 3 (37) of the I&B Code, provides that word and expressions used but not defined in this Code but defined in the Companies Act, 2013 shall have the meaning assigned in the Companies Act, 2013. Section 2 (6) of Companies Act, 2013 defines Associate Company as under:

“Associate Company” in relation to another company, means a company in which that other company has a significant influence but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation: for this purpose of this clause – (a) The expression significant influence means control of at least 20% of total voting power or control of or participation in business decisions under an agreement. (b) Xxx xxx xxx”

(c) As aforesaid Mr. M.V Murlidher family has significant influence over both the Companies i.e. Respondent Nos. 1 and 2. Thus, the Respondent No. 2 Company is associated company of the Respondent No. 1 Company.

**(viii) Common Financial Creditors:** The Respondent Nos. 1 and 2 have Common Financial Creditors i.e. the Respondent Nos. 3 and 4.



19. It can be clearly seen from the above that eight parameters are fully met and satisfied in this case.

20. Apart from this Financial Creditors i.e. Respondent Nos. 3 and 4 in their written submissions have not pointed out that how the consolidated CIRP shall prejudice their rights. Even if the combined CIRP is ordered the balance of convenience is squarely on Respondent Nos. 3 and 4 herein who are secured Financial Creditors and whose interest will remain protected even during the combined Insolvency as secured Financial Creditors. The Appellant being an Operational Creditor is placed sixth in hierarchy for the liquidation process in the I&B Code, (See Section 53 (1) (f) of I&B Code)

21. With the aforesaid, we are of the view that the Respondent Nos. 1 and 2 fulfilled the criteria of consolidation. Ld. Adjudicating Authority has not appreciated the facts of this case in right perspective. Thus, the impugned order is hereby set aside and I.A.No.212 of 2020 filed by the Appellant for consolidation of two CIRP's is hereby allowed.

3.4. The Learned Senior Counsel for the Applicant also relied upon the Judgment of the **Oase Asia Pacific Pte Ltd. -Vs- Axis Bank Ltd & Other Financial Creditors & 2 Ors** in *Company Appeal (AT) (Ins) No. 783 of 2020*, decided on 26.02.2021, wherein it was held that only because the Corporate Debtors do not have common Financial Creditors, would not be sufficient reason to say that the yardsticks laid down in the matter of "*State Bank of India -Vs- Videocon Industry Ltd.*" were not attracted. Thus, it was argued by the Learned Senior Counsel for the Applicants that ordering for consolidation of CIRP of both RPPL and RISPL would be beneficial to the stakeholders and only when consolidation is

ordered there will be maximization of the value of the assets of the Corporate Debtors.

3.5. The Learned Counsel Mr. PVS Giridhar appearing on behalf of the Applicant in IA/709/CHE/2021 submitted that RPPL submitted a proposal dated 15.09.2010 to the Applicant for a 15MW Wind Power Project consisting 10 number of Vensys Design Regen R82-1.5MW Wind Energy Converters to be installed at Theni, Tamil Nadu at an estimated cost of Rs.94.50 Crore. It was submitted that pursuant thereto, the Applicant placed a Purchase Order dated 08.10.2020 with RPPL for a 3MW wind Power project for a supply of two (2) number of Vensys Design Regen R82-1.5MW Wind Energy Converters to be installed at Theni, Tamil Nadu. The Learned Counsel for the Applicant submitted that they had entered into a comprehensive Operation and Maintenance (O&M) Contract dated 12.10.2010 for O&M Service with RPPL.

3.6. It was submitted by the Learned Counsel for the Applicant that after commissioning of the project, RPPL by their letter dated 09.07.2014 requested the Applicant to transfer the Operations and Maintenance (O&M) part of the contract dated 12.10.2010 to their wholly owned subsidiary,

M/s. RISPL as the Operations and Maintenance business of M/s. RPPL was being transferred to their subsidiary Company. Accordingly, a Tripartite Agreement dated 15.09.2015 was executed between the Applicant, RPPL (Assignor) and RISPL (Assignee) wherein the parties agreed that the Operation and Maintenance part of the contract shall be assigned to and performed by RISPL as Contractor and all the other terms and conditions of the contract shall remain same and binding. Subsequently, it was submitted that the Applicant has signed a fresh O&M contract dated 31.03.2021 with the RP of RISPL appointed by this Tribunal.

3.7. In the meantime, it is seen that the CIRP in relation to RPPL and RISPL was initiated by this Tribunal on 19.12.2019 and 19.02.2020 respectively. It was submitted by the Learned Counsel for the Applicant that eventhough RPPL and RISPL are two separate entities, they are a single entity by ownership, corporate control, by both functionally and operationally. It was submitted that both the doctrines of substantial consolidation and piercing the corporate veil needs to be applied to the present case. Also, it was submitted that the parameters as laid down by the NCLT, Mumbai Bench in *Videocon* case (*supra*) are also fulfilled in the present case. It was further argued that as per the ratio

laid down in Videocon case (*supra*), the burden is on the party objecting to consolidation to demonstrate that prejudice is caused, if consolidation is allowed. It was submitted that if an entity is self – serving, self – dependent and self – sustainable, a view can be taken for not granting consolidation, however in the instant case, both RPPL and RISPL are not self – serving, self – dependent and self – sustainable. The Learned Counsel for the Applicant referred to the Business Transfer Agreement to show that the IP relating to O&M has been transferred entirely by RPPL to RISPL, with the consent of the IP owner, Vensys and RPPL has agreed not to compete in the market space of O&M.

3.8. The Learned Counsel for the Applicant further submitted that both RPPL and RISPL are in the business of supplying / operating wind energy turbines / converters, which harness wind, which is a natural resources for purpose of generation of power. Thus, it was argued that natural resources like air, wind, water, natural gas and spectrum are subject to public trust doctrines, as declared by the Hon'ble Supreme Court in various cases including **MC Mehta –Vs- Kamal Nath (1997) 1 SCC 388** and that no commercial value has been incorporated in respect of this invaluable public resources and it is a commonly shared resource.

3.9. Thus, it was submitted by the Learned Counsel for the Applicant that only if the Resolution Process of the two entities viz. RPPL and RISPL are consolidated in joint proceedings, the same will result in maximization of the value of the assets of the Corporate Debtor and balance the interest of all the stakeholders and as such, it was submitted that it is just and necessary that there should be consolidation of the Resolution Process of RPPL and RISPL.

3.10. The Learned Senior Counsel Mr. Om Prakash appeared on behalf of the RP of RISPL also argued in favour of consolidation of CIRP of both RPPL and RISPL. It was submitted by the Learned Senior Counsel that simultaneous CIRP in respect of both RPPL and RISPL would favour the creditors as it would help them not only to retain their voting share in the CoC meeting but will also allow them to settle the claims present with both Corporate Debtors in a more amicable way. Further, it was submitted that simultaneous CIRP will resolve any disputes pending between the Corporate Debtors and speed up the process of CIRP. Reliance was placed upon the Judgment of the Hon'ble NCLAT in the matter of **Edelweiss Asset Reconstruction Company Limited –Vs- Sachet Infrastructure Pvt. Ltd.** in *Company Appeal (AT) (Insolvency) No. 377 of 2019,*

wherein the Hon'ble NCLAT has allowed for simultaneous CIRP of the Holding Company and its Five Subsidiaries under a common Resolution Professional due to the commonalities established therein.

3.11. The Learned Senior Counsel for RISPL further submitted that the object of IBC, 2016 is the Resolution and Rehabilitation of the Companies which turn the Corporate Debtors into going concern as opposed to Liquidation of its assets. It was submitted that the individual CIRP of both the Corporate Debtors viz. RPPL and RISPL has resulted in and is continuously resulting in various litigation disputes and a decrease in the value of the assets of both the Companies. It was submitted that a simultaneous CIRP proceedings, by keeping the assets of each company separate, will increase the coordination between the companies as both the companies will be functioning under one Resolution Professional. This process will provide a better solution to those who have filed their claims before both the Corporate Debtors and have been rejected by both the Resolution Professionals by shifting liabilities on the other Company.

3.12. The Learned Senior Counsel for RISPL further submitted that in the 8<sup>th</sup> CoC meeting conducted on

06.05.2021, the Applicant has received 91.9% votes in favour of filing the Application for simultaneous CIRP of both RPPL and RISPL. The extract of the resolution passed by the CoC of RISPL is captured herewith.

VOTING SHEET FOR THE EIGHTH MEETING OF COMMITTEE OF CREDITORS OF THE CORPORATE DEBTOR																		
M/S. REGEN INFRASTRUCTURE AND SERVICES PRIVATE LIMITED																		
Held Through Video Conference (Mode: Zoom Meeting) AT 04:30 PM to 6:00 p.m. on 06 <sup>th</sup> May 2021																		
Hon'ble NCLT, Chennai Bench Order IBA/1424/2019, dated 19-02-2020																		
DETAILS OF THE RESOLUTIONS PASSED																		
S. No	Consolidated Voting Sheet at the 8th CoC Meeting										Total Vote polled (%)	Votes polled in favour of Resolution (%)	Votes polled against the resolution (%)	Votes polled in favour of the resolution out of Total Vote polled (%)	Votes polled against the resolution out of Total Vote polled (%)	Resolution to be passed with more than 66% voting as per the sec-28(1) of I&C 2016		
	Members of CoC			Asset Reconstruction Company India Limited			L&T Infra Investment Partners			State Bank of India, SAM Branch								
	Percentage of Voting Power			70.27%			20.92%			8.81%								
Resolutions Proposed & Passed			Yes	No	Abstain	Yes	No	Abstain	Yes	No	Abstain							
1	To Consider and Evaluate on the Resolution Plans Received				✓			✓		✓			100	8.81	91.19	8.81	91.19	Resolution Not Passed
2	Continuation in Conducting Enterprise Valuation				✓			✓		✓			100	8.81	91.19	8.81	91.19	Resolution Not Passed
3	To file Petition before the Hon'ble Tribunal, Chennai for the initiation of the Simultaneous Corporate Insolvency Resolution Process Among RPPL & RPPPL			✓*				✓			✓		100	91.19	8.81	91.19	8.81	91.19%
4	RP to take legal opinion for dealing with the Four Resolution Plans Received			✓				✓			✓		100	100	0	100	0	100.00%

\*Note: A/cit, One of the CoC Members, having Voting Share of 70.27% have given following description on the Simultaneous CIRP among RPPL & RISPL

- Our voting will be subject to the following:
- Under the simultaneous resolution, one RP will be appointed for both the companies, however the CoC of each of the companies will be separate.
- Each EA will submit separate resolution plan for each company and CoC of each company will vote for its respective resolution plan separately.
- The CoC of one company will have no voting right on resolution plan of other company.
- In case CoC of RPP doesn't agree for simultaneous resolution, the current process to continue.

Date: 06/05/2021.  
Place: Coimbatore.

**Keenuka Devi Rangaswamy**  
Resolution Professional  
of Regen Infrastructure and Services Private Limited  
Registration No: IRRI/IFA/001/PP/01/63-2019-20 - 12871  
SB: Registered Address: Arthi Nam, 99, Jobhi Nagar, 2nd Street, Uppilpalayam (Post), Coimbatore - 641 015.  
Mail ID: Registered with IRRI (rassociatesrco@gmail.com)  
PFI No: 9442027751

Under such circumstances, the Learned Senior Counsel for the RP of RISPL has prayed for ordering simultaneous CIRP in relation to Corporate Debtors viz. RPPL and RISPL and to appoint a common Resolution Professional.

3.13. The Learned Senior Counsel Mr. R. Murari, appeared on behalf of the Applicant in IA/617/CHE/2021 i.e.

Echanda Urja Private Limited, advanced his arguments in favour of Consolidation of CIRP of both RPPL and RISPL. It was submitted that the Applicant is engaged in Wind Power Generation business and the Applicant has its 100.5 MW wind farm at Echanda site, Tirunelveli District, consisting of 67 wind turbines of 1.5 MW each. It was submitted by the Learned Senior Counsel that the RPPL has exclusive manufacturing and repair facility for generators at TADA Andhra Pradesh. Further, it was submitted that RPPL has an exclusive license agreement with VENSYS AG, a Company in Germany for production and sale of Vensys Wind Turbines in India.

3.14. The Learned Senior Counsel for the Applicant submitted that NuPower Renewables Pvt. Ltd., a holding Company of the Applicant had purchased 67 Nos. of 'ReGen make Vensys V 77 – 1500 KW Wind Turbines' each from RPPL for its 100.5 MW Echanda wind farm and entered into a Comprehensive Operations and Maintenance Agreement (O&M) dated 06.06.2011 with RPPL for a period of 10 years. The Agreement was amended on 12.02.2014 to provide for additional conditions of service by RPPL. It was submitted that NuPower Renewables Pvt. Ltd. sold its business relating to 100.5MW wind farm at Echanda site at Tirunelveli District

to its subsidiary, the Applicant herein in the year 2015 – 2016. Thereafter, it was submitted that the RPPL had transferred the activity of operations and maintenance services to RISPL in the year 2015. Due to the above change, an Assignment Agreement dated 24.07.2015 was entered into between NuPower Renewables Pvt. Ltd. with RISPL and as per the said Agreement, it was agreed in principal that RISPL would provide the operations and maintenance services for the 100.5 MW Echanda wind farm to the Applicant. It was further submitted by the Learned Senior Counsel that on 27.07.2015, RPPL issued a letter admitting its liability and obligations under O&M Agreement and that RPPL shall be the principal obligor for the performance of the assigned obligations to RISPL. Thereafter, it was submitted that an Amendment Agreement was entered between the Applicant and RISPL on 16.08.2019 and by virtue of the same, the tenure of Operations and Maintenance for 100.5 MW Echanda wind farm was extended to 25 years and relevant clauses to give effect to such amendment were amended.

3.15. The Learned Senior Counsel submitted that both RIPL and RISPL are now under CIRP on 09.12.2019 and 19.02.2020 respectively and that 42 Wind Generators out of

the 80 Wind Generators are procured from RPPL by NuPower Group have reported Generator failure till date and that the Applicant has filed MA/918/2020 against RPPL and RISPL to provide Operations and maintenance Services including replacement of generators within 60 days from the date of failure. It was further submitted that when the said Application was pending before this Tribunal, the Applicant has suffered failure of another 17 Generators.

3.16. It was submitted by the Learned Senior Counsel for the Applicant that the Corporate Insolvency Resolution Process of RPPL is required to be combined along with RISPL given the linkages and inherent parent subsidiary relationship between both the companies and that it was submitted that RPPL is proceeding independently with its Resolution and by excluding RISPL. Further, it was submitted that 'State Bank of India' is a common creditor in both RPPL and RISPL. Reliance was placed by the Learned Senior Counsel for the Application in the Videocon case (*supra*), however for the sake of brevity, the arguments advanced on the said issue are not repeated.

3.17. The Learned Senior Counsel for the Applicant further submitted that the CoC of RPPL is proceeding with the

Resolution Plan and without considering the above aspects. It was further submitted that State Bank of India which is a part of CoC of RPPL and RISPL is using its majority voting powers in RPPL and is ignoring the interest of RISPL and similarly placed customers. It was submitted that no attempt was made to determine the combined value of RPPL and RISPL and that the CoC of RPPL are pushing ahead with the Resolution Plan. Under such circumstances, the Learned Senior Counsel in order to protect the interest of the stakeholders and the Applicant reiterated that it is necessary to order for joint Corporate Insolvency Resolution Process of both RPPL and RISPL by appointing a single common Independent Resolution Professional.

#### **4. ARGUMENTS ADVANCED AGAINST CONSOLIDATION**

4.1. The CoC of RPPL and the RP of RPPL were the objectors to the consolidation of CIRP of both the Companies. Mr. Arvinth Pandian, Senior Advocate appeared on behalf of RP of RPPL and Mr. M.S. Krishnan, Senior Advocate appeared on behalf of the CoC of RPPL submitted that the relief as sought for by the Applicants in the above applications seeking consolidated CIRP or simultaneous CIRP of RPPL and RISPL is not at all maintainable and that the present

Application filed by the Applicants is gross abuse of the process of law and a blatant attempt to frustrate the object of IBC, 2016.

4.2. The Learned Senior Counsel submitted that all the Applicants have no business relationship whatsoever with RPPL presently as their business transactions were complete and some of the Applicants are Operational Creditors who have filed their claim with RISPL and their business transactions are only with RISPL. In such a scenario it was submitted that the Applicants have no *locus standi* at all to maintain these Applications and the IA's are bound to be dismissed in limine. It was submitted by the Learned Senior Counsel that some of the reliefs sought for in the Application are in effect of dictating the terms to this Tribunal so as to direct the Resolution Applicant of RPPL to provide for service and maintenance of Generators in respect of RISPL.

4.3. The Learned Senior Counsel submitted that separation of businesses between RPPL and RISPL has not caused any prejudice to the Applicants and in fact only to the lenders of RPPL has suffered irreparable loss and grave prejudice since the assets which were charged to RPPL lenders were given to RISPL without the consent of RPPL

lenders. Further, it was submitted that if the business of O&M was not transferred to RISPL, then these Applicants would have no locus to maintain these Applications.

4.4. The Learned Senior Counsel further submitted that even in a joint CIRP there is no assurance that the Resolution Applicant will not terminate or re-price the contracts for O&M services of RISPL. It was submitted that the Applicants are only customers of RPPL and that they are not Financial Creditors and they do not have any say over the CIRP of the Corporate Debtor. Further, it was submitted that if every supplier and customer contract is to be protected there would be no Resolution Plan at all and the same would end up in liquidation process. The Learned Senior Counsel submitted that any losses or suffering to the Applicant due to CIRP and Resolution Plan are direct consequence of the state of business affairs of RPPL and RISPL arising out of the commercial risk taken by the Applicants in choosing O&M services with RISPL.

4.5. The Learned Senior Counsel submitted that the powers of the CoC of RPPL vested under the provisions of IBC, 2016 cannot be taken away by the Applicants by way of filing the present Application. In any event, it was submitted

that, even during consolidation, no such obligation be endowed upon any Resolution Applicant that the Resolution Plan should honour the O&M contracts of RISPL to the persons similar like that of the Applicants herein. Further it was submitted that the present Applications are not maintainable in law but also is an abuse of process of law, since the present Application has been filed after a period of 18 to 20 months from the date of commencement of CIRP.

4.6. The Learned Senior Counsel for RPPL submitted that the provisions of the Code, do not contemplate any consolidated CIRP of multiple companies. Further, it was submitted that it is a matter of record that the Bankruptcy Law Reforms Committee had considered and deferred the concept of Group Insolvency under the regime of IBC. It was submitted that the present Applications for consolidation of CIRP of both RPPL and RISPL have been filed by the Applicants only to thwart the Resolution Plan of RPPL which is at its final stages and the CoC of RPPL after a comprehensive process duly conducted, approved the Resolution Plan of M/s. Renew Power Service Private Limited and the same is pending approval on the file of this Tribunal in IA/460/CHE/2021. Further, it was submitted that the CoC of RPPL has already exercised its commercial wisdom and

approved the Resolution Plan and even rejected the suggestion to allow bidders of RISPL to participate in the Resolution Process of RPPL and the same was a well considered decision made in exercise of the commercial wisdom of CoC.

4.7. The Learned Senior Counsel for RPPL submitted the judgments relied on by the Applicants for group CIRP or even simultaneous CIRP passed in few cases, are of no avail, since they are being rendered on totally different facts and that the CoC's are common. However in the present case, it was submitted that only 10% of the CoC members are common among RPPL and RISPL. It was submitted that the CoC of RPPL is completely comprised of public sector banks and two private banks and only one of the banks is part of the CoC of RISPL and even the voting share is less than 10%. Further, it was submitted that the CoC of RPPL has rejected the contention for joint CIRP and the decision is taken in its commercial wisdom and the same has become final and the said decision cannot be interfered with by the Applicants at any stage which, if done so, would have no end at all. In any event, it was argued that there cannot be a forced consolidation or simultaneous CIRP of both the Companies viz. RPPL and RISPL.



4.8. The Learned Senior Counsel for RP of RPPL submitted that the cases referred to by the Applicants in Videocon (*supra*), Radico Khaitan Ltd., (*supra*) and Oase Asia Pacific Pte Ltd. (*supra*) all pertain to the facts of that particular case since in certain cases standalone Resolution was not possible and in certain cases the Corporate Debtor was pushed into liquidation. However, in the present case, the Resolution Plans which were received in respect of RPPL way back in November 2020 itself have been approved by the CoC during April 2021 and also the RISPL has received certain Resolution Plans for its consideration. Lastly, it was submitted that the principles of value maximization will apply only with the framework of IBC, 2016 and cannot be allowed to be stretched beyond the framework which has not been stipulated under the provisions of IBC, 2016. Under such circumstances, the Learned Senior Counsel for RPPL sought for dismissal of the Applications filed by the Applicants for consolidation / simultaneous CIRP and also to appoint a common Resolution Professional.

## **5. ANALYSIS AND FINDINGS OF THIS TRIBUNAL**



5.1. Before we embark upon the merits of the case as to whether this Adjudicating Authority can order for consolidation of CIRP in relation to RPPL and RISPL, it is vital to point out here that this Adjudicating Authority considering the unique issue which has arisen in the present Application, has by way of interim directions issued various orders to explore the possibility of conducting a joint CIRP meeting in respect of RPPL and RISPL and has also appointed a Mediator in this regard to oversee the entire process. The direction issued by this Tribunal on 05.04.2021 is extracted hereunder;

Counsel for the Applicant is led by Learned Sr. Counsel Mr. R. Murari. Ld. Counsel Mr. A.G. Satyanarayana appears for R1. Ld. Counsel Mr. B. Dhanaraj appears for R2.

The connected interim applications were listed today.

The erstwhile Board of Directors managing both the companies are one and the same. Both the companies are under CIRP with two different RPs. The CoC members of both are also different. Hence, there appears to be no co-operation between the two companies.

After hearing various applications in both the matters, it is clear that there is no co-ordination between both the companies. However, the work of both the companies in respect of the sale of Wind Mills and servicing the Wind Mills are interconnected.

Learned Senior Counsel Mr. R. Murari stated that the meeting as suggested by the Adjudicating Authority was conducted. However, since there were no Independent Observer and also both sides were involved in various discussions/accusations, no valid suggestions could emerge.



Considering the request of the Ld. Senior Counsel for R1, it is felt that it would be appropriate if an Independent Observer is present to conduct the meetings between both the RPs along with the CoC members of both the Corporate Debtors companies so as to sort out various pending issues creating impediments in CIR Process of both the companies.

Therefore, this Adjudicating Authority hereby appoints Hon'ble Mr. Justice K. Kannan (Retd. Judge, Punjab and Haryana High Court, as a Mediator to conduct the joint meeting between the RPs/CoC members as well as the Counsel are also permitted to attend the meeting.

Both the RPs shall give two pages note stating nature of business of the companies and status of CIRP to the Learned Mediator. The Mediator shall conduct the joint meeting on or before 20.04.2021, if necessary, the Mediator shall also have more than one meeting and shall file his report on or before 23.04.2021.

It is suggested that since both the companies were involved in Wind Mill Energy & Services, the RPs shall also ensure that a competent technical person having the necessary domain knowhow in Wind Mill Energy generation and its regulations and preventive maintenance practices is present in the said meeting to support and explain the importance of the Wind Mill Energy conservation and other technicalities to the Mediator.

This Adjudicating Authority fixes a remuneration of Rs.1,00,000/- (Rupees One Lakh only) to be paid towards fees and expenses to the Hon'ble Mediator. This amount shall be equally shared by both the companies.

List this application on **27.04.2021** at **10.30 a.m.** along with other connected applications for further hearing.

5.2. However, it is seen that in the meantime on 03.04.2021 itself the CoC of RPPL in its 13<sup>th</sup> meeting has proposed a Resolution for approval of Resolution Plan submitted by one M/s. Renew Power Services Private Limited in respect of RPPL and the last date for e-voting for the said

voting on the said resolution was fixed as 23.04.2021. Thereafter, it is seen that the CoC of RPPL with a majority of 94.08% have voted in favour of the Resolution Plan submitted by M/s. Renew Power Services Private Limited. While this being the fact, when the matter came up for hearing before this Tribunal on 27.04.2021, for filing of the Report of the Mediator, this Tribunal has observed as follows;

Both these applications with concurrence of all the Counsels were placed before the Learned Mediator for consideration of a viable solution for a group insolvency of both the companies to facilitate the maximisation of the assets of both the Corporate Debtors. Learned Mediator has filed his report on 23.04.2021. As per order of this Adjudicating Authority, the total fees was fixed as Rs.1,00,000/- (Rupees One Lakh only). The RP in IBA/1424/2019 has paid their share of Rs.50,000/- (Rupees Fifty Thousand only). However, the RP in IBA/1099/2019 has failed to pay their share of Rs.50,000/- as per the Mediator's letter dated 23.04.2021. During the course of argument, the Ld. Counsel Mr. A.G. Satyanarayana appearing in IBA/1099/2019 has stated that on 23.04.2021 through RTGS, the payment was made to the Learned Mediator. However, we do not have the details of the same.

Ld. Counsel Mr. A.G. Satyanarayana appearing in IBA/1099/2019 submits that there is mediation during the period from 05.04.2021 to 20.04.2021. Meanwhile, the CoC members in IBA/1099/2019 have approved a Resolution Plan at 95% voting. This Adjudicating Authority with concurrence of all the members and Senior Counsels have appointed the Learned Mediator Mr. Kannan (Retired High Court Judge) to explore the possibility of maximisation of the value of assets of the Corporate Debtor in IBA/1099/2019 together with a wholly-owned subsidiary of the Corporate Debtor in IBA/1424/2019. This Adjudicating Authority is of the opinion that pending the outcome of the mediation, it is not appropriate on the part of the RP in IBA/1099/2019 to call for a CoC meeting and approve the Resolution Plan in a hurry. Since there is an extension of CIRP period, having been granted by this Adjudicating Authority, the

RP could have waited for further direction and outcome of mediation, as a mark of respect of all the Counsel present, Mediator and the Bench. However, since the group insolvency is still in evolving stage and law is yet to take final shape, the exercise of joint sale of both the Corporate Debtors appears to be not possible due to the unilateral behaviour of RP in IBA/1099/2019.

The Adjudicating Authority acknowledges the effort taken by the Learned Mediator in exploring the possibility of a joint sale of both the Corporate Debtors. However, this exercise appears to be futile. This opens up the question of exploring possibility of group insolvency. The difficulties during the CIRP process of both the companies, strengthen the view that group insolvency is inevitable in such cases. Further, in this particular case in respect of wind energy, it is not only loss of stakeholders of both the Corporate Debtors, the wind energy loss is a national loss. Various Public Sector Undertakings like GAIL India Ltd., and other players like Nupower Wind Farm Ltd., TVH Energy Resources Pvt. Ltd. whose stakes are also involved in this outcome of the CIRP of the two Corporate Debtors. Anyway, this Adjudicating Authority tried to facilitate and bridge the gap between the two companies and explore the possibility of a joint sale of both as a ongoing concern which will, in turn, support all the stakeholders of both the Corporate Debtors. However, it appears to be futile.

With this above observation, mediation report is taken on record and closed.

List all these applications on **03.06.2021** for hearing and disposal.

5.3. Thus, it is seen that the efforts undertaken by this Tribunal in order to explore the possibility of simultaneous CIRP in respect of RPPL and RISPL did not yield fruitful result. Further, it is seen that the RP of RPPL has not correctly placed on record the events which transpired in the COC meetings and this Tribunal has been kept in the dark as to when the CoC of RPPL has approved the Resolution Plan.

The RP of RPPL on hearing before this Tribunal on 05.04.2021 has not disclosed the fact that the e-voting on the Resolution Plan of RPPL was opened on 03.04.2021 itself. The said act of the RP of RPPL would amount to suppression of material facts. Further it was also brought to the knowledge of this Tribunal that an Application has been filed by one of the Financial Creditors objecting to the appointment of the Applicant as RP of RPPL.

5.4. Be that as it may, coming to the issue which is required to be adjudicated in the present case, it is seen that a total of 25 Applications, as arrayed in the cause title, have been filed by the Applicants seeking consolidation and simultaneous CIRP and also to consolidate the assets in relation to the Corporate Debtors viz. RPPL and RISPL.

5.5. IA/548/CHE/2021 alone is an Application which is filed by RP of RISPL seeking simultaneous CIRP and the remaining 24 Applications are filed by the Applicants who are customers either to RPPL or RISPL.

5.6. As already alluded *supra*, the status of the Applicants who have filed the present Application is that they are the customers of RPPL or RISPL. We have gone through

the Application filed by the Applicants and in all the Applications the status of their claim filed with the RP has not been disclosed by the Applicants. Further, from the nature of transactions that happened between the Applicants and the respective Corporate Debtor viz. RPPL and RISPL, it is clear that Applicants herein cannot be treated as an "Operational Creditor" in relation to the Corporate Debtors. Sec. 5(20) and 5(21) of IBC, 2016 defines the term "Operational Creditor" and "Operational debt", which is extracted hereunder;

(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the 2 [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

5.7. The term "Operational Creditor" means a person who has provided goods or rendered service to the Corporate Debtor. In the present case, all the Applicants herein have not rendered services to the Corporate Debtor, however, it is that the Corporate Debtor who has rendered services to all the Applicants as per the Operation and Maintenance Agreement. In such a scenario, the Applicants herein cannot be termed as an "Operational Creditor". Thus, these



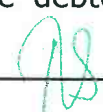
Applicants who are all customers of RPPL and RISPL in the opinion of this Adjudicating Authority has no *locus standi* to maintain the present Application, since they are not either a 'Financial Creditor' or an 'Operational Creditor' in respect of both RPPL and RISPL. Also these Applicants are not members of the CoC of either RPPL or RISPL. Thus, this Tribunal is of the considered view that except IA/548/CHE/2021, which is filed by the RP of RISPL, the other Applications filed by the customers of either RPPL or RISPL seeking consolidation or simultaneous CIRP in relation to the Corporate Debtors are not maintainable.

5.8. Before we give our finding in relation to consolidation of CIRP in relation to RPPL and RISPL, it is imperative to examine the provisions of IBC, 2016 as to how it has dealt with the properties of the Holding Company and Subsidiary Company. *Apropos* it would be relevant to refer to Section 18 of IBC, 2016 which deals with the duties of the Interim Resolution Professional.

**18. Duties of interim resolution professional. –**

The interim resolution professional shall perform the following duties, namely: -

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to -



- (i) business operations for the previous two years;
  - (ii) financial and operational payments for the previous two years;
  - (iii) list of assets and liabilities as on the initiation date; and
  - (iv) such other matters as may be specified;
- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;
- (c) constitute a committee of creditors;
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;
- (e) file information collected with the information utility, if necessary; and
- (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including -
- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
  - (ii) assets that may or may not be in possession of the corporate debtor;
  - (iii) tangible assets, whether movable or immovable;
  - (iv) intangible assets including intellectual property;
  - (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
  - (vi) assets subject to the determination of ownership by a court or authority;
  - (g) to perform such other duties as may be specified by the Board.

*Explanation.* – For the purposes of this section, the term “assets” shall not include the following, namely: -



(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

5.9. Thus, a reading of Section 18(f)(v) of IBC, 2016 would manifest the fact that the Interim Resolution Professional shall take control over the securities including shares held in any subsidiary of the Corporate Debtor. However, clause (b) to the Explanation to Section 18 of IBC, 2016 would state that the assets of the subsidiary of the Corporate Debtor would not form part of the assets of the holding Company. A similar corollary can be seen in Section 36(4) of IBC, 2016 wherein it is stated that shares held in any subsidiary of the Corporate Debtor would form part of the Liquidation Estate and that the assets of the subsidiary of the Corporate Debtor would not form part of the Liquidation Estate. Thus, it is made clear that IBC, 2016, treats the assets of the holding and subsidiary company independently and expressly excludes the assets of the subsidiary Company to be treated along with that of the holding Company. While this being the position of law in relation to holding and subsidiary company under IBC, 2016, the next question

which arises for consideration is that *de hors* the said statutory provision, whether this Tribunal can order for consolidating the assets of the holding and subsidiary company together and thereby order for consolidated CIRP in relation to RPPL and RISPL.

5.10. We have gone through decisions in regard to Consolidation of CIRP ordered by the NCLT Mumbai Bench in the Videocon case (*supra*) and by the Hon'ble NCLAT in the matter of Radico Khaitan (*supra*) and also in Oase Asia Pacific Pte. Ltd. (*supra*). It need not be emphasized that the provisions of IBC, 2016 does not specifically authorize consolidation of CIRP and as already discussed above, the provisions of IBC, 2016 treat the assets of the holding and subsidiary independently. It is seen that the NCLT Mumbai Bench by placing reliance on several US and UK case laws, one of which being the case of *Food Fair Inc., In re; 10 BR 123 (1981)*, where the Bench held that the key factor for granting substantive consolidation of all debtors is required to yield an 'equitable treatment' of creditors without any undue prejudice. However, the provisions of IBC, 2016 do not deal with the 'equitable treatment' when it comes to Operational Creditors and 'Financial Creditor' and this legal position is fortified by the Judgment of the Hon'ble Supreme

Court in the matter of **Committee of Creditors of Essar Steel India Limited -Vs- Satish Kumar Gupta and Others;** (2020) 8 SCC 531, wherein it has been held that the Financial Creditors and Operational Creditors by virtue of their business relations with the Corporate Debtor can never be equally placed and that the IBC itself contemplates Operational Creditors as a separate class of creditors.


5.11. It is also required to be noted that the question of consolidation is one arising out of equity. The decision of the NCLT Mumbai Bench, and the Hon'ble NCLAT in certain matters ordering for Consolidation of CIRP, in the absence of specific provisions under IBC, 2016, was only by exercising its equity jurisdiction. At this juncture, this Adjudicating Authority, which is a creature of a statute, is required to carefully examine whether such an 'equity jurisdiction' has been conferred upon this Tribunal. In relation to the UK and US law referred by the NCLT Mumbai Bench in Videocon Case (*supra*), wherein consolidation of CIRP is being ordered, is by exercising equity jurisdiction which is available under the US and UK Bankruptcy Law. The Indian parliament in its 'legislative wisdom' has expressly and deliberately omitted to implant the concept of 'equitable jurisdiction' upon the Adjudicating Authority under IBC, 2016.

5.12. Further, the term 'equity' which is conspicuous by its absence under the provisions of IBC, 2016 has been engrafted in the Indian Insolvency regime by way of judicial intervention by referring to the US and UK Bankruptcy Law, in which the equity jurisdiction has been embedded under the relevant US and UK Bankruptcy Code. Under the US Bankruptcy Code, the power to order for substantial consolidation emanates from Section 105(a) of the US Bankruptcy Code, which is as follows;

**U.S. Code § 105 - Power of court**

- (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

5.13. Thus, we can see that a broad and equitable power has been conferred under Section 105(a) of the US Bankruptcy Code, which authorizes the Court to issue "any order, process or judgment". However, in so far as the Indian Bankruptcy law is concerned, similar powers have been conferred under Section 60(5)(c) of IBC, 2016, which are as follows;



**60. Adjudicating Authority for corporate persons. –**

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code

5.14. The powers conferred under Section 60(5)(c) of IBC, 2016 cannot be equated with that of Section 105(a) of the US Bankruptcy Code, since under the latter, broad powers have been conferred to pass “any orders or judgments”, however under provisions of IBC, 2016, powers have been conferred only to decide on the question of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor. Thus, it is seen that the Indian legislative makers have consciously omitted to confer such “equity jurisdiction” upon the Indian Insolvency and Bankruptcy Code, 2016. Also, the Hon’ble Supreme Court while dealing with the provisions of IBC, 2016 had an occasion to deal with the said issue and as early as in the

year 2019 while dealing with the approval of a Resolution Plan and the jurisdiction of NCLT and NCLAT, in the matter of

**K. Sashidhar -Vs- Indian Overseas Bank and Ors;**

(2019) 12 SCC 150, has held in para 58 as follows;

**58.** Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.

*(emphasis supplied)*

5.15. Also, the Hon'ble Supreme Court recently in the matter of **Pratap Technocrats (P) Ltd. and Others -Vs- Monitoring Committee of Reliance Infratel Limited &Anr;** 2021 SCC OnLine SC 569, dealt with the equity jurisdiction of NCLT and NCLAT and has held as follows;

**26.** The resolution plan was approved by the CoC, in compliance with the provisions of the IBC. The jurisdiction of the Adjudicating Authority under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2). The NCLT is within its jurisdiction in approving a resolution plan which accords with the IBC. There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC.

**30.** The jurisdiction which has been conferred upon the Adjudicating Authority in regard to the approval of a

resolution plan is statutorily structured by sub-Section (1) of Section 31. The jurisdiction is limited to determining whether the requirements which are specified in sub-Section (2) of Section 30 have been fulfilled. This is a jurisdiction which is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute. The Adjudicating Authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.

**47.** These decisions have laid down that the jurisdiction of the Adjudicating Authority and the Appellate Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the Adjudicating Authority or the Appellate Authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment.

**48.** Certain foreign jurisdictions allow resolution/reorganization plans to be challenged on grounds of fairness and equity. One of the grounds under which a company voluntary arrangement can be challenged under the United Kingdom's Insolvency Act, 1986 is that it unfairly prejudices the interests of a creditor of the company. The United States' US Bankruptcy Code provides that if a restructuring plan has to clamp down on a dissenting class of creditors, one of the conditions that it should satisfy is that it does not unfairly discriminate, and is fair and equitable. However, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature to not confer any independent equity based jurisdiction on the Adjudicating Authority other than the statutory requirements laid down under sub-Section (2) of Section 30 of the IBC.

**50.** Hence, once the requirements of the IBC have been fulfilled, the Adjudicating Authority and the Appellate Authority are duty bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the Adjudicating Authority nor the Appellate Authority have an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.



(emphasis supplied)

5.16. Thus, the Hon'ble Supreme Court has vociferously stated that this Adjudicating Authority (NCLT) and also the Appellate Authority (NCLAT) have not been empowered with equity jurisdiction under the provisions of IBC, 2016 and that there is no equity-based jurisdiction with the Adjudicating Authority, under the provisions of the IBC, 2016. Also, it is made clear that, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature not to confer any independent equity-based jurisdiction on the Adjudicating Authority. Further, an attempt was made by the Learned Senior Counsels arguing in favour of consolidation to state that these decisions were rendered on the issue of approval of Resolution Plan and hence the same cannot be applied to the facts of the present case. However, we are unable to accept the said contention, in view of the fact that the *ratio decidendi* which has been laid down in the above referred Judgment is that in order to exercise an 'equity jurisdiction', the same has to be conferred under the statutory framework i.e. under the provisions of IBC, 2016.



5.17. Further, as emphasised by the Hon'ble Supreme Court in the Judgment referred *supra*, the Indian Bankruptcy Code, has consciously did not confer any independent equity-based jurisdiction on the Adjudicating Authority. As a corollary thereof, if there is no equity-based jurisdiction available under the provisions of the IBC, 2016, then the consolidation of CIRP of group companies, in the absence of specific provisions under IBC, 2016, cannot be ordered by this Adjudicating Authority.

5.18. Further, it is also significant to point out here that, the Hon'ble Supreme Court, while dealing with the Indian Insolvency Laws, after examining the judicial interventions and innovations made under the provisions of IBC, 2016 by the Adjudicating Authority and also by the Appellate Authority, in the matter of **Arun Kumar Jagatramka -Vs- Jindal Steel and Power Ltd. &Anr., 2021 SCC OnLine SC 220**, has held as follows;

**103.** At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of the NCLAT in *Y Shivram Prasad* (*supra*). Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the

IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

**"An adjudicating authority ensures adherence to the process**

At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator."

**104.** Once again, we must clarify that our observations here are not on the merits of the issue, which has not been challenged before us, but only limited to serve as guiding principles to the benches of NCLT and NCLAT adjudicating disputes under the IBC, going forward.

*(emphasis supplied)*

5.19. Thus, it is also seen that the Hon'ble Supreme Court after examining the provisions of IBC has stated that IBC is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. Further, it has been stated that the legislature has also

been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.

5.20. Another *raison d'etre* on why this Adjudicating Authority is not in favour of ordering for consolidation is that in the cases referred to by the Learned Senior Counsels for the Applicants are that the major Financial Creditors have moved an application for consolidation of CIRP of group companies, however in stark contrast, in the present case, the Committee of Creditors of RPPL are totally opposing consolidation, since they have a Resolution Plan in the offing. Similar is the case of RISPL, as seen from the 7<sup>th</sup> and 8<sup>th</sup> CoC meeting that RISPL is also evincing Resolution Plans from four prospective Resolution Applicants, however the RP of RISPL based upon a Resolution passed in the 8<sup>th</sup> CoC meeting has moved IA/548/CHE/2021 for simultaneous CIRP of both RPPL and RISPL. Thus, it becomes crucial at this stage for this Adjudicating Authority to decide on the aspect as to whether consolidation can be ordered at this stage, where the Resolution Plan in respect of both the entities are

in the offing. Hence, the timing of consolidation is also required to be examined, since ordering of consolidation of CIRP would amount to *de novo* start of CIRP process and also there is no extant procedure established under IBC, 2016, as to how to conduct the consolidated CIRP in relation to group companies. Further, when the Resolution Plan in respect of both RPPL and RISPL are in the pipeline, ordering for consolidation of CIRP and thereby starting a *de novo* CIRP process would amount to defeating the provisions of IBC, 2016, since there is always a danger which exists as to whether the Corporate Debtors would fetch a Resolution Plan during the period of consolidation. Also, as per the due process of law, the CIRP period in respect of RPPL came to an end on the day on which it has approved the Resolution Plan and at this point of time, it is not lawfully right under the provisions of IBC, 2016 to force RPPL (*which has already fetched a Resolution Plan*), to undergo another fresh round of CIRP.

5.21. It is also required to be noted at this stage, that one of the essential conditions which is required to be fulfilled for consolidation of CIRP is that the assets of a Corporate Debtor cannot be sold as a standalone unit and that only if consolidation is ordered, the same will maximize

the assets of the Corporate Debtor. In the present case, it is seen that the Resolution Plan in respect of RPPL has already been placed before the CoC of RPPL way back in the year November 2020 itself and the CoC has voted in favour of the Resolution Plan in the month of April 2021. Further, it is significant to point out here that, only after the Resolution Plan has been voted by the CoC of RPPL, the Applicants, who are all customers of RISPL have moved the present Application seeking consolidation of CIRP in relation to the Corporate Debtors viz. RPPL and RISPL. As already alluded *supra* the Resolution Plan in respect of RISPL is also in the offing and it cannot be said that the creditors of RISPL, let alone the customers, would be left in lurch in the present scenario.

5.22. One more vital factor in respect of the present case is that the members of the CoC of RPPL who have vehemently raised their objection for consolidation of CIRP of RPPL and RISPL. Further, the State Bank of India, who is a common Financial Creditor in respect of both RPPL and RISPL has also opposed consolidation and the said fact is also evident from the Resolution passed in respect of RISPL in its 8<sup>th</sup> CoC meeting. Also, it is required to be noted that one of the Financial Creditors of RISPL, viz. Asset Reconstruction

Company India Limited, (ARCIL) who is having 70.27% voting share has agreed for simultaneous CIRP only subject to the following conditions;

- (i) Even though one RP is appointed for both the companies, the CoC meeting of each Companies will be separate.
- (ii) Each Resolution Applicant will submit separate Resolution Plan for each company and the CoC for each company will be separate.
- (iii) The CoC of one Company will have no voting rights on the resolution of the Company.
- (iv) In case of CoC of RPPL does not agree for simultaneous Resolution, the current process to continue.

5.23. Thus, it can be seen from the conditions stipulated by ARCIL, who is a Financial Creditor in respect of RISPL, that ordering for consolidation would render absurd result and would be a futile exercise by this Tribunal. Also, the Applicants herein, who are not even Operational Creditors of RISPL and are not forming part of the CoC of either RPPL and RISPL have moved the present Application for consolidation that too at a belated stage i.e. after the expiry of 3 to 5 months of the approval of the Resolution Plan by the CoC of RPPL. Further, it is pertinent to note here that the erstwhile Board of Directors of both the Corporate Debtors have maintained complete silence throughout the proceedings.

5.24. Further, it is required to be noted that the Report of the Working Group Insolvency was submitted to the IBBI in the month of September 2019, wherein it was observed that IBC, 2016 has provisions for resolving insolvencies of a single company, however it does not have a common framework for resolving situations in which interlinked companies are going through insolvency. By noting the same, the Working Group Committee has proposed and recommended the definition of 'corporate group' including holding and subsidiary companies and has also suggested a comprehensive framework for group insolvency, that would start with a procedural coordination mechanism in the first phase. The Elements of the proposed framework may include: (i) a joint application against all corporate debtors who have defaulted and are part of a group, (ii) a single insolvency professional and a single adjudicating authority (to reduce to litigation and other costs, and save time), (iii) creation of a group creditors' committee, (iv) communication, cooperation and information sharing among all these various members, and (v) group coordination proceedings. Thus, it is seen that even after submitting a comprehensive Report by the Working Group Insolvency Committee, the said recommendation is yet to partake the character of an

ordinance or an Act of Parliament. Therefore, the arguments advanced by the Learned Senior Counsels in favour of consolidation cannot be considered since the Report of Working Group Insolvency Committee is only in the form of recommendation and is yet to partake the character of law and as such the recommendations made by the Working Group Insolvency Committee will not have the force of law.

## **6. CONCLUSION**

To sum up, the upshot of the above discussions would lead us to the following conclusion;

- (i) All the Applicants, except the Application filed by RP of RISPL (IA/548/CHE/2021), being customers of either RPPL and RISPL have no *locus standi* to maintain the present Application seeking consolidation or simultaneous CIRP of the Corporate Debtors, since they are neither a 'Financial Creditor' nor an 'Operational Creditor'.
- (ii) Furthermore, on perusal of the Judgment of **Videocon** (*supra*) and **Radico Khaitan** (*supra*) and **Oase Asia Pacific** (*supra*), it emerges that it is a fit case for ordering for consolidation, considering the views expressed by the customers of both the Companies. However, the CoC of RPPL, the suspended Directors of both the Companies or any Operational Creditor have not expressed their support for consolidation. Also, in

view of the reasoning stated *supra* and in the absence of 'equity' jurisdiction being vested upon this Tribunal under the provisions of IBC, 2016 and in the absence of specific provisions under IBC, 2016, this Adjudicating Authority is unable to order for consolidation or simultaneous of CIRP of the Corporate Debtors viz. RPPL and RISPL at the fag end of CIRP.

- (iii) When the Resolution Plan in respect of RPPL has been approved by the CoC and also the Resolution Plan in respect of RISPL is in the offing, ordering for simultaneous CIRP at this stage would amount to gross delay of Corporate Insolvency Resolution Process of both the Companies.

For the aforesaid reasons, all the Applications are arrayed in the cause title stands **dismissed**. No costs.

-sd-  
(ANIL KUMAR B)  
MEMBER (TECHNICAL)

-sd-  
(R. SUCHARITHA)  
MEMBER (JUDICIAL)

*Raymond*