



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-1, AHMEDABAD

ITEM No.301
IA/1320(AHM)2025
In
CP(IB) 14 of 2018

Proceedings under Section 60(5) IBC r/w Rule 11 of NCLT,
2016

IN THE MATTER OF:

Yogesh Mehra Managing Director of
Wind World India limited

.....Applicant

V/s

Wind World Limited Through Mr. Ravi Sethia RP & Ors

.....Respondents

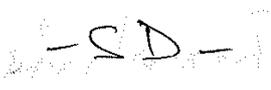
Order delivered on: 26/02/2026

CORAM:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.


SANJEEV SHARMA
MEMBER (TECHNICAL)


SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

IA/1320(AHM)2025

In

CP(IB) No.14/NCLT/AHM/2018

[An application under 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules 2016]

In the matter of

Mr. Yogeshh Mehra

Managing Director,
Wind World (India) Limited

Having its address at:

Wind World Towers
Plot No. A-9, Veera Industrial Estate
Veera Dasai Road, Andheri (West)
Mumbai — 400 053

....Applicant

VERSUS

1. Wind World (India) Limited

**Through Mr. Ravi Sethia
(Resolution Professional)**

Having address at:

Building No. 10, 8" Floor,
Tower C, DLF Cyber City, Phase II,
Gurgaon, Haryana, India - 122002

2. Sipla Wind Energy Ltd.

Having address at:

IL&FS Financial Center
C22 G Block,



Bandra Kurla Complex
Bandra (East), Mumbai - 400051

3. Mahidad Wind Energy Pvt. Ltd.

Having registered office at:
IL&FS Financial Center
C22 G Block,
Bandra Kurla Complex
Bandra (East), Mumbai - 400051

4. Jogihali Wind Energy Pvt. Ltd.

Having registered office at:
IL&FS Financial Center
C22 G Block,
Bandra Kurla Complex
Bandra (East), Mumbai - 400051

... Respondents

Order Pronounced On: 26.02.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For Applicant : Mr. Rashesh Sanjanwala Sr. Adv.
a.w. Mr. Parth Shah, Advocate
For Respondents : Ms. Navin Pahwa, Sr. Adv. a.w.
Neha Naik, Advocate for RP/R-1
Mr. Gopal Jain, Senior Advocate
a/w. Mr. Kuber Dewan, Advocate
for R-2 to R-4.

O R D E R

(Per: BENCH)



1. This application is filed by **Mr. Yogeshh Mehra**, Suspended Director and shareholder (holding 11.56% equity) of Wind World (India) Ltd. ("Corporate Debtor"), (hereinafter referred as "Applicant"), under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules 2016, on 06.11.2025, seeking the following prayers: -

- a. *Allow the instant application;*
- b. *Remove Respondent Nos. 2 to 4 from the Committee of Creditors of Windworld India Ltd.*
- c. *Direct the Resolution Professional to reconstitute the CoC of the Corporate Debtor; and*
- d. *Pass any such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Applicant has placed the facts through the I.A. and documents in the following manner: -

2.1. It is submitted that the present Interlocutory Application has been filed by the Applicant, Mr. Yogeshh Mehra, Suspended Director and shareholder (holding approximately 11.56% equity) of Wind World (India) Limited ("Corporate Debtor"), under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, seeking



directions for removal of IL&FS Group Companies, namely Sipla Wind Energy Ltd., Mahidad Wind Energy Pvt. Ltd. and Jogihali Wind Energy Pvt. Ltd., from the Committee of Creditors (“CoC”) on the ground that they do not qualify as Financial Creditors.

2.2. It is submitted that CIRP against the Corporate Debtor was initiated by this Tribunal vide order dated 20.02.2018 and the Resolution Professional constituted the CoC. Subsequently, the resolution plan of Suraksha Consortium came to be rejected by order dated 24.08.2022, which was challenged before the Hon’ble NCLAT in multiple appeals that are presently pending adjudication.

2.3. It is submitted that the Applicant contends that the inclusion of IL&FS Group Companies as Financial Creditors in the CoC is erroneous and contrary to the provisions of the Code, as no financial debt, within the meaning of Section 5(8) of the IBC, was ever disbursed by them. According to the Applicant, the amounts paid by IL&FS entities were project-related payments made under commercial arrangements and were reflected in the Corporate Debtor’s books as “Other Current Liabilities” and in the books of IL&FS as “Capital Work in Progress,” thereby demonstrating that such payments were not in the nature of financial lending or borrowing involving time value of money.



- 2.4. It is further submitted that the relationship between the Corporate Debtor and IL&FS Group originated from a Memorandum of Understanding dated 27.07.2010 for development of wind power projects, pursuant to which the Corporate Debtor was to design, develop, construct, commission and maintain wind projects on turnkey basis. Thereafter, WRAP Agreements dated 25.03.2015 were executed through various SPVs of IL&FS for development of projects across different locations, and subsequent agreements dated 09.06.2016 and 01.10.2016 were executed to address delay-related costs and to modify the scope of projects.
- 2.5. It is submitted that under the aforesaid arrangements, IL&FS Group Companies provided project-related payments aggregating to approximately Rs. 741 crores up to commencement of CIRP, which were made to facilitate execution of turnkey wind turbine generator projects and were not loans or borrowings. The Applicant contends that these payments were purely commercial advances akin to mobilization advances under construction contracts and therefore cannot be treated as financial debt.
- 2.6. It is submitted that IL&FS Group Companies issued a demand notice dated 01.02.2018 claiming an amount of about Rs. 57.88 crores with interest and categorizing the claim as "secured financial debt," which, according to the Applicant, was a belated attempt to convert



operational/project dues into financial debt without any legal basis.

2.7. It is further submitted that during the 5th CoC meeting dated 04.07.2018, the Resolution Professional had informed the CoC that the claim of IL&FS as a Financial Creditor was under verification and that a second legal opinion was being sought. However, in the 7th CoC meeting dated 20.08.2018, the Resolution Professional admitted the claim of IL&FS Group Companies as Financial Creditors for about Rs. 411 crores out of the total claim of Rs. 482 crores, without sharing the legal opinion or rationale with the Applicant.

2.8. It is submitted that the Applicant had earlier objected to the inclusion of IL&FS entities in the CoC and also filed IA No. 193 of 2019 raising similar concerns. A representation dated 23.12.2019 along with a legal opinion of a retired Judge of the Hon'ble Supreme Court was also submitted to the Resolution Professional seeking removal of IL&FS entities from the CoC; however, the same was not considered.

2.9. It is submitted that this Tribunal, while rejecting the resolution plan vide order dated 24.08.2022, recorded observations expressing serious doubt regarding the status of IL&FS Group Companies as Financial Creditors and noted that their inclusion could vitiate



the CIRP. The Tribunal further took note of money laundering investigations initiated against IL&FS entities and referred to the decision of the Hon'ble NCLAT in ***Asset Reconstruction Company Limited (ARCIL) v. Mr. Koteswara Rao Karuchola & Ors., Company Appeal (AT) (Insolvency) No. 633 of 2018***, wherein it was held that a financial creditor facing money laundering proceedings cannot be permitted to be part of the CoC.

2.10. It is submitted that despite the aforesaid observations and pending adjudication of appeals before the Hon'ble NCLAT, the IL&FS Group Companies continue to participate in the CoC, including the 35th CoC meeting dated 16.09.2025 wherein steps were taken to initiate a fresh resolution process. The Applicant contends that their continued participation is prejudicial and contrary to law.

2.11. It is submitted that the Applicant further asserts that the payments made by IL&FS entities do not have the commercial effect of borrowing and do not involve consideration for time value of money; therefore, they do not satisfy the definition of "financial debt" under Sections 3(11), 5(7) and 5(8) of the Code. At best, such claims may fall within operational debt arising from supply and commissioning services, and hence the inclusion of IL&FS entities as Financial Creditors is legally unsustainable.



2.12. It is submitted that the Applicant also alleges misuse of powers by the Resolution Professional in admitting the claims of IL&FS entities and allowing them to exercise voting rights in the CoC despite disputes regarding their status and pending criminal investigations by the Enforcement Directorate and SFIO, thereby compromising the integrity of the insolvency process.

2.13. It is submitted that in view of the above facts, statutory provisions and judicial observations, the Applicant has filed the present application seeking removal of IL&FS Group Companies from the Committee of Creditors, Reconstitution of the CoC in accordance with law, and appropriate directions to prevent their participation in decision-making pending final adjudication.

3. In compliance with order dated 11.11.2025, the Respondent No. 01 filed its reply to the IA on 27.11.2025 vide Inward No. D-7953. The following contentions were raised by the Respondent: -

3.1. It is submitted that the present Affidavit in Reply has been filed on behalf of Respondent No. 1, Wind World (India) Limited through its Resolution Professional, opposing the Interlocutory Application and placing on record the factual and legal background relating to the claims of Respondent Nos. 2 to 4 and their categorisation as Financial Creditors.



- 3.2. It is submitted that at the outset the Application is not maintainable, as the Applicant is a member of the suspended Board of the Corporate Debtor and, in terms of Sections 17 and 23 of the Insolvency and Bankruptcy Code, 2016, upon commencement of CIRP the powers of management stand vested entirely with the Resolution Professional and the suspended Board is divested of authority to interfere in CIRP-related decisions. Further, under Section 25A of the Code, only financial creditors or their authorised representatives are entitled to participate, deliberate and vote in the Committee of Creditors, and therefore the Applicant has no statutory right to challenge categorisation of debt by the Resolution Professional.
- 3.3. It is submitted that the factual background traces to a Memorandum of Understanding dated 27.07.2010 executed between the Corporate Debtor and IL&FS Energy Development Company Limited for development of wind power projects across India, under which the Corporate Debtor was to design, develop, construct, commission and maintain the projects within specified timelines, failing which it would be liable to pay liquidated damages.
- 3.4. It is further submitted that in pursuance of the said MoU, several Wrap Agreements were executed between the Corporate Debtor and Special Purpose Vehicles of the IL&FS group, namely Respondent Nos. 2 to 4, under



which the Corporate Debtor was obligated to commission projects within stipulated periods and the SPVs made advance payments in tranches, including advance components towards project costs. However, the Corporate Debtor failed to fulfil its obligations and the projects were not commissioned as envisaged.

3.5. It is submitted that thereafter an Additional Agreement dated 09.06.2016 was executed recording that Respondent Nos. 2 to 4 had released project advances/supply payments aggregating to approximately Rs. 6187 million to the Corporate Debtor, despite commissioning remaining incomplete. The agreement further recorded admitted delays on the part of the Corporate Debtor and provided that additional costs incurred up to 31.03.2015 would be borne as part of project costs, while costs incurred thereafter would be compensated by the Corporate Debtor as liquidated damages, and an amount of Rs. 1227 million was agreed to be paid by the Corporate Debtor, which was treated as further project advances.

3.6. It is submitted that subsequently, a Final Agreement dated 01.10.2016 was executed between the parties whereby the original project capacity was revised and reduced, and the Corporate Debtor accepted liability to repay approximately Rs. 1,103 million along with interest at the rate of 14% per annum, thereby recording a quantified exposure and repayment obligation.



- 3.7. It is submitted that under the Final Agreement, the original exposure arising from project-related advances and costs was converted into a transaction having the effect of a financial debt incorporating an element of consideration for the time value of money, and accordingly Respondent Nos. 2 to 4 submitted their claims as Financial Creditors in Form C based on the said agreement and claim notices.
- 3.8. It is further submitted that at the time when the claims were verified and admitted in the year 2018, the prevailing legal position supported classification of the debt as financial debt, as the Final Agreement expressly provided for repayment of the exposure amount together with interest at 14% per annum, which constituted consideration for time value of money and satisfied the requirements under Sections 5(7) and 5(8) of the Insolvency and Bankruptcy Code. The erstwhile Resolution Professional had also obtained a legal opinion to categorise the debt appropriately.
- 3.9. It is submitted that subsequently there have been developments in jurisprudence regarding determination of financial debt and operational debt, and it has been held by the Hon'ble Supreme Court that financial debt must involve disbursement against consideration for the time value of money and that the real nature of the transaction must be examined from the documents. It has also been held that where an advance is made for



supply of goods or services, the same may fall within the domain of operational debt, and the National Company Law Tribunal, New Delhi Bench has observed that an operational debt cannot be converted into financial debt merely by way of a subsequent agreement if such conversion is contrary to the scheme of the Code.

3.10. It is submitted that however, after the categorisation and admission of claims, the Resolution Professional does not possess the authority to unilaterally alter the categorisation of debt or review the status of a creditor who has already been admitted as a member of the Committee of Creditors, and therefore any determination in this regard would lie within the domain of this Tribunal.

3.11. It is submitted that the Resolution Professional remains duty-bound to act strictly within the framework of the Insolvency and Bankruptcy Code and shall abide by any directions issued by this Tribunal in relation to analysis, clarification or adjudication of the claims of Respondent Nos. 2 to 4 and their categorisation.

4. That, the Respondent No. 01 filed an additional affidavit to the reply on 22.12.2025 vide Inward No. D-8684 stating the following:

4.1. It is submitted that the present Additional Affidavit has been filed by the Resolution Professional of Wind World



(India) Limited in compliance with the directions of this Tribunal contained in the order dated 15.12.2025 passed in IA 1490 of 2025 in IA 1320 of 2025, whereby the Resolution Professional was permitted to place on record a clear and reasoned stand on the issue relating to the categorisation of the claims of Respondent Nos. 2 to 4.

4.2. It is submitted that the deponent, being the Resolution Professional of the Corporate Debtor, has already filed a detailed reply dated 24.11.2025 pursuant to earlier directions of this Tribunal and had stated therein that once a claim has been categorised and a creditor has been admitted as a member of the Committee of Creditors, the Resolution Professional cannot suo motu review or alter such categorisation, and that he would abide by any clarification or directions issued by this Tribunal in relation to the claims of Respondent Nos. 2 to 4.

4.3. It is submitted that in light of the subsequent order dated 15.12.2025, the present additional affidavit is being filed reiterating the earlier reply and placing on record a fresh analysis of the transactions between the Corporate Debtor and Respondent Nos. 2 to 4, particularly in the context of developments in jurisprudence under the Insolvency and Bankruptcy Code since 2018, when the claims were originally



admitted and treated as financial debt and the said entities were made part of the Committee of Creditors.

- 4.4. It is submitted that the Resolution Professional has undertaken a fresh examination of the nature of the transactions and claims in the light of subsequent judgments of the Hon'ble Supreme Court which have clarified the tests for determining whether a liability constitutes "financial debt" or "operational debt," particularly the requirement that a financial debt must involve disbursement of money against consideration for the time value of money and that the real substance of the transaction must be examined.
- 4.5. It is submitted that reliance is placed upon the decision of the Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. v. Union of India [W.P. (C) No. 43 of 2019]***, wherein it was held that the expression "disbursed" refers to money paid against consideration for the time value of money and that such disbursal must result in money being made available to the borrower for utilisation.
- 4.6. It is further submitted that reliance is placed on ***Jaypee Infratech Ltd. (IRP) v. Axis Bank Ltd. [(2020) 8 SCC 401]***, wherein the Hon'ble Supreme Court held that for a debt to qualify as a financial debt, the essential elements are disbursal and consideration for time value



of money, which continues to be the governing test under the Code.

4.7. It is submitted that further reliance is placed on ***Global Credit Capital Ltd. & Anr. v. Sach Marketing Pvt. Ltd. & Anr. [(2024) 9 SCC 482]***, wherein the Hon'ble Supreme Court reiterated that the definition of financial debt under Section 5(8) must satisfy the primary test of disbursement against time value of money and that determination must be based on the real nature of the transaction rather than the nomenclature used in contractual documents.

4.8. It is submitted that reliance is also placed on ***Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd. [(2022) 7 SCC 164]***, wherein the Hon'ble Supreme Court held that a claim arising out of advance payments made in relation to supply of goods or services would be treated as operational debt, provided there exists a nexus between the advance and the provision of goods or services.

4.9. It is submitted that applying the aforesaid settled legal principles, the Resolution Professional has analysed the underlying transactions between the Corporate Debtor and Respondent Nos. 2 to 4 and found that such transactions originated as project execution and service arrangements under the MoU and Wrap Agreements for design, development, commissioning and maintenance



of wind power projects, where milestone-based advances were released to facilitate execution of such operational obligations.

4.10. It is submitted that the monies released by Respondent Nos. 2 to 4 were intrinsically linked to performance of project-related services and constituted advance payments forming part of the overall contract value, and were not disbursed as independent loans nor made available for unrestricted use by the Corporate Debtor. The payments were tied to performance obligations under the project contracts and therefore bore a direct nexus to the provision of goods and services.

4.11. It is submitted that although subsequent arrangements contemplated payment of amounts with an element of time value of money, the essential ingredient of “disbursement” as a loan transaction was absent, as the original advances were operational in nature and were made as part of service-linked commercial arrangements.

4.12. It is submitted that in view of the above analysis and in light of the evolving jurisprudence, the Resolution Professional has taken the position that the transactions in question were essentially operational in character and were subsequently sought to be characterised as financial debt by mutual understanding; however, had the present legal position been prevailing in 2018, the



claims of Respondent Nos. 2 to 4 would have been categorised as operational debt rather than financial debt.

4.13. It is further submitted that the Resolution Professional has also obtained an opinion from a leading insolvency practitioner, who had earlier opined in 2018 that the claims could be treated as financial debt under the then prevailing jurisprudence, but has now opined vide memorandum dated 16.12.2025 that in light of the subsequent judgments of the Hon'ble Supreme Court, such claims would presently be regarded as operational debt if re-categorisation were to be undertaken.

4.14. It is submitted that notwithstanding the above, the Resolution Professional has clarified that he shall abide by and give effect to any directions or orders that this Tribunal may be pleased to pass regarding the classification and treatment of the claims of Respondent Nos. 2 to 4.

5. That, in compliance with the order dated 07.01.2026, the Respondent No. 02 to 04 filed an Affidavit of Reply on 19.01.2026 vide Inward No. D-346 raising the following contentions: -

5.1. It is submitted that the present Reply has been filed on behalf of Respondent Nos. 2 to 4, namely Sipla Wind Energy Limited, Mahidad Wind Energy Private Limited



and Jogihali Wind Energy Private Limited (collectively referred to as the IEDCL entities), opposing the Application seeking their removal from the Committee of Creditors of Wind World (India) Limited, and the said Application is stated to be misconceived, not maintainable in law and devoid of merit.

5.2. It is submitted that upon initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor vide order dated 20.02.2018, the management of the Corporate Debtor stood vested in the Resolution Professional in terms of Sections 17 and 23 of the Insolvency and Bankruptcy Code, 2016, and the suspended management, including the Applicant, was divested of all authority to interfere with CIRP-related decisions. Consequently, the Applicant has no locus to challenge the categorisation of the claims of the Answering Respondents or their inclusion in the Committee of Creditors, as the Code confers decision-making authority only upon financial creditors under Section 25A.

5.3. It is further submitted that pursuant to the public announcement dated 23.02.2018, the Answering Respondents submitted their claims in Form C, and the Resolution Professional, after discussions and obtaining legal opinion, admitted a substantial portion of the claim as financial debt and informed the CoC in its 7th meeting held on 20.08.2018 regarding the reconstitution



of the CoC. The Applicant, despite being present in the said meeting, did not raise any objection at that stage and is therefore estopped from raising such challenge belatedly.

5.4. It is submitted that the present Application is barred by limitation and is an afterthought, particularly as this Tribunal, in its order dated 24.08.2022, had left the issue of categorisation open, yet the Applicant did not challenge the said order before the Hon'ble NCLAT and has approached this Tribunal after an inordinate delay of several years.

5.5. It is further submitted that the allegations regarding investigations by the Enforcement Directorate against the Answering Respondents are false and unsupported by any evidence. The Answering Respondents are subsidiaries of IL&FS Energy Development Company Limited (IEDCL), and it is clarified that no ED proceedings are pending against either IEDCL or the Answering Respondents. An earlier challenge on similar grounds had been raised by the Applicant in IA 15(AHM)2020, and the same was duly answered by the Respondents. An appeal has also been filed before the Hon'ble NCLAT for expunging certain adverse observations in the order dated 24.08.2022, which is presently reserved for judgment.



5.6. It is submitted that the financial relationship between the parties originates from a Memorandum of Understanding executed for development of large-scale wind power projects, under which the Answering Respondents made substantial advances and incurred costs for execution of projects. Due to delays in project implementation by the Corporate Debtor, an agreement dated 09.06.2016 was executed wherein the Corporate Debtor agreed to compensate the Answering Respondents for additional costs incurred, and such amounts were converted into further project advances.

5.7. It is submitted that subsequently, a Settlement Agreement dated 01.10.2016 was executed whereby the total exposure of the Answering Respondents as on 30.06.2016 was determined at approximately Rs. 871.70 crores. Out of this, a portion was to be adjusted against project costs, and the balance amount of Rs. 180 crores, along with interest, was expressly converted into a secured financial debt repayable by the Corporate Debtor at an agreed interest rate of 14% per annum.

5.8. It is submitted that the Settlement Agreement clearly created a debt obligation, provided for interest, and contained clauses relating to repayment, default, and enforcement, including cross-default provisions and the right to enforce securities. The Corporate Debtor also executed a Deed of Hypothecation dated 08.05.2017 to secure the said financial exposure, thereby reinforcing



the commercial character of the transaction as a borrowing.

5.9. It is further submitted that upon default by the Corporate Debtor in commissioning the projects and repaying the amounts, the Answering Respondents issued demand notices dated 01.02.2018 calling upon the Corporate Debtor to repay the outstanding sums along with interest, and thereafter filed their claims which were duly admitted as financial debt by the Resolution Professional.

5.10. It is submitted that the essential ingredients of a financial debt under Section 5(8) of the Code are satisfied, namely the existence of a debt, disbursal of money, and consideration for time value of money. The balance exposure of Rs. 180 crores, repayable with 14% interest, constitutes a loan having the commercial effect of borrowing, and the Applicant cannot question the contractual arrangement between the parties.

5.11. It is further submitted that reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Global Credit Capital Ltd. & Anr. v. Sach Marketing Pvt. Ltd. & Anr. (2024) 9 SCC 482***, wherein it has been held that the test for determination of financial debt is the existence of a debt disbursed against consideration for time value of money.



5.12. It is submitted that reliance is also placed on the decision of the Hon'ble NCLAT in ***Shailesh Sangai v. Joel Cardoso & Anr. (2019 SCC OnLine NCLAT 52)***, wherein it has been held that interest is not a sine qua non for financial debt, and that any transaction having the commercial effect of borrowing, including forward sale or purchase arrangements, may fall within the ambit of Section 5(8).

5.13. It is further submitted that reliance is placed on the decision of the Mumbai Bench of the NCLT in ***IL&FS Engineering & Construction Co. Ltd. v. Mr. Pulkit Gupta, RP of Vadraj Cement Ltd.***, wherein it was held that advances which are repayable with interest upon failure of contractual performance would assume the character of financial debt, as they satisfy the criteria of disbursement, time value of money and commercial effect of borrowing.

5.14. It is submitted that in view of the above facts, agreements, security creation, admitted liability, repayment obligation with interest, and settled judicial principles, the claim of the Answering Respondents is rightly classified as financial debt and their inclusion in the Committee of Creditors is lawful. The present Application is therefore stated to be a malafide attempt by the Applicant to delay and derail the CIRP and is liable to be dismissed.

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6. That, in compliance with the order dated 16.01.2026, the Applicant filed an Affidavit of Rejoinder on 03.02.2026 vide Inward No. D-841 raising the following contentions: -

6.1. It is submitted that the present Rejoinder has been filed by the Applicant in response to the Reply dated 13.01.2026 filed by Respondent Nos. 2 to 4, and at the outset the Applicant denies all averments made therein save and except those specifically admitted, reiterating that the contentions raised in the Reply are incorrect, misleading and contrary to the material on record.

6.2. It is submitted that the Additional Affidavit filed by the Resolution Professional, pursuant to the order dated 15.12.2025, substantially supports the Applicant's case by acknowledging that the claims of Respondent Nos. 2 to 4 do not satisfy the statutory requirements of "financial debt" under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, and are liable to be treated only as operational debt, thereby affirming the Applicant's primary challenge to their inclusion in the Committee of Creditors.

6.3. It is submitted that the Rejoinder has been filed with marginal delay, occasioned by the necessity to examine the Additional Affidavit and incorporate subsequent developments, and the same does not cause any prejudice to the Respondents. The Applicant reiterates that Respondent Nos. 2 to 4 have proceeded on



incorrect assumptions of law and have selectively suppressed material facts, particularly the findings recorded by the Resolution Professional that the essential ingredient of disbursement against consideration for time value of money is absent in the underlying transactions.

6.4. It is submitted that the payments made by the IL&FS group entities were intrinsically linked to project execution and were in the nature of operational advances under EPC/turnkey arrangements, never intended to be structured as loans or financial facilities. The subsequent agreements relied upon by the Respondents cannot alter the intrinsic character of the original transactions, and the categorisation of their claims as financial debt is contrary to settled legal principles.

6.5. It is further submitted that the objection to the Applicant's locus standi is misconceived, as the Applicant is a shareholder, a personal guarantor and directly affected by the constitution and decisions of the CoC. The Applicant is not seeking to interfere with the commercial wisdom of the CoC but is only challenging the legality of its constitution, which goes to the root of the insolvency process.

6.6. It is submitted that reliance is placed on the judgment of the Hon'ble Supreme Court in Kiran Shah v.



Enforcement Directorate & Ors., (2023) 8 SCC 145, wherein it has been held that the Appellate Tribunal has jurisdiction to examine illegal or improper actions during CIRP and that such issues relating to legality of constitution and decision-making are amenable to judicial scrutiny.

- 6.7. It is submitted that the Applicant has also placed on record a legal opinion dated 23.12.2019 of a former Chief Justice of India, which concludes that the payments made by IL&FS entities were project-related reimbursements/consideration under commercial contracts and not loans or borrowings, and therefore lacked the essential features of financial debt.
- 6.8. It is submitted that the plea of limitation is untenable, as the present Application is founded on a continuing illegality, and each act of participation by Respondent Nos. 2 to 4 in the CoC, including exercise of voting rights in the 35th CoC meeting dated 16.09.2025, gives rise to a fresh cause of action. The order dated 15.12.2025 of this Hon'ble Tribunal also recognizes that the controversy continues and warrants adjudication.
- 6.9. It is submitted that there is no question of acquiescence or waiver, as the issue raised pertains to the jurisdictional validity of the CoC's constitution, which can be raised at any stage and cannot be

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defeated by delay. The Respondents' attempt to rely on technical pleas of delay or waiver is therefore misconceived.

6.10. It is further submitted that the reliance placed by the Respondents on the agreements dated 09.06.2016 and 01.10.2016 is misplaced, as the underlying advances were project-linked and operational in nature, and subsequent contractual terms cannot convert operational claims into financial debt. In this regard, reliance is placed on judicial precedents including B.V.S. Lakshmi v. Geometrix Laser Solutions Pvt. Ltd. (NCLAT) and Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. (Supreme Court), which recognise that the real nature and substance of a transaction must be examined to determine whether it constitutes financial debt.

6.11. It is submitted that the allegations regarding investigations and proceedings against IL&FS entities have been supported by reference to the SFIO Report dated 30.11.2018 and documentary material placed on record, demonstrating serious governance concerns and corporate irregularities within the IL&FS group structure. The Applicant has also placed reliance on corporate structure records and balance sheet disclosures to demonstrate the interrelationship between IL&FS entities and the entities forming part of the CoC.

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6.12. It is submitted that the continued participation of Respondent Nos. 2 to 4 in the CoC despite the absence of a valid financial debt, and despite ongoing concerns regarding their status and eligibility, has vitiated the transparency and integrity of the CIRP process and amounts to abuse of process.

6.13. It is submitted that the Applicant reiterates that the claims of Respondent Nos. 2 to 4 do not meet the statutory requirements of disbursement against time value of money, are rooted in project execution arrangements, and therefore cannot be treated as financial debt. Consequently, their inclusion and continued participation in the Committee of Creditors is illegal and unsustainable in law.

7. Furthermore, the Respondent No. 01/RP filed an additional affidavit on 22.12.2025 vide Inward No. D-8684 against the Reply filed by the Respondent No. 02 to 04 stating the following:

7.1. It is submitted that the present Affidavit has been filed by Respondent No.1 through its Resolution Professional in response to the Affidavit in Reply dated 13.01.2026 filed by Respondent Nos. 2 to 4, for the limited purpose of clarifying the legal position and distinguishing the judgments relied upon therein, while reiterating the contents of the earlier Reply dated

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24.11.2025 and the Additional Affidavit dated 17.12.2025.

7.2. It is submitted that Respondent No. 1 has taken the position that Respondent Nos. 2 to 4 have misinterpreted the judgment of the Hon'ble Supreme Court in ***Global Credit Capital Ltd. & Anr. vs. Sach Marketing Pvt. Ltd. & Anr. (2024) 9 SCC 482***, by referring only to a limited portion of the decision. The said judgment lays down that the test for determination of "financial debt" under Section 5(8) of the IBC is the existence of a debt disbursed against consideration for the time value of money, and that all categories under the provision must satisfy this principal requirement. The Court has also cautioned that the real nature of the transaction must be ascertained and a written agreement cannot be accepted at face value without examining the substance of the arrangement.

7.3. It is further submitted that applying the aforesaid test, the transactions between the Corporate Debtor and Respondent Nos. 2 to 4, though later structured to include an element of time value of money, lacked the essential element of "disbursement" as an independent loan. The amounts were advanced only in connection with services for design, development, construction, commissioning, operation and maintenance of wind power projects under the MoU and Wrap Agreements

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and were released on a milestone-based and project-linked basis. Such advances formed part of the contract price, were intrinsically tied to performance obligations and were not amounts available for general or unrestricted use. Hence, the transaction, in substance, does not satisfy the criteria for classification as financial debt.

7.4. It is submitted that in relation to the reliance placed by Respondent Nos. 2 to 4 on ***Shailesh Sangai vs. Joel Cardoso & Anr. (2019 SCC OnLine NCLAT 52)***, the deponent states that the said judgment is of the year 2019 and the subsequent law laid down by the Hon'ble Supreme Court, particularly in ***Global Credit Capital Ltd. and Consolidated Construction Consortium Ltd. vs. Hitro Energy Solutions Pvt. Ltd. (2024) 9 SCC 482***, would prevail while determining the true nature of the debt.

7.5. It is further submitted that the decision in ***IL&FS Engineering & Construction Company Ltd. vs. Mr. Pulkit Gupta, RP of Vadraj Cement Ltd. (IA 4131 of 2024 in CP (IB) 3528(MB) 2018)*** has been relied upon by Respondent Nos. 2 to 4; however, the facts of that case are distinguishable. In that matter, the contract itself contained a non-obstante clause providing that upon failure to supply cement, the advance would automatically stand converted into a loan repayable with interest at 16% per annum from the date of



payment, thereby incorporating the time value of money from inception. On a holistic reading of the contract, the NCLT concluded that the transaction was, in substance, a loan from the very beginning.

7.6. It is submitted that in contrast, in the present case the original arrangement was only for advance towards goods and services and any financial obligation was brought in at a later stage through a separate agreement. The first advance was never intended to be a financial borrowing, and the subsequent attempt to convert the obligation into a financial liability cannot alter the original character of the transaction. Even if the obligation was later structured to include time value of money, such conversion would not satisfy the requirements for classification as financial debt under the Code.

7.7. It is further submitted that reliance is placed on the decision of the NCLT, New Delhi in ***M/s. IPK Exports Private Ltd. vs. M/s. HSB Home Solutions Ltd. (Company Petition (IB) No. 771 of 2024)***, wherein it was held that where the initial disbursement is made towards supply of goods or services, the liability is in the nature of operational debt, and an operational debt cannot subsequently be converted into a financial debt merely by way of a later agreement, as such transformation would defeat the scheme and object of the Insolvency and Bankruptcy Code.



- 7.8. It is submitted that therefore, in the present case, the original advances made by Respondent Nos. 2 to 4 were in connection with project execution and supply obligations and were operational in nature. The later Final Agreement sought to convert such obligations into a transaction incorporating the element of time value of money; however, in view of the aforesaid judicial pronouncements, such conversion cannot, by itself, result in the claim being treated as financial debt.
- 7.9. It is submitted that the present affidavit has been filed solely to distinguish the judgments relied upon by Respondent Nos. 2 to 4 and to clarify the correct legal position. Respondent No. 1 reiterates that it shall abide by and comply with any directions or orders that may be passed by this Tribunal with respect to the classification and treatment of the claims of Respondent Nos. 2 to 4 in accordance with law.
8. That, in compliance with the order dated 16.01.2026, the Applicant filed Written Synopsis on 30.01.2026 vide Inward No. D-840 wherein following case laws has been relied upon by the Applicant: -
- i. Vijay Kumar Jain v. Standard Chartered Bank & Ors.,(2019) 20 SCC 455
 - ii. Kalyani Transco v. Bhushan Power and Steel Ltd., Civil Appeal No. 1808 of 2020



- iii. Dr. B.V.S. Lakshmi v. Geometrix Laser Solutions Pvt. Ltd. (Company Appeal (AT) (Ins.) No. 38 of 2017
- iv. Radha Exports (India) Pvt. Ltd. v. K.P. Jayram, Civil Appeal No. 7470 of 2019
- v. Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd., (2022) 7 SCC 164
- vi. Anuj Jain (RP) v. Axis Bank Ltd., Civil Appeal Nos. 8512-8527 of 2019.

9. That, in compliance with the order dated 16.01.2026, the Respondent No. 01/RP filed Written Synopsis on 30.01.2026 vide Inward No. D-842 wherein following case laws has been relied upon by the Respondent No. 01/RP: -

- i. Jaypee Infratech Limited (Interim Resolution Professional) Vs Axis Bank Limited [(2020) 8 SCC 401]
- ii. Global Credit Capital Limited & Anr. Vs Sach Marketing Private Limited & Anr. [(2024) 9 SCC 482]
- iii. Consolidated Construction Consortium Limited vs. Hitro Energy Solutions Private Limited (2022) 7 SCC 164
- iv. M/s. IPK Exports Private Ltd. vs. M/s. HSB Home Solutions Ltd. (Company Petition (I.B.) No. 771 of 2024)
- v. IL&FS Engineering & Construction Company Limited. Vs. Mr. Pulkit Gupta (Resolution Professional of Vadraj Cement Limited) (IA 4131 of 2024 in CP (IB) 3528(MB) 2018).

10. That, in compliance with the order dated 16.01.2026, the Respondent No. 02-04 filed Written Synopsis on



30.01.2026 vide Inward No. D-839 wherein following additional case laws has been relied upon by the Respondent No. 02-04: -

- i. Dinesh Khetan vs M/ s Bigmoon Buildcon Pvt. Ltd. CP (IB) 572 (PB) 2019
- ii. Ajay Kumar Gupta and Anr. vs IERO Fiveriver Pvt. Ltd. C.P. No. IB-355/New Delhi/2017
- iii. Dr. Arabinda Kumar Rath vs Siba Kumar Mahopatra CA(A1)(INS) 1482/2023
- iv. Jogihali Wind Energy Pvt. Ltd. vs Yogesh Mehra CA(A1)(INS) No. 1249/2022

11. We have heard Ld. Counsel for the Applicant, Ld. Counsel for the Respondents, considered the oral submissions of both parties and perused the material on record. The Observation and Directions by this Tribunal are as under:-

11.1. The present Interlocutory Application has been filed by the Applicant, Mr. Yogeshh Mehra, Suspended Director and shareholder of the Corporate Debtor, under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 seeking removal of Respondent Nos. 2 to 4 from the Committee of Creditors and consequential reconstitution of the CoC on the ground that their claims do not qualify as "financial debt".

11.2. The Applicant has contended that the payments made by Respondent Nos. 2 to 4 were project-related advances under EPC/turnkey arrangements and were



reflected in the books of the Corporate Debtor as “Other Current Liabilities”, and therefore lacked the essential element of disbursement against consideration for time value of money. It is further contended that such advances were intrinsically linked to execution of wind power projects and could not be treated as financial debt merely on the basis of subsequent agreements.

11.3. Per contra, Respondent Nos. 2 to 4 have submitted that the relationship between the parties originated from the MoU dated 27.07.2010 and subsequent WRAP Agreements, under which substantial advances were made for execution of projects. It is their case that due to delays attributable to the Corporate Debtor, the parties executed the Additional Agreement dated 09.06.2016 and the Final Agreement dated 01.10.2016, whereby the exposure was crystallised and a quantified amount of approximately ₹180 crores was agreed to be repaid by the Corporate Debtor along with interest at 14% per annum. The said exposure was further secured by execution of a Deed of Hypothecation, thereby giving the transaction the commercial effect of borrowing.

11.4. The Resolution Professional has submitted that the claims of Respondent Nos. 2 to 4 were admitted as financial debt in 2018 after due verification and legal opinion, and that once claims are admitted as that of a



financial creditor and the financial creditor becomes part of the CoC, the RP does not have authority to unilaterally alter such classification. The RP has stated that he would abide by any directions passed by this Tribunal.

12. On the basis of the pleadings and submissions, the following issues arise for consideration:

- i. Whether the present application is maintainable at the instance of a Suspended Director?
- ii. Whether the claims of Respondent Nos. 2 to 4 were rightly admitted as financial debt?
- iii. Whether the challenge raised at this stage is barred by delay and acquiescence?
- iv. Whether any case is made out for removal of Respondent Nos. 2 to 4 from the CoC?

13. Findings on Issue No.01: Whether the present application is maintainable at the instance of a suspended director?

13.1. Respondent Nos. 2 to 4 have raised a preliminary objection to the maintainability of the present Interlocutory Application on the ground that the Applicant, being a Suspended Director and shareholder of the Corporate Debtor, has no locus standi to seek removal of creditors from the Committee of Creditors or to challenge the classification of their claims. It has



been contended that upon commencement of CIRP, the powers of the Board of Directors stand suspended in terms of Section 17 of the Code and vest in the Resolution Professional, and therefore any grievance relating to admission or categorisation of claims can only be agitated by the Resolution Professional and not by the erstwhile management.

13.2. It has further been argued by the Respondents that the present application, though styled as one under Section 60(5)(c), in effect seeks to interfere with the constitution of the CoC and the status of creditors who have been participating in the process since 2018. According to the Respondents, permitting such challenges at the instance of the suspended management would open the floodgates for continuous interference in the insolvency process and would defeat the objective of a time-bound resolution.

13.3. The Applicant, on the other hand, has contended that the present application raises a jurisdictional issue regarding whether Respondent Nos. 2 to 4 were correctly classified as Financial Creditors and therefore included in the CoC. It is submitted that if an entity which does not satisfy the statutory definition of a Financial Creditor continues to participate in the CoC, the very decision-making structure under the Code would be affected, and such a question can always be examined by this Tribunal under Section 60(5).



- 13.4. This Tribunal has considered the rival submissions on the aspect of maintainability. There is no dispute with the settled legal position that upon initiation of CIRP, the powers of the Board of Directors stand suspended and the management of the affairs of the Corporate Debtor vests with the Resolution Professional. The suspended management is not entitled to interfere in the day-to-day conduct of CIRP or in the commercial decisions taken by the CoC.
- 13.5. In this case, CIRP was initiated on 20.02.2018. The IRP made public announcement of the initiation of CIRP, and the Respondent Nos. 2 to 4 filed their claims in Form C, as a financial creditor as per Regulation 8 of the IBBI (Resolution Process for Corporate Persons) Regulations, 2016. The IRP admitted the claims of Respondent Nos. 2 to 4 as that of a financial creditor and these Respondents were part of a committee of creditors as per section 21 of the IBC, 2016.
- 13.6. The Hon'ble Supreme Court in the case of Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors (2025) ibclaw.in 120 SC in paragraphs 107 and 108 dealt with the issue of rights of the suspended Board of Directors by noting that:

“ **107.** It is true that as per Section 24 of IBC, the Resolution Professional is required to give a notice of each of the meetings of the CoC to the members of the suspended Board of Directors, alongwith the members of CoC including the Authorized Representatives and the Operational Creditors or their representatives. However, as per sub-section 4 of Section 24, though the Directors of suspended



Board of Directors have a right to attend the meetings of CoC, they do not have any right to vote in such meetings. Meaning thereby, such suspended Directors would have a right only to receive the notice of meetings of CoC and to attend the same, but would not have the right to vote in the meetings.

108. This Court in *Vijay Kumar Jain vs. Standard Chartered Bank and Others*,¹² while recognizing the rights of the members of the erstwhile Board of Directors to receive a copy of RPs, that may be discussed in the meetings of CoC, has observed as under: –

“21. Under Regulation 24(2)(e), the resolution professional has to take a roll call of every participant attending through videoconferencing or other audio and visual means, and must state for the record that such person has received the agenda and all relevant material for the meeting which would include the resolution plan to be discussed at such meeting. Regulation 35 makes it clear that the resolution professional shall provide fair value and liquidation value to every member of the committee *only after receipt of resolution plans* in accordance with the Code [see Regulation 35(2)]. Also, under Regulation 38(1-A), a resolution plan shall include a statement as to how it has dealt with the interest of all stakeholders, and under sub-regulation (3)(a), a resolution plan shall demonstrate that it addresses the cause of default. This Regulation also, therefore, recognises the vital interest of the erstwhile Board of Directors in a resolution plan together with the cause of default. It is here that the erstwhile Directors can represent to the Committee of Creditors that the cause of default is not due to the erstwhile management, but due to other factors which may be beyond their control, which have led to non-payment of the debt. Therefore, a combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the Committee of Creditors, must be given a copy of such plans as part of “documents” that have to be furnished along with the notice of such meetings.”

However, this case does not confer a right to challenge creditor classification. It only concerns access to documents. The said judgment only recognises participatory rights and does not confer adjudicatory standing to challenge CoC constitution.



- 13.7. Therefore, the role of the suspended Board of Directors in the CIRP is to assist the IRP/RP/CoC concerning factual aspects of the case and extend them all assistance and cooperation as may be required in managing the affairs of the Corporate Debtor (section 19 of the IBC) or in carrying on the corporate insolvency resolution process.
- 13.8. The Applicant's claim is not based on any procedural or legal irregularity, or any misrepresentation or fraud committed by the IRP, or any misrepresentation made by the Respondent Nos. 2 to 4, but solely stating that the "debt" of the Respondent Nos. 2 to 4 was not "financial debt". The decision of accepting the claim as a "financial creditor" and the constitution of the CoC was within the domain of the IRP and this decision was also communicated to this Adjudicating Authority as per Regulation 17 of the Regulations. The Applicant has not adduced any fact or information different than available with the IRP or provided by the Respondent Nos. 2 to 4 which could have materially affected the decision making of the IRP concerning the classification of debt as "financial debt". In fact, copy of relevant agreements are filed by the Applicant in the IA, on which it now relies, and the same agreements were with the IRP/RP based on which the decision to classify the Respondent Nos. 2 to 4 as financial creditor was taken and they were included in the CoC.



- 13.9. Section 60(5)(c) confers residuary jurisdiction upon this Tribunal to entertain and dispose of any question of law or fact arising out of or in relation to the insolvency resolution process. Questions relating to legality of admission of claims, status of creditors and constitution of the CoC do fall within the domain of judicial scrutiny in appropriate cases.
- 13.10. However, in the present case, what is sought is not merely a clarification on legal classification but a direction to remove Respondent Nos. 2 to 4 from the CoC after they were made part of the CoC as discussed above since 2018. The claims of the said Respondents were admitted by the Resolution Professional after due verification.
- 13.11. The Resolution Professional has stated that the claims were admitted in 2018 based on documents and legal opinion then available and that he does not have the authority to unilaterally alter such classification. Importantly, the RP has not supported the prayer for removal of Respondent Nos. 2 to 4 but has only submitted that he would abide by the directions of this Tribunal.
- 13.12. In the absence of any allegation of fraud, misrepresentation or suppression at the time of admission of the claims and there being no change in the factual circumstances, the present challenge by the

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Suspended Director appears to be an attempt to reopen settled issues relating to constitution of the CoC.

13.13. In view of the above, this Tribunal holds that, the locus of the Suspended Director to seek removal of long-standing members of the CoC, in the facts of the present case, is not supported by any factual inaccuracies or misrepresentation or fraud either by the IRP or the Respondent Nos. 2 to 4 and does not warrant exercise of jurisdiction to disturb the existing CoC composition. The issue is therefore answered against the Applicant. However, the legal issue raised by the Applicant concerning “financial debt” is decided based on merit and discussed next.

14. Findings on Issue No.02: Whether the claims of respondent nos. 2 to 4 were rightly admitted as financial debt?

14.1. The legal contention raised by the Applicant is that the amounts advanced by Respondent Nos. 2 to 4 were in the nature of project-linked advances under EPC/turnkey arrangements for development of wind power projects and were therefore operational in character. It has been argued that such advances were intrinsically connected with execution of contractual obligations and were reflected in the books of the Corporate Debtor as “Current Liabilities”, which according to the Applicant, indicates that the



transactions did not involve disbursement against consideration for time value of money.

14.2. Per contra, Respondent Nos. 2 to 4 have submitted that while the initial relationship may have originated from project development arrangements, the nature of the exposure underwent a significant transformation by virtue of the Additional Agreement dated 09.06.2016 and the Final Agreement dated 01.10.2016. It is their case that under the said agreements, the parties consciously crystallised the outstanding exposure into a quantified and acknowledged liability, repayable by the Corporate Debtor along with interest at 14% per annum, and further secured the same through execution of a Deed of Hypothecation of 8.5.2017. According to the Respondents, the moment a repayment obligation with interest was contractually recognised and security was created, the transaction acquired the commercial effect of borrowing and thus squarely fell within the ambit of “financial debt”.

14.3. The Hon’ble Supreme Court in the case of **Global Credit Capital Ltd. and Anr. V. Sach Marketing Pvt. Ltd. and Anr. (2024) ibclaw.in 125 SC** summarised the legal conclusions in regard to “financial debt” in paragraph 20 of the judgment. Relevant part is extracted below:

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↳ b. The test to determine whether a debt is a financial debt within the meaning of sub-section (8) of section 5 is the existence of a debt along with interest,



if any, which is disbursed against the consideration for the time value of money. The cases covered by categories (a) to (i) of sub-section (8) must satisfy the said test laid down by the earlier part of sub-section (8) of section 5;

- c. While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing.

14.4. The Hon'ble NCLAT in the case of **Mr. Rajnish Jain v. Manoj Kumar Singh , (2020) ibclaw.in 409 NCLAT** in paragraph 44 noted that, " In Anuj Jain Interim Resolution Professional For Jaypee Infratech Limited Vs Axis Bank Limited etc. 2020 SCC OnLine SC 237 Hon'ble Supreme Court has held ;

"205. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become 'financial debt' for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursement against the consideration for time value of money. It may include any of the methods for raising money or incurring liability by the modes prescribed in sub-clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per sub-clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in sub-clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of 'disbursement' against 'the consideration for the time value of money' could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said sub-clauses (a) to (i) of Section 5(8) would be falling within the ambit of 'financial debt' only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursement, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least



having some traces of disbursement against consideration for the time value of money.”

14.5. Further, Hon’ble NCLAT in paragraphs 47 to 51 in case (supra) discussed the issue in the following manner: -

47. The Hon’ble Supreme Court, in the case of Pioneer Urban Land Infrastructure Vs. Union of India 2019 SCC Online Page 1055 has observed that; “The definition of ‘Financial Debt’ in Section 5(8) then goes on to state that a debt must be ‘disbursed’ against the Consideration for the time value of money. In the present context, it is clear that the expression ‘disburse’ would refer to the fund transfer made by the Respondent No.3 to the Corporate Debtor for the particular purpose of funding, i.e. working capital. The expression ‘disburse’ refers to money, which has been paid against consideration for the time value of money. In short, the disbursement must be money and must be against Consideration for the time value of money, meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money for the working capital requirement or any other purpose of the company. Thus, it is clear that the Respondent No.3 disbursed money in the form of fund transfer made towards the purpose of working capital of funding.

48. The ‘expression time value of money’ has not been defined under the Code and hence one has to revert to the dictionary meaning of the phrase as generally understood. The time value of money concept states that cash received today is more valuable than cash received at some point in the

49. NASDAQ Glossary of Financial Terms defines phrase ‘*TIME VALUE OF MONEY*’ as The idea that a dollar today is worth more than a dollar in the future because the dollar received today can earn interest until the time the future dollar is received.

50. In Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. – Company Appeal (AT) (Insolvency) No. 07 of 2017, this Hon’ble Tribunal has dealt with the issue of interpretation of the phrase “time of value of money” as follows:

“The key feature of financial transaction as postulated by section 5(8) is its Consideration for time value of money. In other words, the legislature has included such financial transactions in the definition of ‘Financial debt’ which are usually for a sum of



money received today to be paid for over a period of time in a single or series of payments in future. It may also be a sum of money invested today to be repaid over a period of time in a single or series of instalments to be paid in future. In Black's Law Dictionary (9th edition) the expression 'Time Value' has been defined to mean "the price associated with the length of time that an investor must wait until an investment matures or the related income is earned. "In both the cases, the inflows and outflows are distanced by time and there is a compensation for time value of money".

In the present context, the Appellant Company has assured the Respondent No.3 to repay the loan in One month for which an interest @ 18% per annum has also charged as Consideration for the time value of money.

51. The term financial debt has been defined in section 5(8) of Code "to mean a debt, along with interest, if any, which is disbursed against the consideration for the time value of money." An illustrative list of transactions that would fall under this definition has also been included. In Swiss Ribbons Ltd. Vs. Union of India, Writ Petition (Civil) No.99 of 2018, the Hon'ble Supreme Court laid down the distinction between "Financial Debt" and 'Operational Debt' in the following terms, "A perusal of the definition of 'Financial Creditor' and 'Financial Debt' makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the Consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) of the Code or otherwise, as Section 5(8) is an inclusive definition.

- 14.6. For ascertaining the real nature of the transaction, we refer to the relevant extract of the said agreement of 09.06.2016 (annexed as Annexure A-9 with IA at Page No. 326-335) is as follows: -

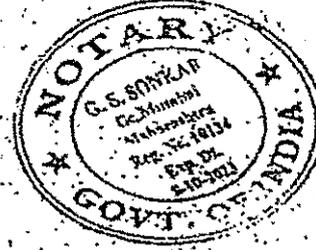
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(1) MWEPL, JWEPL & SWEL have made project advances / supply payments in tranches amounting to Rs 6,187 Mn (Net) to WWIL against the Contract price as on March 31, 2016 as per break-up provided below :

SPV Name	Rs Mn
MWEPL (Gross Rs 3,466 less Security deposit Rs 1,095 Mn, since adjusted)	2,371
JWEPL	2,068
SWEL	1,748
Total	6,187



The payment details are provided in Annexure-1

(2) Pursuant to delays in the completion of the Projects, WWIL hereby agrees and undertakes to compensate / reimburse IL &FS Group Rs 1,227 Mn as the Pre Agreed Costs in lieu of Liquidated Damages for the period April 01, 2015 to March 31, 2016 as per details provided below :

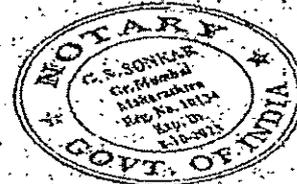
(Rs Mn)

Particulars	SPV	IEDCL / IREL	Total
MWEPL	389	54	443
JWEPL	314	121	435
SWEL	267	82	349
Total	970	257	1,227

(3) It is agreed between the Parties that the said 'Compensation' amount is hereby converted into further project advances provided by IL &FS Group to WWIL with effect from March 31, 2016. Accordingly, the total project payments / advances as at March 31, 2016 shall be as under :

Rs Mn

SPV Name	Project Payments	Compensation for FY-15-16	Total Project Payments/ Advances
MWEPL	2,371	389	2,760
JWEPL	2,068	314	2,382
SWEL	1,748	267	2,015
IEDCL / IREL		257	257
Total	6,187	1,227	7,414



(4) IL &FS Group may assign all or part of its rights under this agreement to any of its affiliates or any other party / parties without prior consent of WWIL.

The Parties hereto have caused this Agreement to be signed as of the day and year first above written.

14.7. The above agreement between parties provided that as there were delays in competition of the project, a compensation was computed for IL &FS Group and that was converted into further project advance and the



total project advances were determined and agreed as above.

14.8. The parties entered into subsequent agreement on 01.10.2016 (Effective Date) and this Agreement assumes considerable significance. The said agreement records a quantified liability on the part of the Corporate Debtor, provides for repayment over a period of time, stipulates payment of interest at 14% per annum, and is accompanied by creation of security interest by way of hypothecation. The Corporate Debtor has acknowledged and accepted this liability and agreed to service the same in terms of the said agreement. The said agreement was annexed by Applicant as Annexure A-9 with IA at Page No. 339 to - 349. A portion of this agreement relevant to current proceeding is extracted as below:

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MWEPL, JWEPL, SWEL, IEDCL and IREL are hereinafter referred to collectively as the "IL&FS Group"

WWIL and WWWRDPL are hereinafter collectively referred to as "WWIL"

MWEPL, JWEPL, SWEL, IEDCL, IREL, WWIL and WWWRDPL are hereinafter separately referred to as the "Party" and collectively referred to as the "Parties".

WHEREAS:

A. IL&FS Group entered into a Memorandum of Understanding (MOU) with WWIL for execution of approximately 1,008 MW wind power projects on 27 July 2010. It was finally agreed to implement 1,004 MW out of afore mentioned 1,008 MW.

B. Accordingly, 775.2 MW wind power projects were to be implemented and 228.8 MW wind power projects were to be implemented.

C. Of the 775.2 MW planned capacity specified above, 728.8 MW has been commissioned as of June 30th 2016. WWIL has to perform balance work as per the contractual scope to complete the commissioning of the 775.2 MW.

D. 228.8 MW wind power projects was scheduled to be commissioned by March 2014. In view of the same, IL&FS Group released advances towards the wind power projects from July 2013 onwards.

E. [Redacted]

F. As on June 30, 2016, the IL&FS Group has a total exposure of Rs. 7,507 Mn (as detailed in clause J below) to WWIL, arising out of advances/supply payments/interest and other cost incurred by IL&FS Group.

G. MWEPL, JWEPL, SWEL, IEDCL, IREL, WWIL and WWWRDPL had entered into an Agreement on June 09, 2016 whereby due to considerable delay in implementation of the wind power projects, WWIL has agreed to compensate/reimburse IL&FS Group for the period April 01, 2016 to March 31, 2016.

H. It is further agreed that due to considerable delay in implementation of the wind power projects, WWIL shall compensate/reimburse IL&FS Group the further amounts of IL&FS Group as per the terms of understanding as stated herein below.

I. WWIL has committed to commission a capacity of approximately 104 MW out of 228.8

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- (1) Total Expected Exposure considering exposure till June 30, 2016 and adjustment on completion of 104 MW but excluding expected interest cost of IL&FS Group from April 01, 2016 is provided below :

Particulars	Rs Mn
Payments to WWIL till Jun 30, 2016	6,280
Interest incurred and borne by IL&FS Group up to March 2015	1,210
Sub Total (A)	7,490
Cost of FY 16 agreed to be borne by WWIL as per agreement dated Jun 09, 2016	1,227
Sub Total (B)	1,227
Total (A+B)	8,717
Less to be adjusted on pro rata basis on completion of 104 MW (out of balance 228 MW) @ Rs. 66.5 Mn/MW	(6,917)
Total Expected Exposure	1,800

- (2) Out of the Total Expected Exposure of Rs. 1,800 Mn, IL&FS Group shall adjust the following amounts :
- Rs [581] Mn
 - Rs 116 Mn
 - The details of aforesaid adjustments mentioned in point (a) above shall be mutually verified and recorded in a separate agreement to be executed within 15 (fifteen) days from the date of this Agreement
- (3) WWIL accepts its liability to repay the Net Expected Exposure of Rs. 1,103 Mn (which is

calculated on the basis that WWIL shall achieve commissioning of 104 MW by March 31, 2017), plus the following amounts :

- Additional money (if any) paid/spent by IL&FS Group from its own sources, including any credit facilities, for 104 MW
- Additional money (if any) spent/provided by the IL&FS Group from its own sources, including any credit facilities, to WWIL through MWEPL, SWEL, JWEPL for the commissioning of the balance portion of 775.2 MW currently being developed through the associate companies of IL&FS Group, from July 01, 2016 onwards
- From 1st April 2016, interest @14.0 % p.a. will be charged on the exposure of Rs. 8,020 million (being Rs. 1800 million, less aforesaid adjustments mentioned in clause 2 above of Rs. 697 million (subject to final verification of Rs. 581 million) plus Rs.5707 million (104 MW EPC Cost), plus project costs including interest incurred by IL&FS Group prior to March 2015 of Rs. 1,210 Mn) together with any further amounts funded by IL&FS Group from its own sources, including any credit facilities, for the completion of 775.2 MW and balance 104 MW from the respective date of funding. For the purpose of interest calculation an amount of Rs. 54.875 Mn will be reduced from the net exposure from the date of the commissioning of each MW.

With respect to the balance Total Expected Exposure of Rs.1,800 mn plus additional amount subject to adjustments in clause 2 and clause 3 above, WWIL agrees and undertakes to provide the following security and means for liquidation of the dues :

- WWIL and/or its affiliates have ownership of Development Rights for development of approximately 1,000 MW. WWIL agrees to monetize the Development Rights to settle the Total Expected Exposure owed to IL&FS Group. WWIL hereby agrees to create a first charge on the proceeds received from such monetization of the Development Rights in favor of IL&FS Group. The scope of work to be completed by WWIL for these Development Rights has been agreed and further detailed in Schedule 1 of this Agreement. Considering the scope items being completed by WWIL as per Schedule 1, each Development Right is expected to be valued in the range of Rs. 3 to 4.5 Mn per MW. Depending upon the scope of work to be completed by WWIL the said development rights and price for the same as may be determined by market discovery process.
- WWIL and IL&FS Group shall within a period of 15 (fifteen) days from the Effective Date shall mutually agree on a mechanism to monitor the monetization of Development Rights. WWIL shall deposit all documents pertaining to the Development Rights in a virtual data room within a period of 30 (thirty) days from the Effective Date and provide data room access to IL&FS Group .

WWIL shall, in consultation with the IL&FS Group sell the Development Rights to third parties and all proceeds received from sale of Development Rights shall first be credited to an escrow account which shall be opened by WWIL and IL&FS Group by 30th October

2016 where IL&FS is the beneficiary. The proceeds of Development Rights shall be utilized to repay/adjust payments towards the Total Expected Exposure remaining unpaid. WWIL shall not create any encumbrance, lien, assign and/or transfer the Development Rights to any third party, without the prior written consent of IL&FS Group. WWIL shall ensure minimum monetization of Rs. 600Mn of Development Rights every year starting from 1st October, 2015 and shall upto September 2021 monetize the development rights required to settle the exposure.

- (c) The parties hereby expressly agree that a second charge will be created on the proceeds from monetization of the Development Rights (as identified in Schedule II) for meeting any outstanding dues of Wind World Wind Farms (MP) P Ltd. towards the Loan Facility extended by IL&FS Wind Power Development Limited/ IL&FS Group.
- (5) In addition to obligations under Clause 4 above, WWIL undertakes to do the following within 45 days from this Agreement with respect to 152.6 MW as specified in Schedule II.
 - (a) Shall create a charge on the economic interest and benefits in the shares/securities held by WWIL with respect to 152.6 MW identified in Schedule I. Economic interest and benefit shall include the right to this cash flow and also the right to realize value of the WTG assets in favour of the IL&FS Group until the entire amount of the Total Expected Exposure is settled. The aforesaid right shall be subservient to the existing charge in favour of the Project Finance lenders in respect to 152.6 MW. Except the charges already created on 152.6 MW in favour of Project Finance lenders as mentioned above, no further charges shall be created by WWIL.
 - In the event WWIL fails to discharge its obligations under Clause 4 (b) above in any year, IL&FS Group shall be entitled to exercise its right under this Clause.
 - (b) Obtain the necessary consents, permissions, no objection certificates from lenders and/or third parties to give effect to transfer of shares and/or assets, as the case may be if IL&FS exercises its right under clause 5 (a) above.
 - (c) In the event the residual value of assets of 152.6 MW capacity of any companies/subsidiaries of WWIL are insufficient to meet the obligations under this Agreement, WWIL shall furnish additional assets to discharge their obligations and create additional security in favour of IL&FS Group.
 - (d) In the event WWIL fails to discharge its obligation in any year or fails to fully pay/settle the amounts due under this Agreement by 30th September 2021, IL&FS Group shall commence the process to adjust the value of the Capital in companies/subsidiaries any companies/subsidiaries of WWIL and transfer the Equity shares, against the Total Expected Exposure.
- (6) It is clarified that the Total Expected Exposure to the extent remaining unpaid shall continue to bear interest at the rate of 14% p.a. till fully settled or paid.
- (7) The Parties hereto agree that in the event WWIL are unable to discharge their obligations

as stipulated in this Agreement, this shall be treated as cross-default and the IL&FS Group shall be entitled to make good repayment of Total Expected Exposure by cashing any Bank Guarantees, LTRs and/or enforcing any security provided by WWIL, under this or any other agreement/arrangement entered into between all or any of the Parties. In addition, as may be mutually agreed between IL&FS Group, WWIL, additional assets/security shall be provided either by WWIL to secure repayment of balance of the Total Expected Exposure.

- (8) IL&FS Group reserves the right to conduct a detailed due diligence of the Legal Entities and conduct a valuation of the Capital Equity Shares of Legal Entities and/or company/subsidiaries of WWIL, identified for transfer to IL&FS Group. WWIL shall cooperate and provide unfettered access to the information requested by the IL&FS Group to conduct the aforesaid exercise.
- (9) If the valuation of each of the aforementioned securities, i.e. Capital/Equity Shares, is not mutually agreed between the Parties, the same shall be carried out jointly by any 2 of Big 4 accounting firms, one to be appointed by IL&FS Group and the second to be appointed by WWIL and the average valuation of the aforesaid securities shall be taken for the purpose of the adjustment. Cost to be paid for such valuation shall be paid by IL&FS Group and WWIL respectively.
- (10) In the event WWIL fails to commission as defined under the WRAP Agreement part or whole of 104 MW by 31st March 2017, IL&FS shall have the right to cancel the contract for the un-commissioned capacity and WWIL shall be obliged to pay to IL&FS Group at the rate of Rs. 66.5 Mn/MW being the per MW cost of EPC price plus the interest cost incurred by IL&FS Group upto March 2015 with interest from date of cancellation.
- (11) IL&FS Group may assign all or part of its rights under this Agreement to any of its affiliates or any other party/parties without prior consent of WWIL.
- (12) This Agreement is an understanding arrived at between the Parties and does not take away any legal right and/or remedies available to IL&FS Group under the applicable law however any recovery by remedies available to IL&FS Group will be set off against the amount due as specified in this Agreement.
- (13) No amendments or modifications to this Agreement shall be valid unless agreed to in writing and duly signed by the Parties.
- (14) Failure or delay by WWIL/IL&FS Group in exercising any right, power or privilege under previous understandings and/or under this Agreement shall not be construed as a waiver thereof.
- (15) Notwithstanding anything contrary contained in this Agreement, it is agreed that the rights accrued to IL&FS Group and WWIL under the EPC Agreement, WRAP Agreements, executed between the parties hereto subsist and continue, except for the provisions in relation to compensation by way of Liquidated Damages and Interest under the WRAP Agreement.

to the extent modified in this Agreement.

(16) The Parties each agree that this Agreement shall be subject to confidentiality and except as may be required under Law, Statutory requirements, not disclosed to any third party without the express written consent of the other party.

(17) If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted here from to the minimum extent necessary to cure such violation.

(18) This Agreement is governed by the laws of India and any dispute arising under this Agreement shall be mutually resolved. If the dispute remains unresolved for a period of 10 days, either Party may issue a notice on the other Party for initiation of arbitration proceedings with the place of Arbitration at Mumbai, in accordance with the Arbitration & Conciliation Act, 1996 (un-amended). Any notices required to be given hereunder by either Party shall be in writing and shall be deemed to be given on the date received if delivered personally, or seven (7) days after the postal date if sent by registered mail, return receipts requested, postage prepaid to the respective addresses.

The Parties hereto have caused this Agreement to be signed as of the day and year first above written.

14.9. The existence of a structured repayment obligation with interest is a crucial indicator of the element of time value of money. The Hon'ble Supreme Court in Anuj Jain, IRP v. Axis Bank Ltd. has held that the requirement of disbursement against consideration for time value of money is the distinguishing feature of a financial debt. Further, in **Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd.**, it has been emphasised that the Tribunal must examine the commercial effect of the transaction in determining whether it has the characteristics of borrowing.

14.10. In the present case, even if the original advances were linked to project execution, the subsequent agreements clearly reflect an intention to convert the existing exposure into a structured financial obligation, as there were project delays. The liability was no longer dependent upon performance of contractual milestones

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or remains simply a payment towards supply but stood crystallised as a repayable debt carrying interest and backed by security. Such restructuring, when voluntarily entered into by the parties, indicates that the exposure had assumed the commercial character of borrowing.

14.11. The argument of the Applicant that the amounts were reflected as “Current Liabilities” in the balance sheet of the Corporate Debtor, though a relevant circumstance, cannot by itself be determinative of the legal nature of the transaction. Accounting classification is a matter of presentation and may vary, but the legal character of a debt must be determined from the substance of the contractual arrangement between the parties, which we have extracted above.

14.12. It is also significant that the advances were made, compensation was agreed for project delays, and later the Corporate Debtor, at the relevant time, acknowledged the liability, agreed to repay the same with interest of 14% as stipulated in the agreement dated 01.10.2016 and created security in favour of Respondent Nos. 2 to 4. It was not a unilateral decision of the IL &FS companies (Respondent Nos. 2 to 4) but was agreed in writing by the Corporate Debtor. The crystallised amount includes actual disbursement and compensation amount and character of whole amount changed to a financial debt with effect from 01.10.2016



when the Corporate Debtor agreed to pay interest as a consideration for the time value of money. Such conduct is consistent with a borrower-creditor relationship. Once the parties themselves structured the exposure as a repayable financial obligation, it would not be appropriate to disregard such a change in character of the transaction based on the contractual intent. The operational debt changed to financial debt effective 01.10.2016 much prior to the initiation of CIRP in the case of the Corporate Debtor.

14.13. The Resolution Professional has stated that the claims of Respondent Nos. 2 to 4 were admitted as financial debt in the year 2018 after verification of documents and on the basis of the agreements on record. The said classification has enabled the Respondents to be part of the CoC. Further, in present case, agreement was not unilateral conversion but novation creating independent repayment obligation.

14.14. In the absence of any cogent material to demonstrate that the admission of such claims was arbitrary, erroneous or contrary to the documents executed between the parties, this Tribunal is of the considered view that the essential ingredients of financial debt, namely, existence of a disbursed liability repayable with interest and having the commercial effect of borrowing, stand satisfied.



14.15. Therefore, we are not inclined to agree with the contention of the Applicant that the claims of Respondent Nos. 2 to 4 are purely operational in nature. The material on record, particularly the subsequent agreements providing for repayment with interest and security, supports the conclusion that the exposure had acquired the character of secured financial debt. The issue is accordingly decided against the Applicant.

15. Findings on Issue No.03: Whether the challenge raised at this stage is barred by delay and acquiescence?

15.1. Respondent Nos. 2 to 4 have strongly contended that the present application suffers from gross delay and is liable to be rejected on this ground alone. It has been pointed out that their claims were admitted as Financial Debt in the year 2018 after due verification by the Resolution Professional and on the basis of the agreements and documents then placed on record. Since then, they have continuously remained part of the Committee of Creditors and have participated in all deliberations and decisions taken in the CIRP.

15.2. It is an admitted position that the constitution of the CoC, including the participation of Respondent Nos. 2 to 4 as Financial Creditors, has remained unchanged for several years. The Applicant, being a Suspended Director and closely connected with the affairs of the



Corporate Debtor, was fully aware of the admission of these claims and the role of Respondent Nos. 2 to 4 in the CoC.

15.3. The present application has been filed after a considerable lapse of time, at a stage when the CIRP has already progressed and various decisions would have been taken by the CoC over the years on the basis of its then-existing composition. It has been informed that resolution plans are under active consideration of the CoC. We have already held that the Respondent No. 2 to 4 are financial creditors. On practical aspect, entertaining such a challenge at this belated stage would necessarily have the effect of unsettling the very foundation on which the CIRP process has been carried forward for more than seven years.

15.4. The Applicant has attempted to justify the delay by contending that the issue of classification of a creditor is a continuing one and that each meeting of the CoC gives rise to a fresh cause of action. However, this submission cannot be accepted in the facts of the present case. The admission of claims and constitution of the CoC is a foundational step in the CIRP, and once carried out after due verification, it cannot be permitted to be reopened repeatedly in the absence of any new material, fraud, or patent illegality.



- 15.5. The record shows that the claims of Respondent Nos. 2 to 4 were admitted by the Resolution Professional in 2018 based on the agreements executed between the parties and the documents produced. The RP is stated to have then obtained a legal opinion. The said classification has continued to remain in force and has been acted upon consistently. The Applicant has not placed on record any new document or subsequent development which fundamentally alters the nature of the transaction or demonstrates that the earlier admission was obtained by misrepresentation or suppression. The Applicant has referred to a legal opinion.
- 15.6. The plea that legal interpretation of “financial debt” has evolved over time, though noted, cannot by itself be a sufficient ground to reopen settled issues after several years, particularly when the parties have structured their conduct and the CIRP has proceeded on the basis of such classification. Allowing such challenges at a late stage would introduce uncertainty and adversely affect the stability and continuity of the insolvency process.
- 15.7. It is also relevant that the Resolution Professional, at the time of admission of the claims, had verified the documents and acted upon professional advice. The RP has supported the claim of the Applicant now based on the re-analysis of the issue based on the jurisprudence



developed since 2018. We have considered the issue based on the facts as available in the pleadings. We do not agree with the RP because no fact has changed since the initiation of the CIRP in the case concerning the financial transactions between the Corporate Debtor and the Respondents 2 to 4. The issues concerning “financial debt” and “disbursal” have been considered based on the developed jurisprudence since 2018 on the issue. Otherwise, also we are of the view that the constitution of the CoC in 2018 was based on the law and Regulations at that relevant point of time and re-interpretation of the same transactions will not alter the decision already made and acted upon for all these years.

15.8. In these circumstances, the present application appears to be an attempt to reopen an issue which has remained settled and acted upon for several years. The doctrine of delay and acquiescence, though not strictly a bar in every case, becomes relevant where a party, despite knowledge of a particular position, chooses not to challenge it for a prolonged period and then seeks to unsettle the same at an advanced stage of the proceedings.

15.9. Therefore, this Tribunal is of the considered view that the challenge raised by the Applicant to the status of Respondent Nos. 2 to 4, in the absence of any new material circumstance, cannot be entertained to



disturb the existing composition of the CoC. The issue is accordingly decided against the Applicant.

16. Findings on Issue No.04: Whether any case is made out for removal of respondent nos. 2 to 4 from the CoC?

16.1. The principal relief sought in the present application is the removal of Respondent Nos. 2 to 4 from the Committee of Creditors and consequent reconstitution of the CoC. The Applicant has contended that their inclusion as Financial Creditors is legally unsustainable as the underlying transactions were project-linked advances and were reflected as “Current Liabilities” in the balance sheet of the Corporate Debtor. It is argued that permitting such entities to remain in the CoC has materially affected the decision-making structure of the CIRP.

16.2. The Resolution Professional has clarified that he admitted the claims as Financial Debt based on the documents then available and that he does not possess the authority to unilaterally alter such classification. The RP has not supported the prayer for removal but has merely submitted that he would abide by the directions of this Tribunal. This further indicates that the original admission was done in the ordinary course of CIRP and not without due consideration.

16.3. It is also pertinent to note that the inclusion of Respondent Nos. 2 to 4 in the CoC has not been shown



to be in violation of any specific statutory provision. We have already held that the Respondent Nos. 2 to 4 are financial creditors. We hold that they have rightly been part of the CoC.

- 16.4. The power of this Tribunal to direct reconstitution of the CoC is to be exercised cautiously and only in cases where the inclusion of a creditor is patently illegal or contrary to the provisions of the Code. In the present case, no such compelling ground has been made out. The challenge is essentially based on re-interpretation of the nature of the transaction after several years, which by itself is insufficient to justify removal of Respondent Nos. 2 to 4.
- 16.5. In view of the above discussion, this Tribunal is of the considered opinion that the Applicant has failed to establish any legal infirmity in the admission of the claims of Respondent Nos. 2 to 4 as Financial Debt. Their continued participation in the Committee of Creditors cannot be said to be unlawful or contrary to the scheme of the Code.
- 16.6. Accordingly, no case is made out for directing removal of Respondent Nos. 2 to 4 from the Committee of Creditors or for reconstitution of the CoC. The issue is therefore decided against the Applicant.

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17. In view of the detailed discussion hereinabove on the issues of maintainability, nature of the claims of Respondent Nos. 2 to 4 and the absence of any material to demonstrate that their admission as Financial Creditors was contrary to the provisions of the Code, this Tribunal is of the considered view that the Applicant has failed to make out a case warranting interference with the constitution of the Committee of Creditors.
18. The composition of the Committee of Creditors shall remain unchanged and the Resolution Professional shall continue to conduct the Corporate Insolvency Resolution Process in accordance with law.
19. Accordingly, **IA/1320(AHM)2025** stands **dismissed**. No order as to costs.

SANJEEV SHARMA
MEMBER (TECHNICAL)
Jeel/LRA

SHAMMI KHAN
MEMBER (JUDICIAL)