

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. I  
KOLKATA**

**IVN. P. (IB)/19/KB/2025**

**IN**

**IA (IB)/90/KB/2025**

**IN**

**CP (IB)/1711/KB/2019**

***An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016***

**IN THE MATTER OF:**

**Avani Towers Private Limited**

**..... Financial Creditor**

***Versus***

**Energy Properties Private Limited**

**..... Corporate Debtor**

**And**

**IN THE MATTER OF:**

**Chintan Jhunjunwala**

**..... Applicant**

***Versus***

**Mahesh Chand Gupta, Resolution Professional of Energy Properties Private Limited & Ors.**

**..... Respondents**

**And**

**IN THE MATTER OF:**

**Avani Towers Private Limited, Through its Resolution Professional, Jitendra Lohia**

**.....Applicant/Intervenor**

**Versus**

**Chintan Jhunjunwala**

**.....Respondents**

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IN  
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IN  
CP (IB) NO. 1711/KB/2019

**Date of Pronouncement: 15<sup>th</sup> day of May, 2026**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)  
CMDE SIDDHARTH MISHRA, MEMBER (TECHNICAL)**

**APPEARANCE:**

Mr. Joy Saha, Sr. Adv. ] For Applicant in IA (I.B.C)/90(KB)2025

Mr. Kunal Sarogi, Adv.

Mr. Aadil Naushad, Adv.

Mr. Shaunak Mitra, Adv. ] For Applicant in IVN. P (IBC)/19(KB)2025

Ms. Swati Dalmia, Adv.

Ms. Neha Sinha, Adv.

Mr. Shubham Raj, Adv.

Mr. S K Bajoria, Adv. ] For Respondent No.1 in IA(IBC)/1812(KB)2024

**ORDER**

**Per: CMDE Siddharth Mishra, Member (Technical):**

1. The court convened in hybrid mode.
2. Heard Ld. Counsels for the parties.
3. The Intervention Application IVN. P. 19/2025 has been preferred by Avani Towers Private Limited (ATPL) 'Intervenor' in IA (IB) 90/2025 in CP (IB) 1711/2019 under Section 60(5) of the I&B Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking the following reliefs:

*"a. That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 to add the Applicant as a party in IA(IB) 90 of 2025.*

*b. That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 to amend the memo of parties of IA(IB) 90 of 2025 by adding the Applicant as a party thereto.*

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*c. That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 to hand over a copy of IA(IB) No. 90 of 2025 to the Applicant;*

*d. That this Hon'ble Tribunal be pleased to pass such other and further orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.”*

**4. Factual Matrix:**

- 4.1. ATPL (Applicant) is the FC as well as OC of the CD and has undergone CIRP by an order dated 15.10.2019 and the RP has also been approved by this Hon'ble Tribunal by an order dated 03.01.2019. A Monitoring Committee has been constituted to oversee the implementation of the Resolution Plan and the Applicant is currently represented by the Monitoring Committee.
- 4.2. Chintan Jhunjhunwala (R1) is a member of the SBOD of the Energy Properties Private Limited (CD). The CD was admitted into CIRP by an order dated 20.03.2024, and Mr Mahesh Chand Gupta (R2) was appointed as the RP of the EPPL (CD).
- 4.3. ATPL filed two appeals being CA (AT) (Ins) No. 100 & 101 of 2025 before the Hon'ble NCLAT and the EPPL had also preferred an appeal before the NCLAT [Comp. App. (AT) (Ins) 147/2025] against an order dated 16.01.2025 passed by this Hon'ble Tribunal in IA (IBC) 90/KB/2025 without impleading the ATPL as a party thereto, wherein the stay of CIRP of EPPL had been sought at the interim stage.
- 4.4. The Hon'ble NCLAT by its order dated 28.01.2025 directed the EPPL to implead the ATPL as a party to the said proceeding. R1 amended the Memo of Parties in CA 147/2025, arrayed Avani as R4, and also served a copy of the said appeal upon the Applicant.
- 4.5. ATPL upon perusing the copy of the aforesaid appeal including the documents annexed thereto found that the EPPL has filed IA (IBC) 90/KB/2025 levelling various serious allegations against the ATPL,

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and the outcome of which has a direct bearing on the rights and interests of the ATPL.

4.6. In view of the above, the Applicant (ATPL) through its RP, Jitendra Lohia, has filed the present intervention application seeking the above-mentioned reliefs.

**5. Submissions of the Applicant:**

5.1. It is submitted that the Applicant is the largest creditor of EPPL, holding 99.97% of the entire debt of EPPL, and the entire resolution process is for the benefit of Applicant.

5.2. It is submitted that although Avani had not been arrayed as a party to IA(IBC) 90/KB/2025, however, upon hearing the counsel on behalf of Chintan Jhunjunwala in Comp. App. (AT) (Ins) 147/2025, which arises from the order dated 16.02.2025 passed in IA(IBC) 90/KB/2025, the Hon'ble NCLAT had been pleased to deem it fit and necessary to add Avani as a party to the said appeal.

5.3. It is further submitted that until and unless an opportunity of being heard is not provided to Avani before the Adjudicating Authority, the impleadment before the Appellate Tribunal would not be effective.

5.4. It is contended that several allegations have been levelled against Avani in the IA (IBC) 90/2025, including allegations of fraud and collusion with the RP of EPPL, and hence Avani should be added as a party to the said IA otherwise the same would tantamount to violation of the principle of natural justice of *audi alteram partem*.

5.5. Further the reliefs sought by Chintan Jhunjunwala in IA (IBC) 90/KB/2025 directly affect the rights and interest of the Intervenor, which *inter alia*, includes:

- a. To declare the decisions taken in the 10<sup>th</sup> COC to be illegal, null and void;
- b. all decisions taken by the CoC in its 1 to 9th meetings be set aside, annulled and rescinded;

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- c. injunction restraining the reconstituted CoC from voting upon the resolution plan submitted by M/s Cheminare Tradecomm Private Limited;
  - d. declaration that sole resolution plan (submitted by M/s Cheminare Tradecomm Private Limited) is illegal, null, void; and
  - e. Permanent stay on CIRP of the CD as the Respondent No. 1 is purportedly willing to make payment of due of Avani Towers to the extent admitted in the balance sheet of Avani Towers.
- 5.6. Further from the reliefs sought by Chintan Jhunjunwala it is evident that he is intending to either scuttle the CIRP of EPPL, or pay out its creditors including Avani such amounts as he deems fit.
- 5.7. It is further contended that both the reliefs sought directly affects the rights and interest of Avani, and reliefs sought for repaying dues of Avani, without arraying Avani as a party in the application is counterintuitive and devoid of logic.
- 5.8. Further that since Chintan Jhunjunwala had repeatedly initiated frivolous litigations at several stages of the CIRP of Avani and EPPL, and therefore the same is a dilatory tactic to impede the successful resolution of the two companies.
- 5.9. It is further contended that ATPL is a 'necessary party' whose presence is necessary to effectively, completely and adequately adjudicate upon IA (IBC) 90/KB/2025, as ATPL has a direct interest in the subject matter of the said application.
- 5.10. Further since ATPL has already been added as a party to Comp. App. (AT) (Ins) 147/2025 arising from IA (IB) 90/KB/2025, therefore, it logically follows and is only reasonable that ATPL be also made a party to the main application IA (IB) 90/KB/2025 pending before this Hon'ble Tribunal.

**6. Submissions of the Respondent:**

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- 6.1. It is submitted that the applicant Avani appearing through its RP Jitendra Lohia was ousted from the COC of EPPL in terms of a split verdict of the Hon'ble Adjudicating Authority, which was then confirmed by the Hon'ble Third Member. Further, Mr. Chintan Jhunjhunwala, being a member of the SBOD, instituted IA (IBC) No. 90/KB/2025 to challenge the Resolution Plan of EPPL approved by its COC, comprising only two OC with a total claim of Rs. 36,580/-.
- 6.2. It is further submitted that the said COC ratified the minutes of the 1<sup>st</sup> to the 9<sup>th</sup> MOM of the COC which were attended only by the RP of the Avani, which had been challenged.
- 6.3. It is further contended that Avani continued to attend the meetings of the COC on 09.11.2024 even after the split verdict dated 27.09.2024 had been pronounced, ousting Avani from the COC.
- 6.4. Further the surviving member of the COC could not, at the 10<sup>th</sup> meeting held on 07.01.2025, have ratified the decision to accept the bid of Cheminare Tradecom even after the verdict of this Hon'ble Tribunal dated 27.09.2024 and the view of the Hon'ble Third Member dated 21.11.2024.
- 6.5. It is contended that the RP of ATPL, Jitendra Lohia, has no locus standi to institute the present Intervention application, as the RP of ATPL became functus officio in terms of Section 23 of the I&B Code, 2016, with the approval of the Resolution plan of Avani on 03.01.2025.
- 6.6. Further the RP could not have filed the present application on behalf of Avani, as also the RP does not have the requisite authority to pursue the same for and on behalf of Avani, as the RP is presently the Chairman of the Monitoring Committee and is only concerned with the implementation of the plan.

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- 6.7. It is further contended that Avani is neither a proper party nor a necessary party within the meaning of Order 1 Rule 10 of the CPC as no prayer has been sought against Avani in IA 90 of 2025.
- 6.8. Further that Avani is merely an alleged creditor of the EPPL, and as such, EPPL has no right to contest the objection to the approval of the resolution plan inasmuch as Avani has duly filed its claim with the RP of EPPL.
- 6.9. Further that there has been a delay of around 4/5 months in filing the intervention application being IVN No. 19 of 2025 (filed on 09.05.2025), although IA (IBC) No. 90 of 2025 was filed on 10.01.2025, IA Plan (IBC) No. 4 of 2025 was filed on 25.01.2025, and the order by the Hon'ble NCLAT was passed on 28.01.2025.
- 6.10. It is further contended that since the application proceeds solely based on the Hon'ble NCLAT dated 28.01.2025, wherein both the appeals [Two appeals being CA (AT) (INS) No. 100 & 101 and an appeal being CA (AT) (INS) No. 147 of 2025] were directed to be heard together, and it was submitted by the Counsel representing Avani that the issues involved in both the appeals were same and consequently Avani was directed to be made a party to CA (AT) (INS) No. 147 of 2025, but no direction was passed by the Hon'ble NCLAT to add Avani as a party to the said IA 90 of 2025.
- 6.11. Further that the contention of the Applicant that EPPL has purchased the subject property with the money borrowed from Avani, and for that, Avani has already instituted CP No 1711 of 2019 under Section 7 of the IBC, EPPL has been admitted into insolvency, and Avani has already filed its claim against EPPL and as such Avani cannot claim any vested right –
- a. To support the plan of Cheminare Tradecom,
  - b. To oppose any of the grounds on which the plan of Cheminare Tradecom has been challenged by the SBOD,

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c. To contend that the plan of Cheminare Tradecom approved by two Operational Creditors of EPPL having a total claim of Rs. 36,580/- is valid.

6.12. Further the contention of the Applicant Avani that IA (IBC) No. 90 of 2025 has been filed by one of the SBOD of EPPL to put a spanner in the CIRP of EPPL is absurd, as the Hon'ble NCLAT has directed that IA (IBC) No. 90 of 2025, being the objection to the Resolution Plan, should be heard before the Petition seeking approval of the Resolution Plan.

**7. Analysis and Findings:**

7.1. We heard the parties and perused the records.

7.2. Upon consideration of the pleadings, documents and rival submissions, the main issue that arises for determination is:

i. Whether ATPL should be allowed to intervene as a party in IA (IB) 90/KB/2025?

7.3. To answer this issue, it is relevant for us to refer the provision of Order 1 Rule 10 of the Code of Civil Procedure, 1908, which inter alia provides :

*“Order 1 Rule 10 (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”*

7.4. In the present case, ATPL claims to be the largest creditor of the Corporate Debtor, holding 99.97% of the entire debt of EPPL. However admittedly it has been held to be a related party of the CD

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- in IA (IB) No. 1299/KB/2024, hence it may not be entitled to a seat in the COC.
- 7.5. It is observed that the reliefs sought in IA (IB) 90/KB/2025 include, inter alia, setting aside the decisions of the Committee of Creditors (CoC), declaring the resolution plan as illegal, and seeking a stay on the CIRP of the Corporate Debtor, on the ground that it would directly impact the rights and financial interests of ATPL.
- 7.6. It is observed that the Applicant has demonstrated that serious allegations, including fraud and collusion, have been levelled against the Applicant, and any adjudication without hearing the Applicant may violate the principles of natural justice *audi alteram partem* if the Applicant is deprived of an opportunity to defend itself.
- 7.7. The contention of the Respondent that no relief has been specifically sought against ATPL is devoid of any merit, as the test for impleadment is not confined to whether relief is claimed against a party, but whether the outcome of the proceedings would affect its rights or interests.
- 7.8. It is further observed that the fact that ATPL has already been impleaded in the connected appellate proceedings before the Hon'ble NCLAT, which makes it necessary and appropriate that ATPL be allowed to participate at the adjudicatory stage, to ensure complete and consistent adjudication of the issues involved.
- 7.9. Thus, it can be concluded that ATPL should be allowed to intervene as a party in IA (IB) 90 of 2025 as ATPL presence is required to ensure complete and consistent adjudication of the issues involved.
8. In view of the foregoing discussions, this **IVN. P. (IB) No. 19/KB/2025**, is **allowed** and **disposed of**.
9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

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10. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**CMDE SIDDHARTH MISHRA**  
**MEMBER (TECHNICAL)**

**BIDISHA BANERJEE**  
**MEMBER (JUDICIAL)**

The Order signed on this, on the 15th day of May, 2026.

*Sagar M. (LRA)*