IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH Court-II

IA-5033/ND/2024

IN

CP (IB) NO. 91(PB)/2022

IN THE MATTER OF CP (IB) NO. 91(PB) OF 2022:

DBS Bank Ltd. **... Applicant/ Financial Creditor**

Versus

M/S Vayam Technologies Ltd. **... Respondent/ Corporate Debtor**

AND IN THE MATTER OF IA-5033/ND/2024
(Under Section: Section 60(5) r/w Rule 11 of the NCLT Rules 2016)

Ashok Tiwari
S/O Late Hridyanand Tiwari
E-4/6, Vasant Vihar,
New Delhi – 110057 **... Applicant**

Versus

Ms. Ritu Rastogi
(Resolution Profession of M/s Vayam Technologies Ltd.)
D-1 B, 9A, D Block, Janak Puri
New Delhi – 110058

Canara Bank
Head Office: 112, JC Road,
Bangalore-560002, Karnataka.
Through its Chief Manager
Stressed Asset Management,
Defence Colony Lajpat Nagar,
New Delhi - 110024

IDBI BANK LTD.
Head Office: IDBI Tower, WTC Complex, Cuffe Parade,
Colaba Mumbai, Maharashtra - 400005
Branch Office: IDBI Bank Limited, NPA Management Group,

8th Floor Block-2, Plate-B, NBCC Office
Complex, Kidwai Nagar East,
New Delhi-110023

BANK OF BARODA
(erstwhile Dena Bank Ltd.)
Head Office: Baroda Bhawan
R.C Dutt Road, Alkapuri,
Baroda-390007 (Gujarat),
Through its Chief Manager,
Zonal Stressed Assets Recovery Branch,
13th Floor, Bank of Baroda Building,
16, Sansad Marg, New Delhi-110001

UNION BANK OF INDIA
(erstwhile Corporation Bank)
Through its Managing Director,
Corp. Office: 239, Vidhan Bhawan Marg
Nariman Point, Mumbai-40002
Through, its Deputy General Manager
Overseas Branch (SAMV), M-93,
Connaught Circus, New Delhi-110001

AXIS BANK LTD
Regd. Office: Trishul, 3rd Floor,
Opp. Samartheshwar Temple,
Near Law Garden, Ellisbridge,
Ahmedabad, Gujarat - 380006,
Through its Assistant Vice President Axis House,
Sector-128 Noida Expressway NOIDA,
District-Gautambudhnagar
U.P-20130 **... Respondents**

<u>Order pronounced: 11.08.2026</u>

<u>CORAM:</u>
SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	**:**	Adv. Rishabh Kumar
For the Respondent	**:**	Adv. Shailendra Ojha
For the Axis Bank	**:**	Mr. Brijesh Kumar Tamber, Mr. Prateek Kushwaha & Mr. Dhimaan Dutta
For the RP	**:**	Sr. Adv. Nandita Rao, Adv. Ujwal Sharma Adv. Rachit Mittal, Adv. Parish Mishra, Kanishk Raj, Adv. Srishti Agrawaal, Adv. Abhishek Sinha, Adv. Aayushi Kiran, Adv. Shivansh Bansal RP Mukesh Kumar Grover in the matter of Vayam Technologies Limited and Abhisar Impex Private Limited

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

The captioned Application has been preferred under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**hereinafter referred to as IBC**) read with Rule 11 of the National Company Law Tribunal Rules, 2016, (**hereinafter referred to as NCLT Rules**) by the Applicant, who is the Promoter, Chairman, and Managing Director of M/s Abhishar Impex Private Limited (**hereinafter referred to as the "Corporate Debtor**), whose Board of Directors stands suspended. By way of the captioned Application, the Applicant has challenged the constitution of the Committee of Creditors on the ground that the shareholders qua M/s Vayam Technologies Limited (**hereinafter referred to as the Holding Company**) have been included as members of the Committee of Creditors **(hereinafter referred to CoC)** with voting rights, which is contrary to the provisions of the Insolvency and Bankruptcy Code, 2016.The Prayer made in the application reads thus:

"i. To allow the present application;

ii. To grant Ad-Interim ex-parte stay on the further steps by Committee of Creditors;

iii. To declare the Re-Constitution of Committee of Creditor with. Respondent No.2 to 6 as member of the Committee of Creditors having 94.04% voting rights as illegal and void ab-initio.

iv. Direct the IRP/RP (Respondent No.1) to recall her decision dated 19.9.2024 and re-constitute the Constitution of Committee of Creditors consisting of DBS Bank India Limited as a sole Financial Creditor."

2. The Case espoused by the Applicant is:

i. The borrower/holding company, Vayam Technologies Ltd., had approached a consortium of six banks viz. Canara Bank, IDBI Bank, Bank of Baroda (erstwhile Dena Bank), Union Bank of India (erstwhile Corporation Bank), Axis Bank and DBS Bank for sanction of financial facility for its business purposes. The financial facilities sought by the borrower came to be sanctioned by the aforesaid banks over a period spanning from the year 2003 to 2013. It is further noticed that, with the exception of DBS Bank India, all the aforesaid lending banks subsequently became the majority shareholders of the company.

ii. Pursuant to the Reserve Bank of India Circular bearing DBR.BP.BC.No.101/21.04.132/2013-15 dated 08.06.2015, the Strategic Debt Restructuring (SDR) Scheme was introduced, enabling Scheduled Commercial Banks to convert outstanding loan dues into equity shares of the borrower company. In furtherance thereof, to facilitate business expansion and address the borrower's liquidity constraints, the Respondent Banks approved a restructuring package, culminating in the execution of the Master Restructuring Agreement dated 22.12.2015, which was signed on 06.02.2016.

iii. The Applicant and his family members stood as a personal guarantor qua the financial facilities extended by the Respondent Banks in favour of the borrower Vayam Technologies Ltd., thus, executed separate deeds of guarantee dated 22.12.2015 in favour of the Respondent-Banks.

iv. On 18.11.2016, a meeting was held whereby the company informed the consortium about low performance during the 1st half of the financial year owing to the delay in release of 50% of the additional limits and further non-release of the remaining 50%, although moratorium was coming to an end. The said delay was acknowledged by them all and Canara Bank specifically requested the consortium-members to release the remaining 50% of the Non-Fund Based limits without delay. It is indispensable to point out that if the company was granted the additional funds timely, the subsequent SDR agreement would not have been required at all.

v. On 27.4.2017, the Applicant wrote a letter to the Canara-Consortium highlighting the substantial time loss due to delay in release of additional limits by the Canara-Consortium under the debt restructuring scheme causing severe liquidity crunch, utilization of the entire project receipts in discharging the payments of supplies and utilities and further outstanding statutory liabilities of about Rs.7.42

crore and LCs to the tune of about Rs.16.27 crore having devolved. They were also requested for grant of no-objection to the sale of the company's Noida office, aggressive scouting of strategic investor and debtor realization, consolidation of operations and manpower, amongst others.

vi. Circular DBR.BP.BC.NO. 67/21.04.048/2016/17 dated 5th May, 2017 was issued by RBI to all scheduled commercial banks, with respect to "Timelines for Stressed Assets Resolution". Thereafter, in the consortium meeting held on 31.5.2017, various restructuring proposals were considered and the consortium explained the option of Strategic Debt Restructuring whereby the Management and Control of the Company would be taken from the present Management upon conversion of the outstanding debt into equity. Applicant being the Promoter/ Managing Director of the Company and also the majority shareholder submitted that *"they are ready to face the situation and asked the bankers to take a call".* Accordingly, the consortium decided to invoke Strategic Debt Restructuring and take majority shareholding in the company by swapping of debt into equity.

vii. Pursuant to the consortium/JLF meeting dated 31 May, 2017, a Techno Economic Viability study (TEV) was conducted and a TEV report was prepared by M/s Mott MacDonald (A Global Agency engaged by Canara-Consortium) which inter-alia demonstrated the future earning potential of the company.

viii. On 22nd December, 2017 the Consortium through the Lead member Canara Bank entered into the Management Framework Agreement with the Applicants wherein inter-alia the Applicants agreed to the implementation of the SDR scheme. In terms of this agreement, the outstanding debts of the company were converted into equity shares at its face value in favour of the Canara-Consortium, Resultantly, the shareholding of Promoters/ Minority-Shareholders/Directors/Applicant was reduced from 81.92% to 34.54%, whereas the Consortium members became majority shareholders to the extent of 56.6% shares.

ix. On 27th December 2017, pursuant to conversion of the outstanding debt into equity under SDR, the company Vayam Technologies Ltd., issued 2,27,65,154 shares to the various members of the consortium and they became majority-shareholders of the company with more than 56.6% equity shares and voting rights. The aforesaid scheme of arrangement was approved by the Canara-Consortium in the meeting held on 27.12.2017 and accordingly to give full effect to such scheme of arrangement, required number of share certificates of the company were issued in their favour. The details of the shares issued in favour of Canara-Consortium are set-out as follows:

S. No.	Name of the Banks	Number of Shares of the company	Distinctive No. (from-to)	Certificate No.
1	Canara Bank	7609652	21872404-29482055	34
2	IDBI Bank	4770097	29482056-34252152	35
3	Axis Bank	4291903	34252153-38544055	36
4	Dena Bank	4467586	38544056-43011641	37
5	Corporation Bank	1625916	43011642-44637557	38
	Total	2,27,65,154		

x. In the consortium/JLF meeting held on 27.12.2017, the Consortium confirmed conversion of the debt into equity shares of the company and the Canara-Consortium became its majority shareholders. Subsequently, return of allotment in FORM No. PAS-3 was notified. On 4.1.2018, Corporate Action Information Form (for shares) was issued by the Company.

xi. On 24.1.2018 the company informed the Ministry of Corporate affairs by filing form no. MGT-14 informing about the amended Articles and Memorandum of Association along with the copy of resolution passed in Extraordinary General Meeting of the company explaining the need for the amendments in pursuance of the implementation of the SDR scheme by the consortium.

xii. On 12th February 2018, the RBI issued circular to all Scheduled DBR.NO.BP.BC. 101/21.04.048/2017-18 Commercial Banks including Canara-Consortium, wherein inter-alia the existing instructions in relation to SDR scheme were revoked and new regime was introduced in relation to accounts where the SDR was not implemented. Further, On 21 February 2018, in the consortium/JLF meeting, the consortium members confirmed the conversion of debt into equity and in relation to the new RBI guidelines of 12.2.2018, they were of the considered view that since SDR has already been implemented before, the revised guidelines would not interfere in the SDR process.

xiii. Despite the aforesaid position being made very clear, in March, 2018 the consortium members proceeded to recall their respective loans and issued demand notices for recovery with the view that the accounts of the Company had been marked as NPA with retrospective effect from 1.1.2015 in view of the new RBI Guidelines and directed repayment of the entire outstanding loan amount to the bank. All these notices were duly replied.

xiv. In the consortium meeting dated 23rd May, 2018 the Canara-Consortium on a complete misunderstanding of the RBI circular confirmed that the accounts of Company were classified as NPA (only) in view of the RBI circular dated 12.2.2018, even though the consortium members had again reiterated the fact that the SDR scheme was "implemented" in this case. Further aggrieved thereby, the Applicant & the Company approached the Hon'ble High Court of Delhi by way of Writ Petition (Civil) No.7221/2018, challenging the notices as well as questioning the legality of the RBI circular dated 12.2.2018 and prayed for the following reliefs:-

"(i) To issue a writ, order or direction in the nature of mandamus or any other writ, order or direction, directing the Respondent No. 1 and 2 to restrain the Respondents No. 3 to 7 from implementing the revised framework for stressed assets under the Reserve Bank of India Circular DBR NO. BP.BC. 101/21.4.048/2017-18 dated February 12, 2018 in a case of the Petitioner No.1 as the Strategic Debt Restructuring Scheme has already been implemented and direct them to revoke instructions for declarations of account of the Petitioner No. 1 as NPAs; and/or

(ii) To issue a writ, order or direction in a nature of mandamus or any other writ, or any other order or direction, directing

Respondent Nos. 1 and 2 restrain the Respondents Nos. 3 to 7 from revoking the preexisting Strategic Debt Restructuring Scheme in the case of Petitioner No. 1; and/or

(iii) Alternatively, to issue a writ, order or direction in the nature of mandamus or any other writ, order or direction directing Respondent No.1 and 2 to withdraw the circular dated February 12, 2018 in cases where documents have been executed by the parties towards the Strategic Debt Restructuring Scheme creating vested right in any of the parties; and/or

(iv) Alternatively, to issue a writ, order or direction in the nature of mandamus or any other writ, order or direction directing Respondent No.1 and 2 to prohibit Respondent No. 2 to 7 from implementing the Circular DBR NO. BP.BC. 101/21.4.048/2017-18 dated February 12, 2018 in an illegal and arbitrary manner in the case of Petitioners: and/or

(v) Alternatively, to issue a writ, order or direction in the nature of certiorari or any other writ, order or direction, quashing the circular DBR NO. BP.BC. 101/21.4.048/2017-18 dated February 12, 2018 issued by Respondent No. 2 being ultra-vires of Article 14, 19 and 21 of the Constitution of India; and/or

(vi) Alternatively, to issue a writ, order or direction in the nature of mandamus or any other writ, order or direction, reading down the Circular DBR NO. BP.BC. 101/21.4.048/2017-18 dated February 12, 2018 issued by Respondent No. 2 so as to make it harmonious with Article 14, 19 and 21 of the Constitution of India; and/or

(vii) To issue any appropriate writ, order or direction which the Hon'ble Court deems just and proper, in the facts and circumstances of the present matter; and/or

(viii) The costs of the present writ petition may also be awarded in favour of the petitioners".

xv. On 16.7.2018 the writ petition was heard and the Hon'ble High Court of Delhi was pleased to pass the following order:-

"4.The learned counsel appearing for the petitioners has also drawn the attention of this Court to the copies of the share certificates for the shares issued by petitioner no.1 to the respondents as a result of conversion of the debt owed to the said respondents to equity. He has also pointed out the minutes of the meeting of the JLF, where such conversion was acknowledged by the respondent banks.

5.The learned counsel appearing for respondent no.6 (Dena Bank) submits that SDR has not been implemented as the shares allotted are not in dematerialised form. Prima facie, this contention seems untenable. The conversion of debt into equity shares is not dependent on the form of shares. The conversion of physical share certificates into dematerialised form does not change the rights of the allottee in any manner; the allottee continues to hold the beneficial interest in such shares. Once, it is acknowledged that the shares were allotted to the banks by conversion of the debt owed to them, it follows that the debt no longer exists. The fact that physical share certificates have not converted in a non-fungible form is only a matter of form of holding interest in such shares and does not change the nature of the investment.

6. Prima facie, it would also follow that any proceedings instituted by the banks for recovery of the debt would obviously be contested on the ground that what is outstanding in favour of the banks is not a loan but outstanding share capital. And, their priority in the order *of preference for payments would also be determined on the said basis."*

xvi. In the meeting dated 23rd July, 2018, it was resolved, inter-alia that the company shall arrange a meeting with strategic investor M/s EBIX Inc. Besides, the Canara-Consortium acceded to this request for change of management through open bidding process and in that regard, it was resolved to discuss modalities with IDBI Capital Markets & Securities, which prepared the Information Memorandum Report under SDR package and the Canara-Consortium further appointed M/s M.K Aggarwal & Co., Chartered Accountant as Forensic Auditors to conduct forensic audit of the company's accounts.

xvii. In August 2018 M/s IDBI Capital Market & Securities Limited was engaged as advisor to assist & advise the Sponsor-Canara Bank (largest shareholder amongst the consortium) in relation to managing the resolution process for the stakeholders for drafting of Expression of Interest and an advertisement for assignment through open bidding process.

xviii. In the meanwhile several similar writ petitions were filed across different High Courts in the Country as well as before the Hon'ble Supreme Court challenging the RBI Circular dated 12.2.2018. The Reserve Bank of India filed several transfer petitions for transfer of all the writ petitions for adjudication by itself. Accordingly, by the order dated 11.9.2018 passed in T.P (Civil) No.1287/2018, the W.P (Civil) No.7221/2018 was transferred to Hon’ble Supreme Court of India and there was an order of status quo passed.

xix. Thereafter vide an order dated 11.10.2018 passed by the Hon'ble Supreme Court the records of the Writ Petition (Civil) No.7221/2018 were directed to be sent to the Hon'ble Supreme Court and it was registered in the Hon'ble Supreme Court as Transferred Case (Civil) No.75/2018.

xx. On 4th December 2018, the 18th Annual General Meeting of the company was held at its registered office at "Thapar House', 124 Janpath, New Delhi-110001. This meeting was attended by Canara-Consortium in their capacity as shareholders of the Company. This fact is evident from the minutes of the meeting and the attendance sheet signed by the shareholders which bear the signatures of their representatives. These shareholders acknowledged the SDR implementation and allowed the Applicant to retire by rotation and re-elected him as the Managing Director.

xxi. On 31 December 2018, the Canara Bank wrote to all the debtors of the Company, misinforming them that the accounts of the company were "NPA' and therefore all the company's payments be remitted into the account of Canara Bank which had drawing rights. This was during the pendency of the Transferred Case (Civil) No.75/2018 before the Hon'ble Supreme Court of India and it was seriously objected to by the Company. Finally vide the judgment and order dated 2.4.2019 reported in (2019) 5 SCC 480, the Hon'ble Supreme Court declared the RBI Circular ultra vires and allowed the writ petition filed by the company [Transferred Case

(Civil) No.75/2018]. Operative part of the judgment dated 2.4.2019 reads thus:-

> *"72. For these reasons also, the impugned circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est.*
> *73. In view of the declaration by this Court that the impugned circular is ultra vires Section 35AA of the Banking Regulation Act, it is unnecessary to go into any of the other contentions that have been raised in the transferred cases and petitions. The transferred cases and petitions are disposed of accordingly".*

xxii. Despite the above, Canara Bank once again on 5.4.2019 wrote to all the debtors of the Company stating that its account turned NPA and accordingly all the payments be made to the account of Canara Bank. This was followed by illegal withdrawal on 13.6.2019 of an amount of Rs.2.39 crore from company's account without even informing the company, and its distribution amongst the consortium members.

xxiii. Since the Canara-Consortium were consistently oppressive against the Applicant and the Company and were forcing the Company and its Promoters to bring strategic investor within a period of 4 weeks' during the Covid-19 lockdown of 2020, that left with no other options, the Applicant & the Company challenged their arbitrary actions by filing W.P

(Civil) No.3437/2020 before the Hon'ble Delhi High Court with the following prayers:-

"(i) Issue an appropriate writ/ order or directions in the nature of Certiorari quashing the letter bearing Re. No. LBA/JANPATH/CR TL/0531/2020 dated 16.5.2020 by which the representation of the petitioner for additional 4 months' time to submit restructuring plan post complete lifting of Covid-19 lockdown has been arbitrarily rejected; and/or

(ii) Issue an appropriate writ/ order or directions in the nature of Certiorari thereby quashing the minutes of the Consortium/JRF meeting dated 15.4.2020 by which decision to initiate recovery proceedings against the petitioners has been taken; and or

(iii) Issue an appropriate writ/order or directions in the nature of Mandamus prohibiting the respondents from taking all/any coercive action of recovery against the petitioners pursuant to the decision contained in the Consortium/JLF meeting dated 15.4.2020; and/or

(iv) Issue an appropriate writ/order or directions in the nature of Mandamus directing the respondents towards taking further steps in pursuance to the Strategic Debt Restructuring to find a Strategic Investor by Swiss Challenge Method; and/ or

(v) Issue an appropriate writ/order or directions in the nature of Mandamus directing the respondents to allow 4 months

additional time to the petitioners post complete lifting of Covid-19 lockdown for submission of a viable Restructuring Plan; and/or

(vi) Issue an appropriate writ/order or directions in the nature of Mandamus directing the respondents for allowing operations in the Trust & Retention Account (TRA) and allow hold on permission at existing level of outstanding; and/or

(vii) Issue any appropriate writ, order or direction which the Hon'ble Court deems just and proper, in the facts and circumstances of the present matter; and/or

(viii) The costs of the present writ petition may also be awarded in favour of the petitioners."

xxiv. On 10.6.2020 the writ petition was heard and the Hon'ble Delhi High Court while issuing notice to the Canara-Consortium was pleased to direct that no coercive action shall be taken against the Applicant till the next date of hearing. The Hon'ble Delhi High Court further granted liberty to the company to submit any restructuring plans/proposals by any investor which shall be considered by the Canara-Consortium.

xxv. On 17.7.2020 the Canara-Consortium filed their common counter-affidavit whereby they acknowledged that Vayam Technologies Ltd., is a viable company with sufficient receivables. Again on 22.7.2020 the Hon'ble Delhi High Court directed the Company to place on record details of the services it had rendered and dealings it had made from 1" January 2015 till date along with details of the payments received. The Company was also directed to place on record an affidavit providing a complete list of bank accounts where the said amounts were received from various clients. Again on 21.8.2020 the Hon'ble High Court directed the company to supply to the consortium details with regard to (i) the total payments received by the company in each financial year; (ii) the total receivables of the company for each financial year; and (iii) the total expenditure of the company as per the audited balance sheet. The company was permitted to approach the Consortium with a concrete proposal either from M/s Ebix Inc. or any other investor.

xxvi. On 18.9.2020 the Hon'ble Delhi High Court directed the Managing Director of the company to provide the details of all the joint-ventures or other entities/divisions of the company (i.e. Applicant herein) including their balance sheets for the last three years.

xxvii. The writ petition was heard on merits and the Hon'ble High Court of Delhi recorded a categorical finding in paragraph-25 of the judgment that, *"The consortium members who are now the majority shareholders of the Company, have to take their own decision as to whether the business of the Company should be continued or whether they wish to pursue other remedies"*. The aforesaid judgment remained unchallenged and has been accepted by all the parties and has attained finality inter-se the parties. Consequent upon the delivery of the aforesaid judgment, consortium meeting was held at Canara Bank, Delhi on 21.1.2021. It is in this meeting two potential investors participated wherein their respective revised proposals were discussed at length. However, the majority shareholders did not accept the revised proposals and requested the potential investor to improve upon their offer. Unfortunately, nothing tangible came out of the revised proposals and matter ended there with no results. The Applicant had serious objections to the proceedings of the meeting dated 21 January 2021.

xxviii. On 24th February 2021, the Canara Bank encashed the FDR of the value of Rs. 4,67,92,875/-, which was deposited by the Applicant on 16.12.2015 as security with Canara Bank. This amount was distributed by the Canara Bank amongst other shareholder/members of the consortium. This was done by the Canara Bank without there being any notice to the company or the Applicant. On 25th August 2021 the President of the Board & CEO of M/s Ebix directly wrote to Canara Bank enclosing his revised proposal for investment into the company and requested for its consideration in the right perspective.

xxix. On 5.10.2021 the Applicant was shocked to receive a confirmation from Canara Bank that by then they had encashed a total amount of Rs.5,52,08,886/- from the account of the Applicant by liquidating the FDR given by him as security and other securities. As on date, an amount of Rs.8,08, 04,407/- has been illegally misappropriated by the Canara-Consortium since January 2021.

xxx. Since the Canara-Consortium was not considering any request that was being made by the company and its Promoters/Directors, and on the other hand, had initiated coercive proceedings for recovery of their non-existent loan, the Company and the Promoter-Managing

Director/Applicant were constrained to file a writ petition bearing Writ Petition (Civil) No.14356/2021 in the Hon'ble High Court, against the Canara-Consortium. In this writ petition, the following reliefs in the nature of issuance of writ of mandamus and certiorari have been sought:-

"(i) Issue an appropriate Writ/ Order or directions in the nature of mandamus upon the respondents-banks to consider the revised investment proposal submitted by strategic investor on 25.8.2021 in furtherance to the earlier proposal dated 30.1.2021 submitted in compliance to the Judgment dated 98 76 23.12.2020 passed by this Hon'ble Court in W.P (Civil) No.3437/2020 and hold a meeting of the Joint Lenders Forum (JLF) for taking a decision on considering the proposal submitted by the strategic investor in accordance with law; and/or

(ii) Issue an appropriate Writ/ Order or directions in the nature of mandamus upon the respondents-banks to consider the representations of the petitioner dated 30.1.2021 (Annexure P/55), 19.3.2021 (Annexure P/57), 12.5.2021 (Annexure P/58), 1.6.2021 (Annexure P/59), 1.9.2021 (Annexure P/62), 7.9.2021 (Annexure P/63) & 5.10.2021 (Annexure P/64); and/or

(iii) Issue an appropriate Writ/ Order or directions upon the respondents-banks prohibiting them from taking any/all

coercive actions against the petitioners jeopardizing the finalization of the Strategic Debt Restructuring which has been affirmed by the Hon'ble Supreme Court in the Judgment reported in (2019) 5 SCC 480; and/or

(iv) Issue an appropriate Writ/ Order or directions thereby declaring the impugned actions of the respondents-banks of recovery without complying with the directions contained in the judgment dated 23.12.2020 as bad in law and unsustainable; and/or

(v) Issue an appropriate Writ/ Order or directions prohibiting the respondents-banks from taking any coercive measures behind the back of the petitioners and in violation to the principles of natural justice; and/or

(vi) Issue an appropriate Writ/ Order or directions declaring that the recoveries made by the respondents-banks is illegal, arbitrary and is violative of the principles of natural justice;

(vii) Issue an appropriate Writ/ Order or directions in the nature of mandamus upon the respondents-banks directing them to place on record the minutes of all the internal meetings of the lenders and the decision taken therein against the petitioners behind their back."

xxxi. On 15.12.2021, the Hon'ble Delhi High Court asked the Canara-Consortium to submit a response as to whether the revised proposal submitted on 30.1.2021 has been considered in the JLF meetings.

xxxii. On 7th January 2022 the company issued a notice to all its members-shareholders about convening an Extra-Ordinary General Meeting enclosing the agenda "To discuss and approve the best possible viable way to achieve maximization of wealth and minimization of losses in view of the prevailing stressed economic financial conditions of the Company keeping vision, mission and goal of the company in perspective".

xxxiii. On 31" January 2022, the EGM of Vayam Technologies Ltd., was held at the registered office of the company after 21 days' due notice and the Special Resolution was passed by 100% members/shareholders present and voting, whereby the latest revised offer/term sheet shared by Chairman of the Board, President & CEO of Ebix vide email dated 25.8.2021 addressed to Canara Bank, Delhi was accepted and approved. Thereafter, vide email dated 5th March 2022, the resolution passed in the EGM held on 31.1.2022 was circulated to all the members/shareholders of the company including the Applicant and the Canara-Consortium members.

xxxiv. However, one of the lender-Bank namely DBS Bank which was not part of the consortium and is not a shareholder in the company, approached the National Company Law Tribunal by way of an application under section 7 IBC vide the order dated 25.3.2022, the learned NCLT admitted the application, appointed an Interim Resolution Professional and a moratorium was declared.

xxxv. Further, it is pertinent to point out that IDBI Bank (consortium member) vide letter bearing Ref No. TFO/Unlisted Shares/05 dated 20th April

2022 wrote to the Applicant that it had put an advertisement in Financial Express and Business Standard on 19th April 2022, inviting bids from interested parties for purchase of the equity shares held by IDBI Bank in the company which they had received pursuant to debt conversion made by the parties as per SDR. The IDBI Bank though was exercising its rights as a shareholder in the company, but these actions are prohibited under the provisions of the IBC and the Companies Act, particularly when the moratorium was in place.

xxxvi. On 26.6.2022, the Applicant was informed by the Canara Bank, that they propose to take steps against the Promoters/Guarantors under section 13(4) of the SARFAESI Act 2002 readwith Rule 8(6) of the Security Interest (Enforcement) Rules 2002 by way of auctioning their personal properties given by way of security prior to the Strategic Debt Restructuring. The said notice had fixed 29th July 2022 as the scheduled date of e-auction. An auction notice dated 23.6.2022 was published in this behalf in the newspaper on 26.6.2022. The aforesaid auction notice was arbitrary, illegal, highly contemptuous and without jurisdiction since it is undisputed that the order dated 16.7.2018 passed in W.P (Civil) No.7221/2018 is between the same parties i.e., the Applicant & the Company and the Canara-Consortium and it is a bi-party decision rendered in exercise of its writ jurisdiction under Article 226 of the Constitution. Accordingly, the Applicant alongwith other Promoters approached the Hon'ble High Court of Delhi in writ jurisdiction vide W.P (Civil) No. 10961/2022 with the following prayers:-

"(i) Issue an appropriate writ/ order or directions in the nature of certiorari thereby quashing & setting aside the Sale Notice contained in ref: 19208/ SAMB/VAYAMI SARFAESI/ SALE/ 01/2022-23 dated 23.6.2022 (Annexure P/32) issued by Respondent No.1 (Canara Bank) under section 13(4) of the SARFAESI act 2002 readwith rule 8(6) of the Security Interest (Enforcement) Rules, 2002; and/or

(ii) Issue an appropriate writ/ order or directions thereby declaring that the coercive actions taken by the consortium of banks (respondents herein) against the Petitioners/Guarantors pursuant to conversion of Debt into Equity as illegal and in teeth of the order of this Hon'ble Court dated 16.7.2018 passed in Writ Petition (Civil) No.7221/2018, affirmed by the Hon'ble Supreme Court in (2019) 5 SCC 480 and further judgment of this Hon'ble court dated 23.12.2020 passed in Writ Petition (Civil) No.3437/2020;

(iii) Issue an appropriate writ/ order or directions upon the respondents-banks prohibiting them from taking any/all coercive actions against the petitioners towards recovery of non-existing debt(s); and/or

(iv) Issue an appropriate Writ/ Order or Directions declaring the encashment of the personal securities of petitioner no.1 amounting to Rs.5,52,08,886/- by the respondents after conversion of debt into equity as illegal, arbitrary and to return

the forfeited amount alongwith 18% interest per-annum; and/or

(v) *Issue any other appropriate Writ, Order or Direction which this Hon'ble Court deems just and proper, in the facts and circumstances of the present matter.*

(vi) *The costs of the present Writ Petition may also be awarded in favour of the petitioners".*

xxxvii. The notice of EGM dated 7.1.2022, the resolution passed in the EGM dated 31.1.2022 and its communication to all the shareholders dated 5.3.2022 are well within the knowledge of the Canara Bank consortium, however, notwithstanding that they are the majority-shareholders of the corporate-debtor, successive frivolous applications are being filed by them suppressing these facts, which is prima-facie 'oppression of the minority-shareholders' as well as the 'mismanagement of the company', and the same are liable to initiation of actions under Sections 241 & 242 of the Companies Act 2013.

xxxviii. Undisputedly the Canara-Consortium members are majority shareholders in the company to the extent of 56.6% whereas, the Promoters' shareholding has dropped down from 81.92% to mere 34.4%. The Annual General Meeting to consider the accounts of the company was convened after due notice to all the shareholders including the members of the consortium and the accounts circulated clearly stipulated that the entire debts were converted into equity and the accounts reflected no outstanding. It is pertinent to mention that the financial statements were also separately provided by the appointed Interim Resolution Professional to the majority shareholders for their review and acknowledgment. Yet, the same has never been objected to by any of the shareholders, including the consortium of these shareholders at any stage, including in their replies in the proceedings of W.P (Civil) No.2685/2023. The accounts approved in the AGM were duly filed with the Registrar of Companies and are in the public domain. Thus, there are no debts recoverable by the Canara Bank or any other member of its consortium as the debts have been converted into equity, and the Canara Bank consortium is free to exercise their rights 'only' as a shareholder, but not as a creditor.

xxxix. IDBI Bank (shareholder-member of Canara Bank consortium) vide letter bearing Ref No. TFO/Unlisted Shares/669 dated 22nd February 2023, requested the Promoters/nominee of the Promoters or Strategic Investors to offer for buy back of the equity shares in the company held by IDBI.In the meanwhile, the Canara Bank by suppression of material facts filed three separate applications under section 14 of the SARFAESI Act, 2002 before the learned ACMM Court, New Delhi in which receivers were appointed to assist the Bank in taking over physical possession of the personal properties of the defendants, the title deeds of which are still illegally withheld by the Canara Bank consortium. This necessitated filing of W.P (Civil) No.2685/2023 before the Hon'ble Delhi High Court. The said writ petition was disposed-off vide the order dated 3.5.2023 directing the defendant nos.2 to 4 herein to pursue remedies in accordance in law according to the Hon'ble High Court, disputed questions of fact could not be adjudicated in writ jurisdiction. The said order was challenged by the defendant nos.2 to 4 before the Hon'ble Division Bench of the Delhi High Court in LPA No.742/2023 in which notice has been issued vide the order dated 8th November 2023 and it is now listed on 17th September 2024.

xl. The Hon'ble Delhi High Court in W.P (Civil) No.7221/2018 recorded a categorical finding that once, it is acknowledged that the shares were allotted to the banks by conversion of the debt owed to them, it follows that the debt no longer exists. The fact that physical share certificates have not converted in a non-fungible form is only a matter of form of holding interest in such shares and does not change the nature of the investment. Prima facie, it would also follow that any proceedings instituted by the banks for recovery of the debt would obviously be contested on the ground that what is outstanding in favour of the banks is not a loan but outstanding share capital. These findings, being rendered inter-parties has attained the finality of affirmance by the decision of the Hon'ble Supreme Court rendered in (2019) 5 SCC 480. This finding, operate res-judicata between the parties and having attained the finality both on facts and law with regard to the loan transaction in question. In the present case the findings of the Hon'ble Delhi High Court are affirmed by the Hon'ble Supreme Court and has attained finality and no longer remains alive for fresh adjudication by any Court, except to give effect to these findings. It is for this reason that, though the Hon'ble Supreme Court examined only one question relating to the vires of the circular dated 12.02.2018 but did not consider it necessary to remand the case to the Hon'ble Delhi High Court for its fresh hearing after it struck down the circular.

xli. As regards the judgment passed by the Hon'ble Delhi High Court in Writ Petition (Civil) No.3437/2020, it is also rendered between the same parties and it is in relation to the same controversy relating to the loan transaction in question. This judgment has also attained finality and operate res-judicata inter-se the parties and hence have to be given effect to, for deciding the rights of the parties.

xlii. The conversion of the debt into equity shares was done by the parties strictly in accordance with the procedure prescribed in SDR read with the provisions of the Companies Act. The same was implemented in letter and spirit. The implementation was duly informed to all concerned parties including competent authorities. All competent authorities accepted the implementation made by the parties and this was therefore, allowed to go ahead. It is only thereafter that the Hon'ble Delhi High Court gave a categorical finding in the order dated 16.7.2018 passed in W.P (Civil) No.7221/2018 which stood affirmed by the Hon'ble Supreme Court in (2019) 5 SCC 480 and this finding was again reiterated in the judgment dated 23.12.2020 passed by the Hon'ble Delhi High Court in W.P (Civil) No.3437/2020 and the same has not been challenged by any of the parties.

xliii. Further the RBI circular on SDR was made applicable to a transaction between a bank and a company (borrower) registered under the Companies Act. Parties could therefore, by agreement settle their disputes by taking recourse to this Circular. Once the parties opt and get their disputes settled in accordance with the procedure prescribed therein, then the rights and obligations of the parties i.e., banks/lenders and the borrowers qua each other are governed by the SDR read with applicable laws.

xliv. The original relationship between the Canara-Consortium members and the company which was that of the "Creditor" and the "Debtor" existed till the conversion of debt into equity was not done as per the procedure prescribed in SDR. However, subsequent to the settlement of the outstanding debts through SDR scheme and getting the same executed, the relationship/status of parties changed. The lenders then became majority shareholders of the company holding 56.6% shareholding, whereas the appellant became the minority shareholders holding to the extent of 34.4% shareholding of the company.

xlv. Furthermore It is undisputed fact that the Management Framework Agreement dated 22nd December 2017, does not provide any clause which provides for any retention of the status of the consortium of banks as 'Creditor' after conversion. In this view of the matter, the only status which the consortium of banks now enjoy is that of a 'majority shareholder' under the Companies Act. This fact was very much noticed in paragraph-25 of the judgment passed by the Hon'ble Delhi High Court on 23.12.2020 in W.P (Civil) No.3437/2020 and therefore remedy with the members of the consortium is only to pursue their rights and remedies in their capacity as shareholders of the company qua other shareholders under the Companies Act. The Canara-Consortium do not have any legal right to pursue their rights & remedies under any other Act for realization of their so-called debt which no longer retains its original character nor it survives for recovery as 'debt' under the DRT/SARFAESI Act. It has attained a different character viz, 56.6% equity shareholding in the company. With regard to the aforesaid illegal actions of Canara Bank and other members of the consortium, the Applicant and the company obtained written-legal opinions from two Former Hon'ble Judges of the Supreme Court of India who have clearly and independently opined that with the conversion of the entire debt of Canara Bank consortium into equity under SDR, there is no debt left to pursue and hence, no recovery/enforcement proceedings, whether under the Recovery of Debts & Bankruptcy Act 1993 or under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act 2002 will lie.

xlvi. The Canara-Consortium are guilty of unjust-enrichment inasmuch as at every stage, the plea of Canara Consortium has come to be rejected as would be evident from the fact that it had earlier moved an application under section 7 of the IBC before NCLT , New Delhi and allowed it to remain in defects, and only after the order dated 4th July 2022 was passed by the Hon'ble NCLAT that said section 7 application bearing CP

(IB)-581 (ND) of 2022 was moved and ultimately dismissed as not maintainable by the learned Adjudicating authority vide the order dated 5.8.2022. Later on, the applicant-Canara Bank filed Intervention Petition No.13/2023 in the pending CP (IB) No.661 of 2021 which was dismissed as withdrawn without any liberty vide the order dated 9.3.2023.

xlvii. Again Canara-Consortium tried to sue the company by filing Interlocutory Application No.4814/2023 before the Hon'ble NCLAT, however the case of Canara Bank has once again been rejected by the Hon'ble NCLAT, New Delhi. This is obviously for the reason that the Canara Bank consortium does not fall within the definition of financial creditors' under section 7 of the Insolvency & Bankruptcy Code 2016, since after 27.12.2017 these banks are merely majority-shareholders of Vayam Technologies Limited.

xlviii. The actions of the Canara-Consortium members have always been against the interests of the Corporate-Debtor and these fall within the ambit of oppression and mismanagement inter-alia for the following reasons-:

A) The Canara-Consortium has in the meetings of the company invited strangers/non-shareholders such as DBS Bank India Limited (Respondent no.6) but did not inform the minority-shareholders i.e., the Applicant herein, and in doing so the provisions of the Companies Act 2013 were grossly violated inasmuch as every notice of such meeting ought to be convened by the Company Secretary which was never done. That apart, in those meetings various vital company information was leaked by these majority-shareholders;

B) The actions of the Canara-Consortium in leaking the company's confidential information in the public, including but not limited to the company's upcoming business and tenders as well as the day-to-day business model of the company has led to infringement of the intellectual property rights of the Company;

C) The Canara-Consortium in collusion with the company's business rivals instigated DBS Bank India Limited in triggering Corporate Insolvency Resolution process of the company. In doing so, the active role of the Canara-Consortium is apparent against the interests of the company and its shareholders when they successively tried to intervene at various stages in the Insolvency Application filed by DBS Bank India Limited, whether before NCLT or before the Hon'ble NCLAT;

D) The Canara-Consortium has not yet released the various securities and title documents as well as shares of the Applicant held by them under pledge, prior to the implementation of the Strategic Debt Restructuring, notwithstanding various requests made by the Applicant to the Canara Bank including sending its copies to the Central Registry CERSAI;

E) The Canara-Consortium is guilty of holding the shares of the company to the extent more than what is permitted under the Banking Regulation Act 1949;

F) The recitals of the audited balance sheet of the company is sought to be avoided and the resolution plan submitted by the Strategic Investor and approved in the Extraordinary General Meeting of the company on 31 January 2022, strictly in line with the judgment dated 23rd December 2020 passed by the Hon'ble Delhi High Court in W.P (Civil) No.3437/2020, is being violated;

G) The Canara-Consortium on the one hand was not participating in the Annual Meetings and other Extraordinary Meetings of the shareholders of the company, whereas on the other hand, when the Company ultimately booked profits in its balance sheets, these majority-shareholders/ Canara-Consortium have sought to assail it as an afterthought;

xlix. That the IDBI Bank Limited has grossly violated the moratorium imposed under section 14 of the Insolvency & Bankruptcy Code 2016 inasmuch as during the CIRP period it has sold substantial number of the company's equity shares held by it upon conversion of debt into equity under the SDR. Section 14(1) (b) of the IBC 2016, specifically prohibits and imposes a moratorium upon transferring, encumbering. alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein

l. The actions of Canara-Consortium falls foul to Section 241(1) (b) of the Companies Act 2013, which specifically provides that any member of a company who complains that there is a material change in the ownership of the company's shares and by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, it may apply to the Tribunal for appropriate reliefs;

li. Further Section 133 of the contract Act deals with "Discharge of Surety by variation in terms of Contract" and read as under:-

"133. Discharge of surety by variance in terms of contract. Any variance, made without the surety's consent, in the terms of the contract between the principal debtor) and the creditor, discharges the surety as to transactions subsequent to the variance. Any variance, made without the surety's consent, in the terms of the contract between the principal debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.

lii. In the present case, as the original contract between the Canara-Consortium and the Company varied pursuant to Strategic Debt Reconstructing Agreement dated 22.12.2017, and the Banks having become the shareholders of the Company, the surety given by all the Guarantors i.e. the Personal Guarantors/Corporate Guarantor stood discharged. The right accrued to the guarantor as per Section 133, 134, 139 and 141 of the Contract Act, 1872 being a statutory right, the right cannot be taken away by virtue of an agreement reached between the Banks and the Guarantors. The Agreement of Guarantee reached between the Guarantors and the Banks on 14.3.2012 as well as 22.12.2015 shows M/s Vayam Technologies Ltd. as the borrower. All the

Paragraphs therein show that the Personal Guarantors and Corporate Guarantors are the borrowers. Even if the Guarantors are treated to be borrower for the purpose of recovery of the amount, the same cannot take away the statutory rights of the guarantors. Any agreement to the extent the same is against Section 28 of the Contract Act, 1872 is void in the eyes of law. Notwithstanding the above legal position, the Canara-Consortium had not been releasing the securities of the Applicant and the company. In this regard, the company made various requests including a recent demand notice dated 19.6.2024 (emailed on 21.6.2024) by the Applicant with copies marked to the Central Registry (CERSAI) constituted under section 20 of the SARFAESI Act 2002. Similarly, a formal Complaint no. N202425014008153 is also lodged with the office of the Banking Ombudsman of the Reserve Bank of India against Canara-Consortium.

liii. On 28th May 2024 at 4.38 PM, an email was received by the Applicant from the IRP of the Corporate-Debtor enclosing an erroneous notice of the 1" meeting of the CoC proposed to be held on 3rd June 2024 at the registered office of the Corporate-Debtor. The Applicant was shocked to find that the Canara-Consortium members were disclosed as Financial Creditors and accordingly the Applicant sought legal advice from its counsels and on 30th May 2024 the counsel for the Applicant advised him to inform all the authorities to act in accordance with law, strictly keeping in mind the order dated 16th July 2018 and the judgments dated 2nd April 2019 & 23rd December 2020.

liv. Acting on the advice as well as two previous legal opinions taken on 28th February 2022 and 7th July 2022, the Applicant wrote to the IRP on 31 May 2024, strongly objecting to the Constitution of the CoC and particularly treating the Canara-Consortium as Financial Creditors and giving them any voting right, in the absence of any debt/claim. Alongwith the said email dated 31 May 2024, the Applicant-Suspended Director enclosed all the supporting materials documents.

lv. Thereafter on 3rd June 2024 the proceedings of the 1" meeting of the CoC of the Corporate-Debtor were disrupted by the Majority-shareholders/Canara Consortium members and the IRP was prevented from discharging her statutory obligations under the Insolvency & Bankruptcy Code 2016. This was an apparent act of the Canara Consortium acting against the interests of their own company or in other words, of which they themselves are the owners/ Promoters. Accordingly, the Applicant once again on 5th June 2024 wrote to the IRP, recording his serious objections in writing to the proceedings of the CoC meeting held on 3rd June 2024 by way of an email dated 5th June 2024 sent at 1.53 PM. On 12th July 2024, the 2nd meeting of the CoC was held at the registered office of the Corporate-Debtor wherein the CoC proceedings were again sought to be disrupted at the instance of Consortium-Members.

lvi. The admitted position is that the Audited Balance sheets of the Corporate Debtor do not reflect the debts of the Respondent-Banks and these balance sheets are already filed with the statutory authorities. These facts are duly acknowledged and admitted on oath and also form part of the order of the Hon'ble Delhi High Court. It is pertinent to point out that in the pending LPA No.742/2023 before the Hon'ble Delhi High Court, an application bearing C.M. Appl. No. 24681/2024 was filed by the Respondent-Banks challenging the audited balance sheets of the Corporate Debtor.

lvii. The admitted fact of Respondent-Banks in the said application as also reflected in the order dated 29.04.2024 of the Hon'ble Delhi High Court is that the balance sheet of the Corporate Debtor does not show any debt of these banks. Furthermore, it is also a matter of fact that the Hon'ble Delhi High Court vide its order dated 29.04.2024 passed in LPA No. 742/2024 has out rightly rejected the prayer of the Respondent-Banks made in C.M. Appl. No. 24681/2024 and till date, the said order has not been challenged before the Hon'ble Supreme Court. This being the position, the recitals of the audited balance sheet of the Corporate Debtor for the FY 2021-22 and 2022-23 is a sacrosanct statutory document.

lviii. With regard to the aforesaid illegal actions of Canara Bank and other members of the consortium, the Applicant and the company obtained written-legal opinions from two eminent legal personalities who have clearly and independently opined that with the conversion of the entire debt of Canara Bank consortium into equity under SDR, there is no debt left to pursue and hence, no recovery/enforcement proceedings, whether under the Recovery of Debts & Bankruptcy Act 1993 or under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act 2002 including under the IBC will lie. These independent opinions also formed part of the representation made to the IRP/RP in the email dated 31 May 2024.

lix. The Applicant was a personal guarantor to the Respondent-Banks and having discharge his liability as personal guarantor to the respondent banks he will again be subjected to the rigours of the subjected liability if the Respondent-Banks are admitted into the Committee of Creditors and are treated as Financial Creditor. That severe prejudice as well as huge loss to be caused to the Applicant herein if the action of the RP in constituting the Committee of Creditor with Respondent No.2 to 6 as a member therefore has a locus to file the present application.

lx. The Applicant being the promoter of the Vayam Technologies Ltd., being an MSME has a right to give a resolution plan for concluding the instant process of the Corporate Insolvency Resolution Process and therefore has a locus to file the present application. That apart, in view of the guarantee executed by the applicant in favour of the financial creditor/DBIL, he has sufficient stakes in the matter and will be adversely affected by the outcome of CIRP of the corporate-debtor.

lxi. The admitted position of respondent nos. 2 to 6 i.e., the Canara consortium is that they had no document/evidence in support of their so-called claims which necessitated filing of C.M Application No.24681/2024 before the Hon'ble Delhi High Court on 29th April 2024 and even as on today when the Company Petition filed by them under section 130 of the Companies Act challenging the balance-sheet has not yet been listed.

lxii. Following the law and the conclusive judgments of the Hon'ble Delhi High Court and the Hon'ble Supreme Court that entire debts of Canara-consortium was fully settled, the Respondent No.1/IRP/RP rightly did not give the respondent nos.1 to 5 any voting rights in the meetings of the CoC and they were called as special invitees'. These banks therefore, filed I.A No.3167/2024 before NCLT seeking reliefs-:

> a. *"Allow the present application; and*
> b. *Direct the Respondent to verify the claims and reconstitute the CoC in accordance with law by assigning the Applicants voting rights in proportion to their admitted claims; and*
> c. *Direct the Respondent not to call for any further meeting of the CoC till the final disposal of present application; and*
> d. *Declare the minutes of meeting and resolutions passed in the 1st CoC meeting void and non-est."*

lxiii. The applicant as well as the sole financial creditor-bank i.e., DBS Bank India Limited were not impleaded as a party to the I.A No.3167/2024 and therefore the applicant filed an application for intervention bearing I.A No.3888/2024, but in view of the disposal of the application on mere statement of the IRP/RP, but without adjudication, the applicant did not press its intervention application.

lxiv. In the reply filed by the IRP/RP (Respondent No.1) it was her specific case that despite repeated reminders the applicants of I.A No.3167/2024 did not provide any proof/relevant documents and in the absence thereof, the audited-balance sheets of the corporate-debtor were relied upon which evidently do not reflect their debts and only the financial debts of DBS Bank India Limited and HP Financial Services Limited reflected and therefore the IRP/RP filed her compliance report certifying the constitution of CoC under Regulation 17(1) of the 2016 CIRP Regulations vide L.A No.3004/2024 and the same was taken on record on 11.6.2024 BY NCLT.

lxv. During the hearing of 1.A No.3167/2024 a statement was made on behalf of the IRP/RP which was recorded in the order dated 20.8.2024 and the same reads, *"the RP would verify the claim of the Applicant as also its locus to remain part of CoC within 2 weeks and till such exercise is completed, the CoC would not take any decision. In view of the statement made by Mr. Sumesh Dhawan, Ld. Counsel for the RP, the application is disposed of. No cost"*.

lxvi. Despite 13 days having elapsed from the order when no communication was received from the IRP/RP, an objection was filed by the applicant herein requesting her to act strictly in accordance with the order dated 16.7.2018 passed in W.P (Civil) No.7221/2018 of the Hon'ble Delhi High Court which ultimately merged into the judgment of the Hon'ble Supreme Court passed in Transferred Case (Civil) No.75/2018 reported in (2019) 5 SCC 480; the judgment dated 23.12.2020 passed by the Hon'ble Delhi High Court in W.P (Civil) No.3437/2020 as well as the audited balance sheet of the corporate-debtor which forms part of the record of the LPA

No.742/2023 as also the own affidavit dated 2.8.2024 filed by the IRP/RP in I.A No.3167/2024.

lxvii. When no response was received from the IRP/RP for more than 15 days even thereafter, that the applicant again sent his objections via email on 18.9.2024 to her requesting her to act strictly in accordance with the settle legal position in the matter or face legal action On 19.9.2024 an email communication was received from the IRP/RP which was also addressed to the respondent nos.2 to 6 by which the IRP/RP went contrary to her own affidavit and in the absence of any debt of the Canara-consortium, suo-motu re-constituted the CoC and gave voting rights to the majority-shareholders/respondent nos.2 to 6. The applicant immediately objected to the impugned action of the IRP/RP dated 19.9.2024 by filing his objection dated 22.9.2024 and requesting her to withdraw her decision, but in vain.

lxviii. The impugned action of the IRP/RP dated 19.9.2024 is bad in law inasmuch as it had no jurisdiction to re-decide and re-constitute the CoC by provisionally giving 94.09% voting rights to the majority-shareholders of the Corporate-Debtor. NCLT in the order dated 20.8.2024 has not passed any direction to either reconstitute the CoC, nor it has ordered that the IRP shall take a stand contrary to its affidavit, but further CoC proceedings comprising only DBIL & HPFSL as financial creditors, was merely stayed. Admittedly until 29th April 2024, the Canara Consortium had no evidence of their debt, in terms of Regulation-8 of the IBBI Regulations and therefore they unsuccessfully went to the Hon'ble Delhi

High Court in C.M Appln. No.24681/2024. Thereafter instead of challenging this order in Supreme Court they approached NCLT in a company petition purportedly under section 130 of Companies Act, in which no order has yet been passed. Thus, the impugned action is bad.

3. Written Submissions On Behalf of Respondent No. 1

a. The IRP has submitted that the present written submissions are confined to the challenge regarding the constitution of the CoC by inclusion of Canara Bank, IDBI Bank Ltd., Bank of Baroda, Axis Bank Ltd. and Union Bank of India (collectively referred to as the Canara Consortium). It is stated that the Canara Consortium presently holds 32.38% voting share in the CoC, though such inclusion is purely provisional and subject to the outcome of the present proceedings. The IRP submits that no final determination has been made regarding the status of the Canara Consortium's claims, and the IRP shall abide by the decision of this Adjudicating Authority.

b. The IRP submits that it has neither exceeded its jurisdiction nor failed to discharge its statutory duties. It is contended that under the Insolvency and Bankruptcy Code, 2016, the Resolution Professional possesses no adjudicatory powers to finally determine disputed claims and is therefore required to act on the basis of available material while leaving contentious issues for adjudication by the Adjudicating Authority. Accordingly, the provisional admission of the Canara Consortium's claims does not amount to a final adjudication of their status as financial creditors.

c. It is further submitted that a similar controversy concerning the constitution of the Committee of Creditors is already pending in I.A. No. 4742 of 2024 in the CIRP of the parent company, Vayam Technologies Ltd., wherein the suspended management has raised substantially similar issues.

d. The IRP has narrated the background of the financial transactions and submitted that Vayam Technologies Ltd., being the principal borrower, had availed various working capital facilities from the Canara Bank-led consortium, which were secured, inter alia, by a corporate guarantee executed by the present Corporate Debtor and by creation of pari passu security over immovable property. The CIRP of the present Corporate Debtor commenced on 25.01.2024, whereas the CIRP of the parent company commenced earlier on 25.03.2022. The IRP submits that the first meeting of the Committee of Creditors was held on 27.02.2024, but the minutes could not be circulated in view of the interim order passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 343 of 2024 challenging admission of the Corporate Debtor into CIRP. Upon dismissal of the appeal on 12.07.2024, the second CoC meeting was convened, wherein attention was drawn to the audited financial statements of the Corporate Debtor for FY 2022-23. The said financial statements reflected only the liability of DBS Bank as a contingent liability and recorded a note that the liabilities of the Canara Consortium stood resolved under the Strategic Debt Restructuring (SDR) Scheme through conversion of debt into equity. The IRP points out that these audited financial statements had been approved and signed by the suspended directors prior to commencement of CIRP. The IRP submits that in terms of Regulation 8 of the CIRP Regulations, the Canara Consortium submitted its claims in Form C along with supporting documents. However, since the audited financial statements did not reflect the debt claimed by the consortium, the lenders approached the Hon'ble Delhi High Court by filing CM Application No. 24681 of 2024 seeking directions which would have provided supplementary material in support of their claims. As the High Court declined to grant the relief sought, the IRP, while constituting the Committee of Creditors under Regulation 17(1), specifically recorded that the claims of the Canara Consortium remained under verification.

e. The IRP further submits that the Canara Consortium thereafter filed I.A. No. 3167 of 2024 in the CIRP of the parent company seeking verification of their claims and reconstitution of the Committee of Creditors. In the reply filed therein, the IRP had consistently maintained that, in the absence of supporting documentary material beyond the audited financial statements, the claims could not be finally verified. The IRP also informed the Canara Consortium during the CoC meeting that the issue remained sub judice and that the present Corporate Debtor's liability arose only by virtue of the corporate guarantee executed in favour of the lenders.

f. The IRP submits that following the order dated 20.08.2024 passed in the parent company's CIRP, a preliminary due diligence exercise was undertaken. On such verification, the IRP found that the charges created in favour of the Canara Consortium continued to remain active on the MCA portal, no no-dues or discharge certificate had been issued by the lenders, and multiple proceedings concerning the alleged extinguishment of debt and correctness of the Corporate Debtor's balance sheets remained pending before competent forums. In view of these circumstances, the IRP provisionally admitted the claims of the Canara Consortium pending final adjudication.

g. The IRP further submits that, owing to the complexity of the legal issues involved, clarification was sought from the Insolvency and Bankruptcy Board of India (IBBI) regarding the scope of the IRP's powers. The IBBI, by its communication dated 12.09.2024, advised the IRP to act in accordance with the provisions of the Code and, where necessary, seek appropriate directions from the Adjudicating Authority. The IRP concluded by reiterating that the claims of the Canara Consortium have only been provisionally admitted, that no final determination regarding their entitlement to be members of the Committee of Creditors has been made by the IRP, and that the IRP shall implement and abide by the final decision rendered by this Adjudicating Authority on the present application.

4. Reply on behalf of the Respondent Nos.2 to 6

a) The Answering Respondents No. 2 to 6 have opposed the present Application and have, at the outset, raised a preliminary objection regarding its maintainability. It is submitted that upon commencement of the CIRP, the powers of the Board of Directors stood suspended under the IBC. Consequently, the Applicant, being a suspended director, has no locus to challenge the claims submitted by financial creditors before the Interim Resolution Professional/Resolution Professional or to assail the constitution of the Committee of Creditors (CoC).

b) On merits, the Respondents submits that the Corporate Debtor had executed corporate guarantees in favour of the consortium lenders in respect of the credit facilities extended to the principal borrower, M/s Vayam Technologies Ltd. It is their case that under the Strategic Debt Restructuring (SDR) Scheme sanctioned vide letter dated 24.11.2017, only ₹22.76 crores out of the total outstanding debt of ₹488.51 crores was converted into equity by issuance of 2,27,65,154 equity shares of ₹10 each. They categorically deny the Applicant's contention that the entire outstanding debt stood converted into equity or stood extinguished. In support of the submission, reliance has been placed on the SDR sanction letter, corporate action records and the Information Memorandum prepared by IDBI Capital Market and Securities Limited.

c) The Answering Respondents submitted that the SDR Scheme was never successfully implemented, as the Applicant failed to bring in a strategic investor within the stipulated period despite repeated opportunities. Consequently, the restructuring failed and became inapplicable in terms of the RBI Circular dated 12.02.2018 and the applicable IRAC norms. Thereafter, the consortium lenders classified the account as a Non-

Performing Asset (NPA) and proceeded to initiate recovery proceedings in accordance with law.

d) The Answering Respondents contended that the judicial pronouncements relied upon by the Applicant do not support the plea that the entire debt stood converted into equity. According to them, the observations made by the Hon'ble Delhi High Court in W.P. (C) No. 7221 of 2018 were merely prima facie and did not finally adjudicate the issue of conversion of debt. Likewise, the judgment of the Hon'ble Supreme Court dated 02.04.2019 only quashed the RBI Circular dated 12.02.2018 without determining the nature or extent of debt conversion under the SDR Scheme. It is further submitted that the order passed by the Hon'ble Delhi High Court in W.P. (C) No. 3437 of 2020 merely granted the Applicant further time to bring in a strategic investor and reserved liberty in favour of the consortium lenders to pursue other remedies in the event of failure. In support of their stand, the Respondents have also relied upon the Management Framework Agreement dated 22.12.2017, particularly Clauses 4.3(c) and 4.3(e) thereof to contend that the Applicant had expressly acknowledged that the minutes of the Joint Lenders' Forum could not be construed as reflecting the lenders' final intention and that initiation of the SDR process would not preclude the lenders from pursuing any other remedies available under law. It is therefore contended that the Applicant is estopped from asserting that the lenders ceased to be financial creditors merely because a portion of the debt was converted into equity.

e) The Answering Respondents further alleged that the Applicant deliberately omitted the outstanding liability of the consortium lenders from the balance sheets for the financial years 2021-22 and 2022-23 despite such liabilities having been reflected in earlier financial statements. According to them, such omission was mala fide and caused serious prejudice to the consortium lenders, compelling them to initiate proceedings under Section 130 of the Companies Act, 2013 for reopening and rectification of the financial statements. Reliance has also been placed on the order passed by the Hon'ble Delhi High Court in CM Application No. 24681 of 2024, whereby liberty was granted to the consortium lenders to pursue appropriate legal remedies against the alleged effacement of debt.

f) It is further submitted that the Applicant has suppressed material facts from this Adjudicating Authority, particularly the pendency of W.P. (C) No. 14356 of 2021, wherein directions have been sought for implementation of the SDR Scheme through consideration of a proposal submitted by a strategic investor. According to the Respondents, the pendency of the said proceedings itself demonstrates that the SDR Scheme remained incomplete and had not attained finality.

g) With regard to the verification of claims, the Respondents submit that they duly filed their claims before the Interim Resolution Professional together with all supporting documents and additional records. It is contended that under Regulations 8, 13, 14 and 17 of the CIRP Regulations, the Resolution Professional is required to verify claims on the basis of all relevant material and, wherever necessary, make a best estimate pending final determination. According to the Respondents, although the Interim Resolution Professional initially relied upon the Corporate Debtor's balance sheets, she subsequently undertook verification of the consortium lenders' claims pursuant to the order dated 20.08.2024 passed by this Adjudicating Authority.

h) The Answering Respondents further submit that the Applicant's challenge to the constitution of the Committee of Creditors is misconceived, as the issue regarding verification of claims had already been considered by this Adjudicating Authority in I.A. No. 3167 of 2024, wherein the Resolution Professional undertook to verify the claims of the consortium lenders. It is therefore submitted that the Applicant cannot seek to reopen the same controversy through the present proceedings.

i) The Answering Respondents also submit that the earlier insolvency proceedings initiated by the consortium lenders were never dismissed on merits. CP (IB) No. 581 of 2022 was disposed of with liberty to file claims before the Interim Resolution Professional, the intervention application in CP (IB) No. 661 of 2021 was withdrawn with similar liberty, and the Hon'ble NCLAT also granted liberty to pursue appropriate remedies before the Adjudicating Authority. Accordingly, the contention that the consortium lenders have ceased to be financial creditors is denied.

j) Lastly, the Answering Respondents submit that although they participated in certain meetings as shareholders to the extent of the equity allotted under the SDR Scheme, no document evidences complete implementation of the restructuring package or conversion of the entire outstanding debt into equity. According to them, partial conversion of debt did not extinguish the remaining financial debt or alter their status as financial creditors. They further contend that the present Application has been filed only to delay the CIRP and frustrate recovery of public funds. Accordingly, they have prayed for dismissal of the Application with costs, submitting that the allegations regarding illegal constitution of the Committee of Creditors and extinguishment of the consortium lenders' debt are wholly devoid of merit.

5. Written Submissions On Behalf Of The Applicant I.E., Ashok Tiwari

a) The Applicant, being the suspended Promoter-Director of the Corporate Guarantor, has challenged the constitution of the Committee of Creditors (CoC) in I.A. No. 5033 of 2024, contending that the inclusion of Canara Bank, IDBI Bank Ltd., Bank of Baroda, Axis Bank Ltd. and Union Bank of India as financial creditors is contrary to law. According to the Applicant, these banks ceased to be financial creditors upon implementation of the Strategic Debt Restructuring (SDR) Scheme, whereby the entire outstanding debt of the principal borrower, M/s Vayam Technologies Ltd., stood converted into equity, leaving the consortium only as majority shareholders without any subsisting financial debt.

b) The Applicant submits that the issue of conversion of debt into equity stands concluded by the orders dated 16.07.2018 passed in W.P. (C) No. 7221 of 2018 and 23.12.2020 passed in W.P. (C) No. 3437 of 2020 by the

Hon'ble Delhi High Court, which were never challenged and have therefore attained finality. Reliance is also placed upon the SDR sanction letter dated 24.11.2017, which records the valuation of shares at ₹270 per share, and the RBI Circular dated 08.06.2015, under which the conversion was effected at fair value after compliance with all statutory requirements.

c) It is further submitted that, pursuant to the aforesaid judicial pronouncements and legal opinions obtained by the Corporate Debtor, necessary amendments were carried out in the financial statements of the Corporate Debtor with retrospective effect from Financial Year 2017-18. The revised position has been consistently reflected in the subsequent audited balance sheets, which were duly approved by the shareholders in the Annual General Meetings. According to the Applicant, these financial statements no longer recognize any outstanding liability in favour of the Canara Consortium.

d) The Applicant contends that attempts made by the consortium lenders to challenge the revised financial statements before the Hon'ble Delhi High Court and subsequently through proceedings under Section 130 of the Companies Act, 2013 have not resulted in any reopening or alteration of the approved accounts. It is argued that duly approved financial statements carry a statutory presumption of correctness, and unless reopened in accordance with Section 130 of the Companies Act, they continue to bind all stakeholders. Reliance is placed upon the decision in *Fateh Chand Kad v. Hindsons (Patiala) Ltd.*, reported in (1957) 27

Comp Cas 340, as well as the statutory framework governing reopening of accounts under the Companies Act, 2013.

e) The Applicant further submits that, having lost their status as creditors, the consortium lenders cannot claim membership of the Committee of Creditors or exercise voting rights under the Insolvency and Bankruptcy Code, 2016. It is argued that they presently hold only the status of shareholders and are therefore ineligible to participate in the CoC as financial creditors.

f) The Applicant has also assailed the reliance placed upon the order dated 20.08.2024 passed in the CIRP of the principal borrower, contending that the concession made by the then counsel appearing for the Resolution Professional was erroneous and, in any event, the said order did not direct the Resolution Professional to alter the existing legal position or disregard the documentary material already available on record.

g) It is further submitted that the judgment dated 03.05.2023 rendered in proceedings arising out of SARFAESI measures merely declined to interfere in the writ petition and expressly left all issues open without adjudicating upon the merits of the dispute. Consequently, the observations made therein are stated to be only prima facie in nature and incapable of overriding the earlier binding judgments of the Hon'ble Delhi High Court, which, according to the Applicant, conclusively recognize the conversion of debt into equity.

h) The Applicant finally contends that the Corporate Guarantor, being a wholly owned subsidiary of the principal borrower, cannot be saddled with any liability towards the consortium lenders once the principal debt itself stood extinguished by conversion into equity. It is therefore prayed that the inclusion of the Canara Consortium in the Committee of Creditors be declared illegal, their voting rights be set aside, and the Committee of Creditors be reconstituted in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

6. **Analysis and Decision**

a) The short issue which arises for consideration in the present Application is whether Respondent Nos. 2 to 6, namely, Canara Bank, IDBI Bank Ltd., Bank of Baroda, Union Bank of India and Axis Bank, were legally entitled to be treated as Financial Creditors of the Corporate Debtor and consequently be inducted as members of the Committee of Creditors with voting rights pursuant to the reconstitution dated 19.09.2024.

b) The Applicant has contended that pursuant to the implementation of the Strategic Debt Restructuring (SDR) Scheme, the debt owed by Vayam Technologies Ltd. stood converted into equity, whereby the consortium banks became majority shareholders of the Holding Company and consequently ceased to remain Financial Creditors. It has further been argued that once the principal debt stood extinguished by conversion into equity, the corporate guarantee executed by the Corporate Debtor also stood discharged and, therefore, no financial debt survived in favour of Respondent Nos. 2 to 6. According to the Applicant, the Resolution Professional acted contrary to the provisions of the Insolvency and

Bankruptcy Code, 2016 by reconstituting the Committee of Creditors and granting voting rights to Respondent Nos. 2 to 6.

c) Per contra, Respondent Nos. 2 to 6 have submitted that only a portion of the outstanding debt was converted into equity under the SDR Scheme and the remaining financial debt continued to subsist. It has been further argued that the SDR Scheme was never fully implemented, the restructuring failed, and therefore the lenders continued to retain their character as Financial Creditors. The Respondents have also placed reliance upon the Management Framework Agreement and other contemporaneous documents to contend that the conversion of equity did not extinguish the entire debt.

d) The Resolution Professional has also clarified that the admission of the claims of Respondent Nos. 2 to 6 was only provisional and subject to adjudication by this Adjudicating Authority. It has been submitted that the Resolution Professional has no adjudicatory jurisdiction to conclusively determine disputed claims and was therefore required to verify the claims on the basis of the material available on record pending final adjudication by this Tribunal.

e) It is evident from the pleadings that the dispute between the parties is not confined merely to verification of claims but extends to the very existence of the underlying financial debt. The Applicant asserts complete extinguishment of debt by virtue of the SDR Scheme, whereas the consortium banks contend that only a partial conversion took place and the balance debt continues to subsist. These rival claims are already the subject matter of multiple proceedings before various judicial forums, including proceedings under Section 130 of the Companies Act, writ proceedings before the Hon'ble Delhi High Court, and connected litigation between the parties.

f) This Tribunal is of the considered view that the Resolution Professional is neither expected nor empowered to finally adjudicate complicated questions relating to extinguishment of debt, interpretation of the SDR documents, or the legal effect of various judgments relied upon by the parties. The powers of the Resolution Professional under the Code are confined to collation and verification of claims. Wherever serious disputes regarding existence of debt arise, the same necessarily fall within the adjudicatory jurisdiction of this Adjudicating Authority.

g) The Applicant has also relied upon the audited financial statements of the Corporate Debtor to contend that no liability towards the consortium lenders is reflected therein. However, the consortium banks have specifically challenged the correctness of those financial statements and proceedings seeking reopening of the accounts are stated to be pending before the competent forum. Therefore, the audited balance sheets, though relevant, cannot by themselves conclusively determine the existence or otherwise of the financial debt while such disputes remain *sub-judice.*

h) Similarly, the rival contentions regarding the legal consequences flowing from the Strategic Debt Restructuring Scheme, the extent of debt conversion, discharge of guarantees and the effect of the judgments relied upon by both parties require detailed adjudication on evidence and cannot be finally determined merely in proceedings challenging the constitution of the Committee of Creditors.

i) In view of the foregoing discussion, this Adjudicating Authority is of the considered opinion that the controversy regarding extinguishment of the financial debt of Respondent Nos. 2 to 6 and their consequent status as Financial Creditors cannot be conclusively determined merely on the basis of the pleadings advanced in the present Application. The question whether the entire outstanding debt of the consortium banks stood extinguished pursuant to the Strategic Debt Restructuring Scheme is itself a seriously disputed issue and forms the subject matter of proceedings pending before competent forums. Therefore, the same cannot be adjudicated incidentally while examining the validity of the constitution of the Committee of Creditors.

j) It is also not in dispute that the Resolution Professional admitted the claims of Respondent Nos. 2 to 6 only on a provisional basis, subject to adjudication of their entitlement, and has categorically undertaken to abide by the final decision of this Adjudicating Authority. In such circumstances, no illegality or jurisdictional error can presently be attributed to the exercise undertaken by the Resolution Professional while verifying the claims.

k) Further, under Sections 5(7) and 5(8) of the Insolvency and Bankruptcy Code, 2016, a person continues to remain a Financial Creditor so long as a financial debt is due and payable. In the present case, apart from making a bald assertion that the entire debt stood converted into equity, the Applicant has failed to place any conclusive material on record establishing that the entire outstanding financial debt of the consortium banks stood fully satisfied or extinguished. On the contrary, the consortium banks have consistently maintained that only an amount of Rs. 22.76 crore out of the total outstanding debt of approximately Rs. 488.51 crore was converted into equity under the SDR Scheme and that the remaining debt continues to subsist.

l) The contention of the Applicant that Respondent Nos. 2 to 6, having become shareholders of the Holding Company pursuant to the Strategic Debt Restructuring Scheme, were disentitled from participating in the Committee of Creditors is equally devoid of merit. The second proviso to Section 21(2) of the Insolvency and Bankruptcy Code, 2016 specifically carves out an exception by providing that the disqualification applicable to related party financial creditors shall not apply to a financial creditor regulated by a financial sector regulator where such creditor has become a related party solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date. Thus, conversion of debt into equity, would not render them ineligible to participate in the Committee of Creditors. The Section 21(2) of IBC,2016 reads thus:

> ***"21. Committee of creditors. –***
>
> *(1) The interim resolution professional shall after collation of all claims received against the corporate debtor*

and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed], prior to the insolvency commencement date."

m) Accordingly, the challenge to the reconstitution of the Committee of Creditors is unsustainable. The Applicant has failed to establish that the action of the Resolution Professional was arbitrary, illegal or contrary to the provisions of the Insolvency and Bankruptcy Code, 2016. Consequently, the present Application is found **devoid of merit, ergo the same is dismissed.**

Sd/-	**Sd/-**
(ATUL CHATURVEDI)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**