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

IA NO. 2528 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:
RR INFRALANDS PRIVATE
LIMITED
... 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 behalf of RR Infralands Pvt. Ltd. (***"RR IPL"),*** 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 ofRs.4,11,27,310/-(Rupees Four Crore Eleven Lacs Twenty Seven Thousand Three Hundred and Ten 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 ***("STPL");***

(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 along-with 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 submitted that the Corporate Debtor, Indiabulls Realtech Ltd., was incorporated in 2007 to establish a 5 x 270 MW Thermal Power Project at Sinnar SEZ, Nashik, Maharashtra. In 2010, the Corporate Debtor was awarded civil and structural works for Boiler, Turbine, and Generator (BTG) to the Operational Creditor, Shapoorji Pallonji & Co. Pvt. Ltd., for the Nashik Thermal Power Project, issuing corresponding work orders.

b. To provide financial support and meet business needs, the Applicant, a promoter-owned company, entered into an Inter Corporate Deposit Agreement dated 10.07.2020 with the Corporate Debtor. Under this agreement, the Applicant agreed to deposit funds with the Corporate Debtor as demanded, up to a maximum of Rs. 50 crore, initially valid for five years.

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.*
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> *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. Pursuant to the liberty granted by the Hon'ble NCLAT, the suspended Directors of the Corporate Debtor continued managing its day-to-day affairs, including attempts to commission the power plant, safeguarding stakeholder interests, and arranging necessary capital for operations. Meanwhile, 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 application was disposed of on 18.01.2023, with the Hon'ble NCLAT observing that the 26.09.2022 order does not stay the moratorium imposed by the Adjudicating Authority. The NCLAT clarified that the matter was only for clarification, and the Applicant may file a separate application if seeking a stay of the moratorium.

e. Apropos, the Applicant filed a claim as a Financial Creditor before the IRP of the Corporate Debtor on 30.01.2024 for Rs. 20,19,48,310/- in Claim Form 'C'. As no decision on the claim was communicated, the Applicant, through its authorized representative, emailed the IRP on 19.02.2024, requesting that Rs. 4,11,27,310/- incurred from the CIRP initiation until the disposal of the appeal by the Hon'ble NCLAT on 19.01.2024, be recognized as IRP costs under the provisions of the IBC.

f. On 24.02.2024, the Applicant was informed by the IRP that its claim under Claim Form 'C' was admitted for Rs. 16,28,21,000/- (against the original claim of Rs. 20,19,48,310/-). Subsequently, on 14.03.2024, the IRP revised the admitted amount to Rs. 16,08,21,000/-. Accordingly, the Applicant stands admitted as an unsecured Financial Creditor of the Corporate Debtor for Rs. 16,08,21,000/-. The Applicant has also downloaded the relevant Annexure 4 – List of Unsecured Financial Creditors, as uploaded by the RP on the IBBI website.

g. 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. Accordingly, the Applicant herein disbursed Inter Corporate Deposit of an aggregate amount of Rs.4,11,27,310/- (Rupees Four Crore Eleven Lacs Twenty-Seven Thousand Three Hundred and Ten Only) from 01.10.2022 to 17.01.2024. 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 Rs. 4,11,27,310/- (Rupees Four Crore Eleven Lacs Twenty-Seven Thousand Three Hundred and Ten Only) which ought to be treated as Insolvency Resolution Process Costs under Section 5(13) of the Insolvency and Bankruptcy Code, 2016.

m. Accordingly, the Applicant submitted that 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 01.10.2022 to 17.01.2024—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 Sinnar Thermal Power Limited (STPL)

a. The Applicant's contention that the RRIPL Expenses qualify as CIRP Costs is misconceived. The RP has 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 RRIPL 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 RRIPL 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 RRIPL 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 RRIPL Expenses. As per the minutes of the 1st CoC Meeting, the CoC rejected the approval of RRIPL 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 rai ed by the resolution professional (si11ce 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 an 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 Qudduskhan & 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. IBBIIIP0l 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:*
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> **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.

ANALYSIS AND FINDINGS

4. This Adjudicating Authority has heard the arguments advanced by Learned Counsels for the parties and perused the pleadings, submissions, and documents placed on record.

5. 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

6. 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 Rs. 4,11,27,310/- between 01.10.2022 to 17.01.2024 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.

7. 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

8. 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 RRIPL Amount was expended under exceptional circumstances between 01.10.2022 to 17.01.2024, pursuant to the Hon'ble NCLAT's interim order in Company Appeal (AT) (INS) No. 1185/2022.

9. 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.*

10. 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. RRIPL has admitted that no CoC had been constituted at the time of the disbursement. Therefore, the RRIPL Amount cannot be treated as interim finance or financial assistance to STPL merely on the basis of PFC's approval.

11. 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.

12. 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 RRIPL 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.

13. Further the respondent has mentioned that as per IBBI Circular No. IBBI/IP-013/2018 dated 12.06.2018, insolvency professionals are required to ensure that any fee or expense claimed is directly related to and necessary for the CIRP, and must be approved by the CoC. Clause 8(d) of the Circular explicitly provides that costs incurred by promoters in relation to the CIRP shall not form part of CIRP Costs. Accordingly, the Applicant's Amount cannot be classified or accepted as CIRP Cost.

14. That the mere occurrence of expenses during the CIRP period does not, by itself, qualify them as CIRP Costs. Section 5(13)(c) mandates that only expenses incurred by the Resolution Professional for running the corporate debtor as a going concern can be included as CIRP Costs. The Applicant's Amount, having been incurred by the promoter and not by the RP, does not satisfy this requirement and, therefore, cannot be classified as CIRP Cost.

15. Further we record that Applicant's submission regarding the treatment of the RRIPL 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 RRIPL 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.

16. 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.

17. 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*
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> .
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> *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.***
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> ***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."***

18. 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.

19. 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. 2528 of 2024 stands dismissed, however without cost.**

Sd/-	**Sd/-**
ATUL CHATURVEDI	**MANNI SANKARIAH SHANMUGA SUNDARAM**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**