



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- IV

IA NO. 2455 OF 2024

IN

COMPANY PETITION(IB) NO. 2561/ND/2019

IN THE MATTER OF:

M/S. SHAPOORJI PALLONJI & CO. PVT. LTD.

... OPERATIONAL CREDITOR

VERSUS

SINNAR THERMAL POWER LTD.

. . . RESPONDENT/ CORPORATE DEBTOR

AND IN THE MATTER OF:

RATTANINDIA POWER LTD.

. . . APPLICANT

VERSUS

SINNAR THERMAL POWER LTD.

THROUGH ITS RESOLUTION PROFESSIONAL & ORS.

. . . RESPONDENTS

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

Order Delivered on:14.10.2025

PRESENT:

For the Applicant

: Mr. Karan Batura,
Mr. Karan Mehta,
Ms. Tanvi Sapra, Advs.

For the Respondent

: Mr. Somesh Srivastava,
Ms. Nimisha,
Mr. Karan Gandhi,
Ms. Drishti Kaushik,
Mr. Ramakant Rai, Advs.



ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. Under consideration is an application filed on behalf of Rattanindia Power Ltd. (“**RPL**”), i.e. the promoter company of the Corporate Debtor herein, under section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with rule 11 of the National Company Law Tribunal Rules, 2016 with the following prayer:

“(a) Allow the instant Application and direct the Respondents to treat the amount of Rs.7,94,54,000/- (Rupees Seven Crore Ninety Four Lacs Fifty Four Thousand Only), as disbursed by the Applicant to the Corporate Debtor between 26.09.2022 and 19.01.2024, as Insolvency Resolution Process costs in the ongoing Corporate Insolvency resolution Process of 'Sinnar Thermal Power Limited';

(b) Direct the Respondent No. 1 to forthwith provide to the Applicant the relevant information regarding the decision taken by the Committee of Creditors of the Corporate Debtor on the claim filed by the Applicant for treating the amounts disbursed by it as Insolvency Resolution Professional costs;

(c) Direct the Respondent No. 1 to forthwith provide to the Applicant the copy of (i) all Notices of all CoC Meetings of the Corporate Debtor alongwith agenda(s)/ notes to agenda(s) of all Meetings of the Corporate Debtor; (ii) Minutes of all CoC Meetings of the Corporate Debtor; and (iii) voting result(s) of each voting held by/ before the CoC of the Corporate Debtor;

(d) Pass such further or other orders as may be deemed necessary in the facts and circumstances of the present Application.”

2. **Briefly stated the facts of the present case as averred by the Applicant are:**

- a. The Applicant, **Rattanindia Power Limited** (formerly *Indiabulls Power Limited*), promoted the Corporate Debtor in 2007 for establishing a 5x270 MW Thermal Power Project at *Sinnar SEZ*,



Nashik, Maharashtra, under the name Indiabulls Realtech Ltd. In 2010, the Corporate Debtor awarded the Operational Creditor, Shapoorji Pallonji & Co. Pvt. Ltd., the civil and structural works for the Boiler, Turbine, and Generator (BTG) package of the said project, pursuant to which corresponding work orders were issued.

- b.** To provide financial support and meet the business requirements of the Corporate Debtor, the Applicant and the Corporate Debtor entered into a Loan Agreement dated 30.10.2011, whereby the Applicant agreed to extend an unsecured loan up to ₹500 crore as and when required. The agreement, initially valid for three years, was extended on 01.01.2014 for a further five years, and subsequently renewed again on 01.01.2019 for another five-year term. During this period, the names of the entities were changed — the Applicant from *Indiabulls Power Limited* to *Rattanindia Power Limited*, and the Corporate Debtor from *Indiabulls Realtech Limited* to *Sinnar Thermal Power Limited*.
- c.** On 19.09.2019, the Operational Creditor filed CP(IB) No. 2561/ND/2019 under Section 9 of the IBC against the Corporate Debtor. This Hon'ble Tribunal, vide order dated 19.09.2022, admitted the petition, thereby initiating the CIRP of the Corporate Debtor and appointing Mr. Adarsh Sharma as the Interim Resolution Professional (IRP). Aggrieved by the said order, one of the suspended directors, Mr. Chandan Mishra, filed an appeal before the Hon'ble NCLAT, New Delhi, bearing Company Appeal (AT) (Ins.) No. 1185 of 2022 titled "Chandan Mishra, Suspended Director of Sinnar Thermal Power Ltd. vs. Shapoorji Pallonji & Co. Pvt. Ltd. & Anr." The Hon'ble NCLAT, vide interim order dated 26.09.2022 in Company Appeal(AT)(INS) No. 1185 of 2022, directed as follows:

"Shri Ramji Srinivasan, learned senior counsel for the Appellant submits that the proceedings for initiation of



Arbitration were already initiated before filing of Section 9 application, which statement is disputed by learned counsel for Respondent No. 1 Mr. Ramji Srinivasan further submits that against the award dated 22.04.2022, application under Section 34 of the Arbitration and Conciliation Act has already been filed in the High Court which is pending consideration. He further submits that in the minutes of meeting held on 02.05.2022 and 06.05.2022, the Ministry of Power is already taking steps to start commissioning of the plant and he has referred to minutes at SI. No. 4.4.5.

In view of the above submission, we are of the view that IRP in pursuance of the impugned order may not take any steps and it shall be open for the Appellant to participate further with the Ministry of Power in continuation of the earlier minutes of meetings."

- d.** The Applicant submitted that in view of the liberty granted by the Hon'ble NCLAT, New Delhi, the suspended directors continued to manage the day-to-day affairs of the Corporate Debtor, including efforts toward commissioning the power plant, protecting stakeholder interests, and arranging capital infusion for operational expenses. Subsequently, the Operational Creditor filed I.A. No. 4692 of 2022 in Company Appeal (AT)(Ins.) No. 1185 of 2022 before the Hon'ble NCLAT seeking clarification of the order dated 26.09.2022. The Hon'ble NCLAT, vide order dated 29.11.2022, clarified that its earlier order did not stay the moratorium imposed by the Adjudicating Authority under Section 14 of the Code and disposed of the application accordingly.
- e.** The Applicant submitted that the Hon'ble NCLAT, New Delhi, vide its final judgment dated 19.01.2024, dismissed Company Appeal (AT)(Ins.) No. 1185 of 2022, thereby vacating the interim order dated



26.09.2022. Pursuant thereto, the Applicant filed its claims before the IRP on 31.01.2024, namely:

- (i) ₹77,33,56,037/- under Form 'C' as a Financial Creditor; and
- (ii) ₹5,15,03,158/- under Form 'B' as an Operational Creditor.

Since no communication was received from the IRP regarding the status of these claims, the Applicant, through its authorised representative, addressed an email dated 19.02.2024 requesting that an amount of ₹7,94,54,000/-, incurred by the Applicant during the CIRP period till the disposal of the appeal on 19.01.2024, be recognised as CIRP costs in accordance with the provisions of the Code.

- f.** The Applicant submitted that on 23.02.2024, the Applicant received an email from the IRP confirming admission of its claim under Form 'B' for ₹5,15,03,158/-. Subsequently, on 27.02.2024, the IRP informed that the claim under Form 'C' was admitted to the extent of ₹69,90,02,037/- against the original claim of ₹77,33,56,037/-. Thereafter, vide email dated 13.03.2024, the IRP further revised the admitted amount under Form 'C' to ₹69,39,02,037/-.
- g.** Accordingly, the Applicant was admitted as an unsecured Financial Creditor of the Corporate Debtor (STPL) for ₹69,39,02,037/-. Thereafter, on 29.02.2024, the IRP, on behalf of the CoC, filed I.A. No. 1030/ND/2024 under Section 27 of the IBC seeking his replacement with Mr. Rahul Jindal. The said application was allowed vide order dated 19.03.2024, appointing Mr. Rahul Jindal as the Resolution Professional.
- h.** Pursuant to the Hon'ble NCLAT's order dated 26.09.2022, which restrained the IRP from proceeding with the CIRP, it became incumbent upon the suspended Board of Directors to preserve the Corporate Debtor as a going concern and pursue revival of its power plant. Accordingly, the Board sought necessary approvals from its lead lender, Power Finance Corporation Ltd. (PFC), to obtain financial assistance from its promoter company, i.e., the Applicant.



- i.** Pursuant to such approvals, the Applicant disbursed an aggregate sum of ₹7,94,54,000/- (Rupees Seven Crore Ninety-Four Lakh Fifty-Four Thousand only) between 09.11.2022 and 01.06.2023 under the existing Loan Agreement dated 30.10.2011. The disbursements were made through banking channels to the Corporate Debtor's account and were bona fide, solely intended to meet operational expenses and safeguard the interests of the creditors.
- j.** It is submitted that the funds disbursed by the Applicant were utilized solely to preserve the Corporate Debtor as a going concern during the period when the IRP was restrained from taking further steps in the CIRP. Despite this, the CoC has either failed to consider or has rejected the Applicant's claim for treatment of the said amount as CIRP costs, without proper application of mind.
- k.** The Applicant has not been formally informed of the decision, though it has bona fide reasons to believe its claim was rejected. It is respectfully submitted that, had the Applicant not extended timely financial support, the operations of the Corporate Debtor and the commissioning of its power plant would have come to a complete standstill. However, instead of acknowledging these bona fide efforts—made with prior approval of the lead lender, PFC—the CoC has unjustifiably refused to recognize the same as CIRP expenses.
- l.** It is submitted that the present case is a peculiar one where, with prior approval of the lead lender (PFC), the Applicant, being the promoter, was compelled to infuse funds to preserve the Corporate Debtor as a going concern and safeguard the interests of its creditors. Accordingly, the Applicant disbursed a total sum of ₹7,94,54,000/-, which ought to be treated as Insolvency Resolution Process Costs under Section 5(13) of the Insolvency and Bankruptcy Code, 2016.
- m.** In terms of Section 5(13)(c), any expenditure incurred in running the business of the Corporate Debtor as a going concern



constitutes CIRP costs. Since, in the present case, such expenses were met from the funds infused by the Applicant during the period 26.09.2022 to 19.01.2024—when the CIRP was ongoing though the IRP was restrained from acting—the said amount rightfully qualifies as Insolvency Resolution Process Costs.

3. Reply on behalf of the Respondent No. 1 i.e., RP of Sinner Thermal Power Limited (STPL)

- a. The Applicant’s contention that the RPL Expenses qualify as CIRP Costs is misconceived. It has been submitted that Section 5(13)(c) of the IBC specifically covers costs incurred by the Resolution Professional in running the business of the Corporate Debtor as a going concern. It does not extend to expenses incurred by the promoter group.
- b. Further, Regulation 31 of the CIRP Regulations, 2016 governs the scope of CIRP costs. Under Regulation 31(e), the Committee of Creditors (“CoC”) has the discretion to recognize any other expenses incurred during the CIRP as CIRP Costs. It is submitted that the mere fact that an expense arose during the CIRP period does not automatically make it a CIRP Cost. For inclusion, two essential conditions must be satisfied under Section 5(13)(c) read with Regulation 31(e):
 - i. The cost must be incurred by the IRP/RP during the CIRP period; and
 - ii. The cost must be incurred to keep the Corporate Debtor as a going concern.
 - iii. Any other expenses which are directly in relation to the CIR Process and approved by the CoC.

Therefore, unless such expenses are both incurred by the RP and duly approved by the CoC, they cannot be classified as CIRP Costs.

- c. Since, the Applicant has submitted that the RPL Expenses were incurred by the Applicant (Promoter of STPL) and not by



the RP or IRP, therefore expenses incurred by the promoter during the CIRP do not fall within the definition of CIRP Costs under Section 5(13)(c) of the IBC. To support its contention, reliance has been placed upon **IBBI Circular No. IBBI/IP013/2018 dated 12.06.2018**, which directs insolvency professionals to ensure that fees and expenses are directly related to and necessary for the CIRP and approved by the CoC. Clause 8(d) of the Circular explicitly provides that costs incurred by promoters in relation to the CIRP shall not be included as CIRP Costs.

- d.** The Respondent has submitted that the RPL Expenses cannot be classified as CIRP Costs under Section 5(13)(c) of the IBC, and the Applicant's contentions in this regard are liable to be rejected. Regarding approval of RPL Expenses by the CoC under Regulation 31(e), it is submitted that the first CoC meeting, conducted by the IRP on 15.02.2024, appointed Mr. Rahul Jindal as RP for the CIRP of the Corporate Debtor. During this meeting, the IRP presented the issue of ratification/approval of RPL Expenses. As per the minutes of the 1st CoC Meeting, the CoC rejected the approval of RPL Expenses. The relevant excerpts of minutes of 1st CoC Meeting as under:

*"These expenses were incurred during the period of the CJRP and when the moratorium was continuing and hence the expenses shall be construed as CJRP expenses and the COC was requested to ratify them as such. **However, since these expenses were funded by the suspended directors of the Corporate Debtor through the related parties of the corporate debtor and not by way of a debt raised by the resolution professional (since the Hon'ble NCLAT had vide Order dated 26.09.2022 directed the Interim Resolution Professional not to take any steps in the CIRP) the same shall not be considered a interim finance 'as defined in section 5(15) of the Insolvency and Bankruptcy Code, 2016.'**"*



e. In this context, the Respondent has referred to the judgment of the Hon'ble NCLAT in **Avi Menezes, Liquidator of Sunil Hitech Engineers Ltd. v. Abdul Quddus Khan & Anr., Company Appeal (AT) (Insolvency) No. 263 of 2024**, decided on 14.05.2024 ("**Sunil Hitech Case**"). In the *Sunil Hitech* case, the Hon'ble NCLAT, while interpreting Section 5(13)(c) of the IBC, Regulation 31 of the CIRP Regulations, and the IBBI Circular dated 12.06.2018, elaborated on the scope and ambit of CIRP Costs and provided authoritative guidance on the issue.

"48. Appellant has also pointed out the guidance for insolvency professionals (IP) in clause 8(a) and other sections in the Circular No. IBBI/CP/3/2018 dated 12.06.2018. It directs IPs to ensure that the fee or other expenses incurred by them are directly related to and necessary for the CIRP and also approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required. It is also clarified that the IRPC shall not include any fee or other expense not directly related to CIRP. The relevant provisions are extracted herein:

49. We are, therefore, inclined to agree that mere fact that the dues have arisen during the CIRP period would not be determinative of it to be classified as CIRP cost. Interpreting Section 5(13)(c) of the Code in this manner would render the words "in running the business of the corporate debtor as a going concern" otiose. Further, it is clear from Regulation 31 and the guidance provided by IBBI vide the above-mentioned circular that unless the CoC has approved the dues and they directly relate to the CIRP, the dues cannot be classified as CIRP cost. And the CoC decided to exclude the cost incurred from the terminated projects, which is not



maintaining the Corporate Debtor as “a going concern”.

50. In conclusion, the following criteria determine whether a cost incurred by the Resolution Professional during CIRP qualifies as CIRP cost: (a) maintaining the Corporate Debtor as a going concern, (b) payment to suppliers of essential goods and services, and (c) direct relation to CIRP with approval from the Committee of Creditors (CoC). Applying these criteria to this case, the claim fails to meet the definition of CIRP cost.

f. To further buttress its argument the Respondent has submitted that determination of CIRP costs lies exclusively within the domain of the CoC. This position has been affirmed by the Hon’ble NCLAT in:

- i. **Bharat Hotels Ltd. v. Tapan Chakraborty** (Company Appeal (AT) (Insolvency) No. 1074 of 2022), wherein it was held that approval, modification, or rejection of CIRP costs falls solely within the CoC’s purview and cannot be examined by the Adjudicating Authority before the CoC’s decision.
- ii. **Mehul Parekh & Ors. v. Unimark Remedies & Ors.** [Company Appeal (AT) (Ins) No. 839 of 2023], where the Hon’ble NCLAT reiterated that directing the CoC to redetermine CIRP costs after approval of the Resolution Plan is unsustainable.

g. The Respondent RP has submitted that the RPL expenses cannot be treated as CIRP costs in the CIR process of STPL, as they do not satisfy the requirements of Section 5(13)(c) of the IBC and were neither approved nor ratified by the CoC. Further, regarding the Applicant’s request for copies of CoC meeting notices, agendas, minutes, and voting results, it has been submitted that the Applicant, being the



holding company of STPL, qualifies as a *related party* under Section 5(24) of the IBC. As per STPL's audited financial statements for FY 2022–2023, the Applicant is disclosed as a related party, and hence, being a related party, is not entitled to participate in or seek such documents from the CoC proceedings.

h. The RP has further submitted that Regulation 16 of the CIRP Regulations provides that if a corporate debtor has no financial creditors or all financial creditors are related parties, such related parties are excluded from the CoC, and operational creditors constitute the CoC. Accordingly, as a related party, the Applicant cannot participate in CoC meetings or seek copies of notices, agendas, minutes, or voting results. This exclusion ensures fairness, impartiality, and prevents conflicts of interest in the CIRP. Hence, the Applicant's submissions in this regard deserve rejection.

4. Rejoinder on behalf of Applicant

a. The Applicant submitted that pursuant to the Hon'ble NCLAT's order dated 26.09.2022, the IRP was directed not to proceed with the CIRP. Accordingly, the suspended board of the Corporate Debtor, to preserve its going concern status and protect stakeholder interests, sought approval from its lead lender, Power Finance Corporation Ltd. ("**PFC**") to obtain financial assistance from its promoter company, the Applicant. With PFC's approvals, the Applicant disbursed loans aggregating to ₹7,94,54,000/- between 09.11.2022 and 01.06.2023 under the Loan Agreement dated 30.10.2011. These disbursements, made through bank transfers, were bona fide and intended solely to meet the Corporate Debtor's operational needs and safeguard its assets and creditor interests.

b. It is submitted that without the Applicant's financial support, the Corporate Debtor would have faced severe



financial distress, jeopardizing stakeholders' interests. Despite the lead lender PFC's prior approval, the CoC unjustly rejected the Applicant's bona fide claim. The Applicant had infused ₹7,94,54,000/- between 09.11.2022 and 01.06.2023 through bank transfers solely to meet the Corporate Debtor's immediate expenses and preserve its assets.

- c. It is submitted that the expenses incurred for maintaining and operating the Corporate Debtor between 26.09.2022 and 19.01.2024 were met from the funds infused by the Applicant, pursuant to approvals from the lead lender, PFC. Given the peculiar circumstances where the CIRP was ongoing but the IRP was restrained from proceeding, such amounts ought to be treated as Insolvency Resolution Process Costs under Section 5(13)(c) of the IBC.

ANALYSIS AND FINDINGS

5. This Adjudicating Authority has heard the arguments advanced by Learned Counsels for the parties and perused the pleadings, submissions, and documents placed on record.
6. Upon perusal of the records, it is noted that vide order dated 19.09.2022 in CP(IB) No. 2561/ND/2019, this Adjudicating Authority admitted the application and initiated CIRP of the Corporate Debtor. Subsequently, in appeal [Company Appeal (AT) (Ins) No. 1185 of 2022], the Hon'ble NCLAT, by order dated 26.09.2022, directed that the IRP shall not take any steps pursuant to the impugned order and allowed the Appellant to continue its participation with the Ministry of Power as per the earlier minutes of meetings
7. It is the case of the Applicant that with requisite approvals obtained from Power Finance Corporation Ltd. ("**PFC**"), the lead lender of the Corporate



Debtor, the Applicant herein infused funds to meet the Corporate Debtor's day-to-day and immediate expenses. In this regard, the Applicant disbursed an aggregate amount of ₹7,94,54,000/- between 09.11.2022 and 01.06.2023 and has sought that the same be treated as CIRP Cost in the CIR Process of STPL. Further, I.A. No. 4692 of 2022 in Company Appeal (AT) (Ins) No. 1185 of 2022, filed by the Operational Creditor before the Hon'ble NCLAT seeking clarification of the order dated 26.09.2022, was disposed of with the observation that the said order did not stay the moratorium imposed by the Adjudicating Authority.

8. On 19.01.2024, the Hon'ble NCLAT dismissed Company Appeal (AT) (Ins) No. 1185 of 2022. Subsequently, on 31.01.2024, the Applicant filed its claims before the IRP as follows:

Claim Form C: ₹77,33,56,037/- as a Financial Creditor of the Corporate Debtor; and

Claim Form B: ₹5,15,03,158/- as an Operational Creditor of the Corporate Debtor.

9. It is the contention of the Applicant that the amount, though advanced with the lead lender's permission, constitutes *CIRP Cost* under Section 5(13)(c) of the IBC, which includes expenses incurred to maintain a corporate debtor as a going concern. The RPL Amount was expended under exceptional circumstances between 26.09.2022 and 19.01.2024, pursuant to the Hon'ble NCLAT's interim order in Company Appeal (AT) (INS) No. 1185/2022
10. In view of which we are inclined to refer to the definition of "*interim finance*" as provided in Section 5(15) of the Code, which is as follows:



"Interim finance means any financial debt raised by the resolution professional during the insolvency resolution process period or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be, and such other debt as may be notified.

11. We note that as per Section 5(15) of the Code, *interim finance* must be a financial debt raised by the Resolution Professional. However, pursuant to the NCLAT Interim Order, the IRP/RP was directed “not to take any further steps.” Further, Section 28(1)(a) of the IBC prohibits the RP from raising interim finance without CoC approval. RPL has admitted that no CoC had been constituted at the time of the disbursement. Therefore, the RPL Amount cannot be treated as interim finance or financial assistance to STPL merely on the basis of PFC’s approval.

12. Section 5(13) provides:

(13) *“insolvency resolution process costs” means –*

- (a) The amount of any interim finance and costs incurred in raising such finance;
- (b) Fees payable to any person acting as a resolution professional;
- (c) Costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;**
- (d) Costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- (e) Any other costs as may be specified by the Board.

13. A plain reading of Section 5(13)(c) shows that only expenses incurred by the RP in operating the corporate debtor as a going concern qualify as CIRP Costs. The RPL Amount, being disbursed by the promoter group and not by the RP, does not fall within this statutory definition and, therefore, cannot be treated as CIRP Cost. Section 5(13)(c) expressly



confines CIRP Costs to expenses incurred by the Resolution Professional in running the corporate debtor as a going concern.

- 14.** Further we record that Applicant's submission regarding the treatment of the RPL Amount are inherently inconsistent. On one hand, Applicant contends that the Amount constitutes financial assistance/interim finance to STPL/Corporate Debtor, which would fall under Section 5(13)(a) of the IBC. Simultaneously, Applicant relies on Section 5(13)(c) to argue that the Amount qualifies as expenses incurred by the RP for running the corporate debtor as a going concern. Such contentions overlook the settled legal position that Section 5(13)(c) applies only to expenses incurred by the Resolution Professional. Unlike CIRP Costs incurred by the RP, which are transparently scrutinized and approved by the CoC, the RPL Amount was expended unilaterally by the promoter group, in consultation with the lead lender, without CoC oversight or authorization. There is, therefore, no certainty or accountability regarding the use of these funds, and they cannot be admitted as CIRP Costs.
- 15.** Under the proviso to Section 21(2) of the IBC, a financial creditor who is a related party has no right of representation, participation, or voting in the CoC. Regulation 16 of the CIRP Regulations further provides that even where the corporate debtor has no financial debt or all financial creditors are related parties, such related parties are excluded, and operational creditors constitute the CoC. Accordingly, under no circumstances can a related party of STPL/Corporate Debtor participate in CoC meetings or access notices, agendas, minutes, or voting results.



16.

We are inclined to refer to order passed by Hon'ble Supreme Court in the matter in ***Phoenix Arc Private Limited v. Spade Financial Services Limited*** [(2021) 3 SCC 475], where while interpreting the proviso to Section 21 of the IBC, the Hon'ble Supreme Court held that even financial creditors who attempt to circumvent the proviso by ceasing to be related parties must be excluded from the CoC. The relevant extracts are reproduced below:

“82. Since the IBC attempts to balance the interests of all stakeholders, such that some stakeholders are not able to benefit at the expense of others, related party financial creditors are disqualified from being represented, participating or voting in the CoC, so as to prevent them from controlling the CoC to unfairly benefit the corporate debtor

*103. Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing between a related party financial creditor and the corporate debtor. As such, the financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC. **However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso.***

104. Hence, while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are



related parties in praesenti would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder.”

- 17.** Therefore, we are of the view that, it is evident that under the Code and the regulations framed thereunder, related parties are expressly precluded from participating in the CoC. Such exclusion is intended to preserve the integrity and impartiality of the CIRP and to eliminate any potential conflict of interest that may arise. This ensures that the decisions of the CoC are taken objectively and in the best interest of all stakeholders. Accordingly, the contentions advanced by the Applicant in this regard are devoid of merit and liable to be rejected.
- 18.** In view of the foregoing submissions and the judicial precedents cited, we find that the Applicant has failed to substantiate its contentions. Accordingly, the present application **IA No. 2455 of 2024 stands dismissed, however without cost.**

Sd/-
ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)