

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
JAIPUR BENCH**

**IA No.110/JPR/2019 IN CP (IB) NO.54/PB/2018**

*(An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

**IN THE MATTER OF:**

**GENUS POWER INFRASTRUCTURES LIMITED  
(GPIL)**

**CORPORATE OFFICE:**

SPL-3, RIICO Industrial Area Sitapura,  
Tonk Road, Jaipur- 302022, Rajasthan

**REGISTERED OFFICE:**

G-14, Sector 23, NOIDA  
Uttar Pradesh- 201307

.....Applicant

*Versus*

**Mr. ARUNAVA SIKDAR**

Resolution Professional:  
Jaipur Metals & Electricals Limited  
D-3, LGF Lajpat Nagar I  
New Delhi- 110024

.....Respondent

**AND IN THE MATTER OF:**

**ALCHEMIST ASSET RECONSTRUCTION LIMITED**

.....Financial Creditor

*Versus*

**JAIPUR METALS & ELECTRICALS LIMITED**

.....Corporate Debtor

**Order pronounced on: 09.06.2026**

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***Coram:***

Sh. Praveen Gupta : Member (Judicial)

***Appearances:***

Sh. Rishabh Khandelwa, Adv. : *For the Applicant*

Sh. Ashu Kansal, Adv. : *For the RP*

**ORDER**

**Per: Praveen Gupta, Member (Judicial)**

1. The instant Interlocutory Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code ('IBC/the Code'), seeking directions to the Resolution Professional to verify and admit the claim of the Applicant, in respect of which reply and rejoinder have also been filed by the respective parties. Thereafter, vide separate dissenting orders passed by the Hon'ble Member (Judicial) and Hon'ble Member (Technical) of the NCLT, Jaipur Bench, on 10.03.2026, differing views were expressed on the issues involved in the present application, and accordingly, the matter has been referred to me under section 419 (5) of the Companies Act, 2013 read with Rule 60 (2) & (3) of NCLT Rules, 2016 vide order dated 01.04.2026, File No. 06/13/2026-NCLT (JPR) for adjudication on the points of difference of opinion.
2. Accordingly, I have heard the matter on various dates through physical hearing as well as by virtual mode. I have also carefully perused the



pleadings, documents placed on record, and submissions advanced, by the Learned Counsels appearing on behalf of the respective parties.

**BRIEF FACTS OF THE MATTER:**

3. The instant application has been filed by the Applicant, Genus Power Infrastructures Limited seeking directions to the Resolution Professional to verify and admit the claim of the Applicant, submitted by the Applicant through Form C as a Financial Creditor which has however been rejected by the RP vide email communication dated 05.03.2019. The reliefs sought in the present application are as under:

*In view of the facts mentioned above, the Applicant prays for the following reliefs:*

- a) *accept the Claim of the Applicant submitted under Form C as a Financial Creditor of the Corporate Debtor; and*
  - b) *pass any other order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.*
4. It is averred in the application that the Corporate Debtor, Jaipur Metals and Electricals Limited ('JMEL') was engaged in the manufacturing of electronic meters, aluminium and copper conductors, etc., and had enjoyed a strong reputation. It is further stated that the management of the Corporate Debtor came to be vested with the Government of Rajasthan as per the Jaipur Metals Share Acquisition Ordinance. During the earlier stage, since the Corporate Debtor started incurring losses, it was referred to the Board for Industrial and Financial Reconstruction ('BIFR') on 18.12.1998 and was

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declared as a sick company under Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA') vide order dated 02.06.1999. Further vide order dated 26.09.2002, BIFR recommended winding up of the Corporate Debtor under Section 20(1) of SICA, and consequently, a Company Petition No. 19/2009 under Section 433 of the Companies Act, 1956 was filed before the Hon'ble High Court of Rajasthan.

5. It has also been averred that the Corporate Debtor had been declared as a Relief- Undertaking by the Government of Rajasthan vide notification dated 03.10.1998 under the provisions of the Rajasthan Relief Undertaking (Special Provisions) Act, 1961. The Hon'ble High Court of Rajasthan vide order dated 29.09.2008 directed the Government of Rajasthan to revive the Corporate Debtor. Accordingly, the Government of Rajasthan floated a Request for Proposal (RFP) for revival of the Corporate Debtor through acquisition of shareholding of the Government of Rajasthan. As per the stipulations made in the RFP, the successful bidder was required to enter into separate MoUs with the Government of Rajasthan, the JME Employees Cooperative Credit & Thrift Society Limited and Metal and Electricals Mazdoor Sangh. The bid of the Applicant was eventually declared successful vide letter dated 08.10.2008 issued by the Government of Rajasthan by accepting the bid amount of Rs. 19.42 crores.
6. As per the stipulations made in the RFP, the Applicant entered into MoUs

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dated 07.11.2008 with the Government of Rajasthan, Employees Cooperative Credit Society, and Mazdoor Sangh. The relevant excerpts of the MoU dated 07.11.2008 entered into with the Government of Rajasthan have been reproduced below:

“ *Memorandum of Understanding*  
*This Memorandum of Understanding (MOU) is made on this 7th day of November, 2008 at Jaipur by and between:*  
*Government of Rajasthan, (hereinafter referred to as "GoR") through its authorized nominee Principal Secretary, Industries Department, Secretariat, Jaipur of the First Part,*

*AND*

*Genus Power Infrastructure Ltd., a company incorporated under the provisions Not the Companies Act, 1955 and having its registered office at SPL-3, Rite Industrial Area, Sitapura, Tonk Road, Jaipur-302022 through its authorized representative (hereinafter referred to as the "Successful Bidder" which expression I shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) of the second part.*

*WHEREAS:*

*I. GoR is a shareholder of Jaipur Metals & Electricals Limited (JMEL), a company incorporated under the Companies Act 1956, and has also been entrusted with the responsibility of the management of JMEL;*

*....*

*IV. Pursuant to an open competitive bidding process conducted by GoR, the Successful Bidder has been selected by GoR for implementing the Revival Plan of JMEL.*

*V. The Successful Bidder has submitted a lumpsum financial bid 19,42,00,000/- (Rs. Nineteen crores and forty-two lacs) for the purchase of 58,511.3 shares of JMEL held by GoR in terms of Request for Proposal document and submitted a EMD of*

Rs. 5,00,00,000/- (Indian Rupees Five Crore only) and the same has been accepted by GoR.

VI. The Successful Bidder will be required to submit and obtain the approval of the revival scheme/proposal of JMEL from the Court/BIFR within the 18 months of signing of MOU as per clause 3.5 of RFP document.

The parties are now desirous of entering into this MOU for carrying out the objects of the Revival Plan of JMEL and also complying with the conditions of the RFP provisions.

The understanding between the Parties is that the rights and obligations of all the parties with regard to this MOU are to be interpreted and acted upon in accordance with the terms of the MOU and in the spirit thereof.

Now therefore, in consideration of the mutual covenants and obligations herein contained, the Parties, intending to be legally bound, agree as under:

#### Article 1

#### OBJECTS OF THE MOU

1.1 The object of this MOU is to achieve the successful Revival of JMEL within the period prescribed and terms in the RFP documents.

1.2 During the currency of this MOU, the parties hereto shall take effective steps for the implementation of the Revival Plan/proposal of JMEL.

#### Article 2

#### OBLIGATION OF THE PARTIES

##### *Obligation of the Successful Bidder*

2.1 The Successful Bidder shall have to prepare a bankable revival scheme/proposal in the form of a draft rehabilitation Scheme/proposal for submission to BIFR/Court for revival of JMEL.

The draft rehabilitation Scheme/proposal shall be filed BIFR/Court within three months of signing of MoU. The Successful Bidder will also be required to pursue vigorously for obtaining approval of the said revival scheme/proposal of JMEL from BIFR/Court and other statutory authorities within eighteen months of signing of MOU. In the event any extension of time is

required for obtaining the approval of BIFR/High Court, the Successful Bidder shall seek the prior approval of GoR in this regard. The revival scheme/proposal should ensure that JMEL should become a financially viable company and provide employment to the workers of JMEL who are otherwise eligible to be employed and are willing to be employed in the new factory at the new location, on mutually agreed terms from the date of starting the manufacturing activity, in terms of the Bid conditions.

2.2 The Successful Bidder agrees that the transfer of shares of JMEL held by GoR to the Successful Bidder shall be given effect to, only after the approval of proposed revival scheme/proposal by BIFR/Court.

2.3 The milestone payments to be made by the Successful Bidder of the consideration of Rs, 19,42,00,000/- (Rs. Nineteen crores and forty two lacs only) towards purchase of shares of GoR by Successful Bidder as mentioned in the Financial Bid will be as under:

<b>Milestone</b>	<b>Payment</b>
<i>Within 30 days from the date of revival scheme/proposal by BIFR/Court of approval</i>	<i>At least 50% of Rs. 19,42,00,000/-</i>
<i>At the time of or before conversion of land use for commercial purpose of the land of JMEL at Jaipur</i>	<i>Balance amount</i>

2.4 The Successful Bidder, as a part of the Revival Plan of JMEL, would ensure that the manufacturing activity of JMEL commences at the new location within two years from the date of conversion of the land use of the existing land of JMEL.

2.5 The Successful Bidder shall make payment towards clearance of the sovereign dues of JMEL outstanding towards the loans provided by government, dues of government departments like Commercial Taxes Department etc .; and the dues of government-controlled organizations like RIICO, JDA, JWVN etc. as under:

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<i>Milestone</i>	<i>% of the consolidated amount i.e., Rs. 20,18,00,000/-</i>
<i>On signing of MoU with GoR</i>	<i>5%</i>
<i>On transfer of Management</i>	<i>10%</i>
<i>Within 60 days of approval of revival scheme/proposal by BIFR/Court</i>	<i>25%</i>
<i>At the time of or before conversion of land of JMEL at Jaipur for commercial purpose</i>	<i>60%</i>

*The EMD of Rs, 5,00,00,000/- (Rupees Five Crore only) would be adjusted against the sovereign dues payable to GoR.*

*2.6 The Successful Bidder agrees that the failure in making any of the payments as stipulated in clause 2.3 and 2.5 of MOU by the Successful Bidder would lead to the event of termination of MOU and forfeiture of all the payments made by the Successful Bidder till that time. However, in the event that the Revival Plan falls on account of the GoR or the "workers" calling off the transaction or on account of any force majeure, the amount paid to GoR towards EMD, share consideration and government dues will be refunded to the Successful Bidder*

*2.7 The Successful Bidder agrees that all disclosed/undisclosed liabilities of JMEL shall be the responsibility of Successful Bidder.*

.....

*VII. The existing land of JMEL will be converted for commercial purposes subject to the revival proposal being approved by BIFR/Courts. The conversion will be done in accordance with the procedure and provisions under the prevailing rules of JDA/JMC, without any waiver or concessions of conversion charges. The conversion will be effective upon approval of the Revival Plan of JMEL by BIFR/Courts.*

7. The relevant excerpts of the MoU dated 07.11.2008 entered into with the Mazdoor Sangh are reproduced below:

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*Memorandum of Understanding*

*This Memorandum of Understanding (MOU) is made on this 7<sup>th</sup> day of November, 2008 at Jaipur by and between:*

*Genus Power Infrastructures Ltd., a company incorporated under the provisions of the Companies Act, 1956 and having its corporate office at SPL-3, RICO d Industrial. Area, Sitapura, Tonk Road, Jalpur-302022 through its authorized representative (hereinafter referred to as the "Successful Bidder" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) of the first part,*

*AND*

*Metal and Electricals Mazdoor Sangh, a trade union registered under the Trade Union Act 1926 and, having Its office at Jaipur Metals Campus, Power House Road, Jalpur-302006 through Its authorized representative (hereinafter referred to as the A Mazdoor Sangh" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) of the second part.*

*WHEREAS:*

*Mazdoor Sangh is a recognized trade union of Jaipur Metals & Electricals Limited (JMEL), a company Incorporated under the Companies Act 1956.*

*II. JMEL had been declared a sick company in the year 1999 by the BIFR. BIFR had recommended its winding up to Rajasthan High Court In the year 2002, Keeping in view hardships faced by the workers of JMEL GoR has now taken Initiative to facilitate revival of JMEL which Inter alia Includes the transfer of the shares held by It to a party In the private sector.*

*III. In terms of the aforesaid Initiative, GoR had Issued a public notice dated 03-09-2008 Inviting offers for private sector participation and Investment in JMEL from interested parties Inter alia envisaging (i) the transfer of shares of JMEL held by GoR (58,511.3 equity shares) and also the shares held by the JMEL management of JMEL Thrift Society (1,72,083 equity shares at oar along with the transfer of management activity of*

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JMEL to the Successful Bidder, (ii) the revival of the manufacturing activity of JMEL, (iv) providing of employment to its workers (iv) Settlement of dues and package of workers and (v) making JMEL a financially viable company ('Revival Plan of JMEL".)

.....

*Article 1*

**OBJECTS OF THE MOU**

1.1. The object of this MOU is to achieve the successful Revival of JMEL settling the dues and package of the workers of JMEL.

1.2. During the currency of this MOU, the parties hereto shall take effective steps for the implementation of the Revival Plan/proposal of JMEL.

*Article 2*

**OBLIGATION OF THE PARTIES**

*Obligation of the Successful Bidder*

2.1. The Successful Bidder shall have to prepare a bankable revival scheme/proposal in the form of a draft rehabilitation Scheme/proposal for submission to BIFR/Court for revival of JMEL....

2.2. The Successful Bidder shall make payment towards clearance of the dues and package of the "Workers and Staff" (herein referred to as employees) of JMEL as under:

<b>Milestone</b>	<b>% of the settlement amount i.e. Rs. 68,35,00,000/-</b>
<i>On signing of MoU with Mazdoor Sangh</i>	10%
<i>On transfer of Management</i>	10%
<i>Within 60 days of approval of revival scheme/proposal by BIFR/Court</i>	20%
<i>At the time on or before conversion of land of JMEL at Jaipur for commercial purposes</i>	60%

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2.3. *The Successful Bidder agrees that the failure in making any of the payments as stipulated In clause 2.2 of MOU by the Successful Bidder would lead to the event of termination of MOU and forfeiture of all the payments made by the Successful Bidder till that time.*

....

2.5 *The Successful Bidder agrees to pay the following amount towards the payment of arrears in wages/salary and voluntary retirement benefits to the employees of JMEL:*

*A. Payment of dues to all the employees who were on the rolls JMEL as on 31<sup>st</sup> March 2007 and those employees who were on the rolls of JMEL as on 30<sup>th</sup> of September, 2000 but have been retrenched, suspended, dismissed or terminated before 31<sup>st</sup> March, 2007, as under:*

- i. All arrears of wages/salary, bonus and other benefits, if any, payable up to 30<sup>th</sup> September, 2000;*
- ii. Arrears of Gratuity till 31<sup>st</sup> of March 2007. For this purpose Gratuity means 15 days' salary for each completed year of service.*

*... ”*

8. The relevant excerpts from the MoU dated 07.11.2008 entered with the JME Employees Cooperative Credit and Thrift Society are as follows:

*“This Memorandum of Understanding (MOU) is made on this 7<sup>th</sup> day of November, 2008 at Jaipur by and between:*

*Genus Power Infrastructures Ltd., a company incorporated under the provisions of the Companies Act, 1956 and having its corporate office at SPL-3, RICO d Industrial. Area, Sitapura, Tonk Road, Jalpur-302022 through its authorized representative (hereinafter referred to as the "Successful Bidder" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) of the first part,*

*AND*

*JME Metals Cooperative Credit & Thrift Society Limited, a society registered under the Societies Registration Act, 1860 and*

having its office at J.M.E.L. Campus, Near Jaipur Railway Station Jaipur-302006, through its authorized representative (hereinafter referred to as the "JMEL Thrift Society" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) of the SECOND PART:

.....

ARTICLE 2

OBLIGATION OF THE PARTIES

*Obligation of the Successful Bidder*

.....

<i>Milestone</i>	<i>Payment</i>
<i>Within 30 days from the date of approval of the revival scheme/ proposal by BIFR/Court</i>	<i>At least 50% of Rs. 1,72,08,300/-</i>
<i>At the time of or before conversion of land use for commercial purpose of the land of JMEL at Jaipur</i>	<i>Balance Amount</i>

.....”

9. It is submitted that pursuant to the said MoUs, the Applicant was required to submit a rehabilitation scheme for approval before the Hon'ble Court/BIFR Court, and upon approval thereof, the Government of Rajasthan was to transfer its respective shareholding to the Applicant. It is averred that in compliance with the terms of the RFP and MoUs, the Applicant made payment of Rs. 6.30 crores to approximately 1445 workers and informed the same to the Government of Rajasthan vide letter dated 07.12.2008. Apart from this, the Applicant also paid an amount of Rs. 1.09 crores to the Government of Rajasthan in terms of the MoUs, and a draft

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rehabilitation scheme was also framed. The details of the amounts paid by the Applicants as stated in the Application are as follows:

S. No.	PARTICULARS OF PAYMENT	DATE OF PAYMENT	AMOUNT PAID
	10% of salary & wages (outstanding) of Workers & Employees (1558 cheques)	07.11.2008	6,54,68,695
	Less: Chq Undistributed (No. of Chqs - 76)		15,39,170
1.	Chq Distributed (No. of Chqs -1482) (Claim Amount)		6,39,29,525
2.	Paid to JME Employees Cooperative Credit & Thrift Society Ltd. Towards deposit amount of Workers/employees)	07.11.2008	16,69,534
3.	To State Govt- towards Statutory dues (5%) payment	07.11.2008	1,00,90,014
4.	Provident Fund (on above workers/employees payment)	09.09.2011	12,71,955
	<b>Sub-Total</b>		<b>7,69,81,028</b>
	Add: interest till date of commencement of CIRP		6,50,47,787
	<b>TOTAL:</b>		<b>14,20,28,815</b>

10. It is stated that being the successful bidder under the RFP and intending to acquire significant shareholding in the Corporate Debtor, the Applicant filed Application No. 6780/2010 seeking impleadment in the winding up proceedings u/s 433 of the Companies Act, 1956, i.e., in Company Petition No. 19/2009. It is submitted that the Hon'ble High Court of Rajasthan vide order dated 13.12.2010 dismissed Application No. 6780/2010 filed by the Applicant for impleadment. The relevant excerpts from the order dated 13.12.2010 are as follows:

*“Having due regard to the provisions of S.557 (1) of co. Act, it is settled position that right of the creditors/ contributories to*

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*appear and be heard before or after winding up order being passed, is recognized by law and that right to appear and be heard comprehends the stage of admission, as well. There cannot be any dispute that order passed by the Company Court admitting winding up petition by itself, holds serious consequences of the Company as it seriously affects the market position of a company subject to the order.*

.....

*Applicant-Genus, as alleged, deposited Certain payment of employees' dues as also of State Government and mere making of payment of certain dues will not make the applicant- Company as creditor of the Company-JMEL. It is not the case of either of applicants seeking impleadments that they are contributories and rightly so since for a contributory one has to fulfil conditions as provided U/s 439(4) of Co. Act, which indisputably are not meted out by either of applicants seeking impleadments.*

*Thus, contention advanced by Counsel for applicant (Genus) that they are creditors of the Company on account of certain payments of dues of employees as also of State Government being paid under a MOU/agreement being successful bidder, is of no substance.*

.....

*Before parting with the order, this Court would like to observe that ofcourse an order passed of admitting a petition for winding up a company certainly has serious consequences of the Company as it affects market position whereof but that will not make any person interested to appear and be heard at the stage of admission of winding up petition and if plea of applicants (Genus/Umang) of their right to be heard at the stage of admission of the company for winding up is accepted, it will certainly open flood gates and a number of persons would come before Company Court claiming either for having vital information regarding diversion of the funds of Company under winding up process which can facilitate the Court in taking decision in company petition or their interest may be it would certainly hamper progress of procedure instead of early disposal.*

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*Thus, in considered opinion of this Court, both the applications of applicants (Genus & Umang) to be heard at the stage of admission of company petition for winding up are without substance and are liable to be dismissed at this stage.*

*Consequently, both the applications (No.6780/dt.15/03/2010) filed by M/s Genus Power 26/08/2010) filed by M/s Umang Board (P) Ltd, are hereby rejected. Office to proceed.”*

11. During this period, Alchemist Asset Reconstruction Company Limited, i.e., the Financial Creditor, acquired debts of the Corporate Debtor from IDBI vide assignment agreement for Rs. 12 crores, thereby acquiring 33% of the total secured debts, and was also impleaded in the winding up proceedings vide order dated 29.04.2010.
12. It is further averred that upon preparation of the Draft Rehabilitation Scheme, the Applicant filed Application No. 103/2010 seeking leave to file Application under Section 391(1) and Section 393 of the Companies Act, 1956 and also filed Application No. 104/2010 under Section 391(1) of the Companies Act, 1956 in CP No. 19/2009, seeking revival of M/s Jaipur Metals & Electrical Ltd, praying for directions to convene meetings of secured creditors, unsecured creditors, and shareholders of the Corporate Debtor for consideration and approval of the scheme proposed by the Applicant.
13. It is stated that under the proposed scheme, the Applicant proposed total investment of approximately Rs. 200 crores for revival of the Corporate

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Debtor. The said scheme was also adopted by the Society and Workers Union, who independently filed corresponding application i.e., Application No. 153/2010 under Section 391(1) of the Companies Act, 1956, before the Hon'ble High Court of Rajasthan.

14. Thereafter, objections were filed by the Financial Creditor, Alchemist Asset Reconstruction Company Limited, against Application No. 104/2010, opposing the proposed rehabilitation scheme and vide order dated 02.04.2012, the Hon'ble High Court of Rajasthan dismissed Application No. 103/2010 and 104/2010 filed by the Applicant and 153/2010 by the Thrift Society and Mazdoor Sangh. The relevant excerpts of the order dated 02.04.2012 are reproduced below:

*“This Court finds substance that instant so-called Scheme put forward by successful bidder (Genus) cannot be given any credence for the reason that it is not compromise/arrangement having been allegedly proposed, if arrived at between the Company and its creditors or its members. As regards so called MOUs, they were entered into between so-called successful bidder (Genus) with State Government & two workmen Unions, its term was valid for three years from the date of execution thereof which indisputably expired in November, 2011 and the bidder (Genus) might have submitted application to the State Government for renewal of MOUs' but it has not been renewed as yet.*

*Whole thrust of so-called successful bidder (Genus) is in regard to certain payments having been made to the worker's dues statutory dues of the State Government but that alone would not be considered to be sufficient for being taken note of by this Court in regard to the Scheme proposed for revival of Co .- JMEL at the behest of bidder (Genus).*

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*State Government is also one of major share holders of Co.- JMEL and at one stage, effort were made calling upon State Government to come forward for some better ways for compromise & revival of the Company, being paramount consideration, should not be divested and the State Government must be in favour of revival of Co.-JMEL rather than closing it down; but in the proceedings initiated before the Co-ordinate Bench in CWP-7761/2023 while the Advocate General was called upon to hold a meeting with Principal Secretary of Government, Department of Industries to find out ways regarding the Scheme of compromise/arrangement, if arrived at, can be considered and how it is possible to revive the Co.- JMEL; obviously keeping in view that secured creditors cannot be asked to wait for indefinite period which may render their securities balancing of views & adverse interest in fact were to be performed taking note of various factors. That being so, State Government under directions given by Co-ordinate Bench vide order dt.06/03/2009 in CWP-7761/2003, held meeting in his chambers on 21/03/2009 and submitted a report on 02/04/2009 which has been taken note of by Co-ordinate Bench in its order dt. 10/04/2009 (referred to herein above); according to which, the State Government who is one of major share holders, had expressed that they are not in agreement to affect the compromise and the sentiments expressed by the Court cannot be operationalized and most of the parties to the dispute including the State Government seems to be acquiesced and the only course of action opened for parties to the dispute including State Government is that the matter be referred to the Company Court for further adjudication.*

*Thus, when one of major share holders has shown inability and the others who have participated have not arrived at to affect the so-called compromise & the present scheme introduced through MOUs is neither by Company and its creditors or members; inasmuch as the matter has been examined at length by BIFR which has made its recommendations in exercise of powers U/s 20(1) of Sick Co. Act, 1985 and taking note of further fact that to give any effect to the compromise or arrangement as referred to in sub-section (2) of S.391 unless majority in numbers representing*

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*3/4th in value of the creditors or class of creditors or members or class of members, as the case may be, present or voting at such a meeting, may accord their approval to the Scheme proposed, the same cannot be sanctioned having its binding effect and when one of the secured creditors-Alchemist who admittedly without taking note of order of Company Law Board, is holding 33% of total secured debts of Co .- JMEL, any compromise/arrangement, if taken note of and meeting of the Co .- JMEL, creditors & members is being called upon, that will not get majority representing 3/4th in value of the creditors or class of creditors or members or class of members, as the case may be, which is the requirement U/s 391(2) of Co. Act, apart from having any locus of the Scheme in question put forward by so called successful bidder (Genus), in the considered opinion of this Court, calling of meeting of Company, creditors & members to examine the Rehabilitation package proposed will not be meaningful and is not going to serve any purpose, but will remain a futile exercise.*

*Consequently, both the applications (No.104/2010 & 153/2010) being devoid of merit and are hereby dismissed. However, it is made clear that what has been observed by this Court (supra) may not adversely affect right of the parties while Company Petition No.19/2009 being heard for admission.*

*In the light of what has been observed (supra), 3rd Co.Appl.No.103/2010 seeking leave has become infructuous and accordingly stands dismissed...”*

15. Aggrieved thereby, the Applicant, Thrift Society, and Workers Union preferred Special Appeals No. 13/2012 and 15/2012 before the Division Bench of the Hon'ble High Court of Rajasthan, which were also dismissed vide order dated 30.04.2013. The relevant excerpts from the order dated 30.04.2013 are as under:

*“17. The record shows that application filed by appellant Genus seeking permission of being heard at the admission stage, had*

*been rejected vide Company Court's order dated 13.12.2010, on the ground that under Section 439(4) of the Companies Act, 1956, the Company creditors/contributories can only have a right of hearing at admission stage and merely because payments were made of certain dues of the workmen and statutory dues, that by itself, will not make the successful bidder (Genus) as creditor/contributory of company JMEL entitling right of hearing at admission stage. This order was not assailed and has attained finality.*

*18. The record further shows that the State Government who was holding 20% shares was called upon for holding a meeting for revival of JMEL. The meeting was called but the parties to the dispute including the State Government, were not in agreement to affect a compromise, as recorded by Coordinate Bench in its order dated 10.4.2009 in Writ Petition No. 7761/2003. The MOU executed on 7.11.2008 between Genus and State was for three years which having been not renewed as such expired on 6.11.2011. However, the MOUs with two workmen unions were renewed for further one year in continuation.*

*19. A conjoint reading of Sections 391 and 393 of the Companies Act, 1956, quoted herein-above, makes it clear that compromise or arrangement can be proposed between "a company and its creditor" or any class of creditors, or company and its members or class of members, and if such a scheme is put forward by a company for sanction of the Court, the Court may consider the scheme and protect holding of meeting of creditors or class of creditors or members, or class of members being concerned with such scheme. But as per Section 391(2), the Court gets jurisdiction to sanction the scheme with or without modification if the majority in number representing 3/4th in value of creditors or class of creditors or members or*

*class of members, as the case may be, present and voting either in person or by proxy at such a meeting accord their approval to any compromise or arrangement thus put to vote, and once such compromise is sanctioned by the court, it would be binding to all creditors or class of creditors or members or class of members,*

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*as the case may be, which would also necessarily mean that even to dissenting creditors or class of creditors or dissenting members or class of members, such sanctioned scheme would remain binding.*

*20. In the case in hand the appellant Genus claiming itself to be the majority shareholder and on the basis of payment of certain statutory and workmen dues, claiming itself to be creditor, sought directions for holding a meeting under Section 391. But the fact is that the shareholding was yet to be transferred and MOU entered into with State Government having 20.23% shareholding, had not been renewed and the transfer of shares was yet to take place. Just because certain payments were made by Genus towards statutory and employees' dues, it cannot claim itself to be a creditor or contributory of Company because every person who gives money to the company cannot be construed as creditor unless such a person is treated as "creditor to whom company owes debt", or every person who has paid or given money to the company, otherwise than under any concluded contract, cannot be construed to be creditor of the company.*

*21. From plain reading of Section 391, it is clear that if compromise or arrangement is proposed "(a) between a company and its creditors or any class of them; or (b) between a company and its members or any class of them; in that situation on the application of company or of its creditor or member or in case of company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.*

*22. The wording used in Section 391(2) clearly implies that if majority in number representing 3/4th in value of the creditors, or members, as the case may be, present and voting either in person or by proxies if allowed under the rules, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, or the class of creditors, all the members, or class of members as the case may be, and also on the company, or, in the case of a*

company which is being wound-up, on the liquidator and contributories of the company.

...

24. On the basis of discussion made herein-above, as also Rule 67 of Company Court Rules, we are of the considered view that the provisions contained in Section 391 extracted above, and 393 of the Act of 1956, clearly show that the compromise or arrangement can be proposed between a company and its creditors or any class of them, or between company and its members or class of them. In the present case, however, it has been proposed by a third party being neither creditor- nor member because before the transfer of 20.23%-of-shareholding of government, the MOU having not been renewed, expired by efflux of time. Accordingly, there has not been any concluded contract to show that the appellant is a creditor merely by paying some workmen and statutory dues the appellant Genus does not become creditor. For the foregoing reasons, we are of the considered view that the learned Company Court has rightly dismissed the applications filed by the appellants under Section 391 of the Companies Act.

25. Therefore, the appeal No. 13/2012, filed by appellant Genus, is devoid of merit.

26. As regards the appellants of appeal no. 14/2012, the Employees Society and Mazdoor Sangh holding 59.49% shares, their MOU executed on 8.11.2008 had although been extended but there is no rehabilitation scheme given by them and they have come with the case that they are supporting the appellant Genus. In this regard, suffice it to say that the Employees Society and Mazdoor Sangh, although majority shareholders, who had participated, have not come out with any Rehabilitation Package Scheme. Therefore, their application also, in our view, had been rightly rejected.

27. As regards appeal no. 15/2012, filed against the order passed in Application No. 103/2010 under R. 9 of the Company Court Rules, suffice it to say that it had been dismissed on account of

*having become infructuous. In the facts and circumstances, no ground to interfere, hence dismissed.*

*28. Accordingly, the appellants' appeal No. 13/2012, 14/2012 and 15/2012, being devoid of merit, deserve to be dismissed and are hereby dismissed with no order as to cost."*

16. Aggrieved by the dismissal of the Special Appeals, the Applicant preferred Special Leave Petition, SLP (C) No. 34900-34901/2013 before the Hon'ble Supreme Court. Vide order dated 09.11.2016, the Hon'ble Supreme Court disposed of the SLPs. The relevant excerpts from the order dated 09.11.2016 passed by the Hon'ble Supreme Court are reproduced below:

"SLP (C) No. 34900-34901/2013

*Heard the learned counsels for the parties and perused the relevant material. The special leave petitions are disposed of with the direction that in the event the Company is wound up, from the proceeds of winding up the amount paid by the petitioner under the Memorandum of Understanding executed pursuant to the revival proposal invited by the State Government shall be adjusted. This will be subject to the provisions of the Companies Act applicable in this regard. The amount will also carry interest at the rate of 9% from the date when the same was paid till the date of actual repayment."*

17. It has been further submitted that subsequently, the Financial Creditor filed an application under Section 7 of the Code, seeking initiation of CIRP against the Corporate Debtor, which was admitted by the Hon'ble NCLT, New Delhi vide order dated 13.04.2018. Pursuant thereto, the IRP was

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appointed and public announcement inviting claims was issued. In response, the Applicant submitted its claim under Form C on 05.02.2019 as a Financial Creditor along with supporting documents. However, vide email dated 16.02.2019, the Resolution Professional expressed inability to verify the Applicant's claim on the ground that the Applicant was not a creditor of the Corporate Debtor. It was further submitted that despite clarification provided by the Applicant vide email dated 20.02.2019, the Resolution Professional rejected the Applicant's claim vide email dated 05.03.2019. The relevant excerpts from the email dated 05.03.2019 sent by the Resolution Professional are reproduced below:

*"12. In view of the above it is clear that:*

- (i) You have made payments to the following entities in terms of MOU signed by you and the said entities:*
  - a) Government of Rajasthan;*
  - b) Jaipur Metals and Electricals Employees Cooperative Credit and Thrift Society Ltd.;*
  - c) Jaipur & Metals Mazdoor Sangh;*
- (ii) That the said payments were made by you for purchase of shareholding of GOR / Thrift Society and settlement proposed between you and the workmen / staff on takeover of the Company. None of these can be construed as a debt on the Company (Corporate Debtor).*
- (iii) The Single Bench and Division Bench of the Hon'ble High Court have clearly held that you are not a creditor of the Company (Corporate Debtor).*
- (iv) Company is wound up" from the proceeds of the winding up, the amount paid by the Petitioner under the MOU executed*

*pursuant to the revival proposal invited by the State Government will be adjusted". As such the monies paid by you to the Government of Rajasthan / Thrift Society / Workers and Staff can be adjusted only out of proceeds received by the said entities on winding up the Company. Further, your application for modification of the order dated 09.11.2016 wherein you had prayed that the amounts paid by you should be paid in priority before payments to others including secured creditors. The said application was dismissed by the Hon'ble Supreme Court of India vide its order dated 31.03.2017.*

- (v) The claims to be made by Government of Rajasthan / Thrift Society / Workers and Staff will be for the full amount due to them and on receipt of their share, the amount paid by you to them will be adjusted along with interest at 9% from the date of the payment made by you to them.*
- (vi) The Company (Corporate Debtor) has not received any monies from you nor are payments made by you at the behest of the Company.*
- (vii) The Company (Corporate Debtor) has itself not recognized the amounts paid by you to these entities as a liability in its Balance Sheet.*

*In view of the above, your claim cannot be considered as a Financial Debt in JMEL and is therefore rejected."*

**18.** It is contended by the Applicant that payments amounting to Rs. 7,69,81,028/- made pursuant to the RFP and MoUs towards workers' dues, statutory liabilities, and Government dues on behalf of the Corporate Debtor constitute a financial debt under Section 5(8)(f) of the Code. It is further submitted that these payments were acknowledged in the notes to audited balance sheets of the Corporate Debtor and as contended by the Applicant, the right of the Applicant to receive the amount has also been recognised by

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the Hon'ble Supreme Court. The relevant excerpts from the notes to audited balance sheet of the Corporate Debtor as at 31.03.2012 annexed as Annexure R-6 to the Reply are as follows:

*"Note No. 41: Non finalization of the modalities for accounting of the payments made by M/S Genus Power Infrastructure Ltd. in lieu of the MOU*

*signed between M/S Genus Power Infrastructure Ltd., State Govt. of Rajasthan, JMEL Employees Co-operative & Thrift Society and JME Mazdoor Sangh on 07.11.2008 and creditors/liabilities are subject to non-recognition of the payments made by the said firm of the company's liability as detailed in note 41. Also disclosure of the all details of MOU is not made.*

.....

*41. As reported in the previous year accounts, the Govt. of Rajasthan had invited bids for revival of the company and an MOU, has been signed between Genus Power Infrastructure Ltd. (Genus Consortium), State Govt. of Rajasthan, JMEL Employees Co-operative & Thrift Society and JME Mazdoor Sangh on 07.11.2008.*

*Under the MOU M/s Genus Power Infrastructure Ltd. (Genus Consortium) has made payment of Rs. 77444789/- in year 2009-10 and Rs. 196546/- in year 2008-09 as reported by M/s Genus Power Infrastructure Ltd. (Genus Consortium).*

*The modalities of the transactions are as such that no effect for the aforesaid transaction has been given in the company's account as the matter is still pending before the H'ble court/BIFR."*

19. The Applicant has also relied upon Sections 3(6) and 18 of the Code and Regulation 13 of CIRP Regulations to contend that the Resolution Professional was only empowered to verify and collate claims and had no

adjudicatory power to reject the claim relying on the judgment of the Hon'ble Supreme Court in *Swiss Ribbons Private Limited & Anr. Vs Union of India, Writ Petition (Civil) No. 99 of 2018*.

20. Further, it has also been contended that the Resolution Professional has wrongly relied upon the decision of the Hon'ble High Court of Rajasthan while holding that the Applicant is not a creditor of the Corporate Debtor, inasmuch as the observations therein regarding the status of the Applicant as a creditor were rendered in the context of the Applicant's right to file an application under Sections 391/394 of the Companies Act, 1956. It is submitted that the said findings cannot be transposed for the purpose of adjudicating the Applicant's claim under the IBC, particularly when the decision was rendered in an entirely different legal context. Accordingly, the present application has been preferred seeking admission of the Applicant's claim as a Financial Creditor of the Corporate Debtor.

**REPLY ON BEHALF OF RESPONDENT:**

21. The reply has been filed by the Resolution Professional opposing the present application. The submissions made by the Respondent are as follows:
- i. It is averred that the application is not tenable or maintainable in law and is liable to be rejected. It is submitted that the Applicant, without making any financial facility to the Corporate Debtor, claims to be a Financial Creditor of the Corporate Debtor. According to the

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Respondent, in order to qualify as a creditor of the Corporate Debtor under the Code, there should exist a debt owed by the Corporate Debtor to the applicant. It is specifically contended that no financial debt or operational debt is owed by the Corporate Debtor to the Applicant, since no amount was ever paid by the Applicant directly to the Corporate Debtor.

- ii. It is further submitted in the reply that on 08.10.2008, the Applicant's bid was accepted by the Government of Rajasthan pursuant to the Request for Proposal floated for revival of the Corporate Debtor, and subsequently, on 07.11.2008, the Applicant entered into MoUs with the Government of Rajasthan, JMEL Employee Cooperative Credit & Thrift Society and Metals and Electricals Mazdoor Sangh. However, it is averred that no MoU or agreement was executed by the Applicant with the Corporate Debtor itself, nor was the Corporate Debtor a party to such MoUs.
- iii. It is stated that under the RFP and MoUs, the Applicant paid Rs. 6,30,89,609/- to JMEL Employee Cooperative Credit and Thrift Society and Metals and Electricals Mazdoor Sangh, and Rs. 1,09,00,000/- to the Government of Rajasthan, but admittedly no payment was made to the Corporate Debtor. Thus, it is contended that payments made for transfer of shares under the RFP/MoUs cannot constitute debt of the Corporate Debtor, which is a distinct legal entity.
- iv. It is submitted that on the basis of such payments, the Applicant had earlier preferred Application No. 6780/2010 seeking impleadment in Company Petition No. 19/2009 pending before the Hon'ble High Court of Rajasthan. However, vide order dated 13.12.2010, the Hon'ble High Court of Rajasthan dismissed the impleadment application. It is submitted that the Hon'ble High Court of Rajasthan outrightly rejected

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the Applicant's contention to be treated as a creditor of the Corporate Debtor.

- v. It is further submitted that thereafter, the Applicant prepared a Draft Rehabilitation Scheme and preferred Application No. 104/2010 before the Hon'ble High Court of Rajasthan seeking directions to convene meetings of creditors and shareholders of the Corporate Debtor for approval and modification of the scheme. However, vide order dated 02.04.2012, the Hon'ble High Court of Rajasthan dismissed Application Nos. 103/2010 and 104/2010.
- vi. It is further averred that against the order dated 02.04.2012, the Applicant along with JMEL Employees Cooperative Credit & Thrift Society and Metals and Electricals Mazdoor Sangh preferred Special Appeal Nos. 13/2012 and 15/2012 before the Hon'ble Division Bench of the Hon'ble Rajasthan High Court and vide order dated 30.04.2013, the Hon'ble Division Bench also dismissed the Special Appeals and reiterated that merely because certain payments were made by the Applicant towards statutory and workers' dues, the Applicant could not claim to be a creditor or contributory of the Corporate Debtor unless the Corporate Debtor owed debt to the Applicant.
- vii. It is submitted that thereafter, the Applicant preferred SLP (C) Nos. 34900/2013 and 34901/2013 before the Hon'ble Supreme Court against the order dated 30.04.2013. Vide order dated 09.11.2016, the Hon'ble Supreme Court disposed of the petitions by directing that the Applicant would be entitled to adjustment of the amount paid under the MoUs only in the event of winding up of the Corporate Debtor under the Companies Act, 1956, from the proceeds receivable by the workers and Government of Rajasthan.

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viii. It is further stated that the Applicant subsequently filed IA Nos. 17-18/2016 seeking clarification/modification for first charge holder status, which also came to be dismissed by the Hon'ble Supreme Court vide order dated 31.03.2017, reiterating the earlier order dated 09.11.2016. According to the Respondent, these orders strengthened the position that the Applicant was not a creditor of the Corporate Debtor. The relevant excerpts from the order dated 31.03.2017 are reproduced below:

- a. *"We have heard the learned counsels for the parties and considered the matter.*
- b. *The prayers made in I.A. Nos.17-18 in Special Leave Petition (Civil) Nos.34900-34901 of 2013, in our considered view, ought not to be allowed. Accordingly, we decline the same and reiterate our earlier order dated 9th November, 2016 in Special Leave Petition (Civil) Nos.34900-34901 of 2013 disposing of the Special Leave Petitions.*
- c. *I.A. Nos.17-18 are disposed of in the above terms."*

ix. Subsequently, pursuant to the aforesaid directions issued by the Hon'ble Supreme Court, the Applicant filed an application for impleadment before the Hon'ble High Court of Rajasthan under Section 557 of the Companies Act, 1956, contending that in light of the observations made by the Hon'ble Supreme Court, the Applicant was entitled to an opportunity of being heard before any order was passed in the winding up proceedings. However, the said application also came to be dismissed vide order dated 24.08.2017 passed by the Hon'ble High Court of Rajasthan.

x. It is further contended that under Sections 3(11), 5(7), and 5(8) of the Code, a financial creditor must be a person to whom a financial debt is owed by the Corporate Debtor and since the Applicant admittedly did not disburse any amount to the Corporate Debtor, and no amount was

legally assigned or transferred by the Corporate Debtor to the Applicant, the Applicant does not satisfy the statutory requirements to be treated as a Financial Creditor. Reliance has also been placed on the decision of the Hon'ble NCLAT in *Aditya Enterprises vs. Rajratan Exim Pvt. Ltd., Company Appeal (AT) (Ins.) No. 335/2018* affirmed by the Hon'ble Supreme Court, wherein Section 7 petition was dismissed as there was no evidence to suggest that any financial debt is due.

- xi. It is also averred that as per the notes of the audited balance sheets of the Corporate Debtor for financial years 2011-2012 and 2012-2013, no effect was given in the accounts of the Corporate Debtor to the payments made by the Applicant to the Government of Rajasthan, JMEL Employees Cooperative Credit and Thrift Society, or JMEL Mazdoor Sangh, since the matter remained pending before the Hon'ble Court/BIFR.
- xii. It is stated that on the basis of documents produced and orders dated 02.04.2012, 30.04.2013, 09.11.2016 and 24.08.2017 the Resolution Professional, after detailed verification of Form C, rejected the Applicant's claim vide communication dated 05.03.2019. It is specifically contended that the Resolution Professional acted within the scope of Regulation 13 of CIRP Regulations and in accordance with the judgments of the Hon'ble High Court of Rajasthan and Hon'ble Supreme Court wherein the reliefs sought by the applicant for treating it to be a creditor have not been allowed.
- xiii. It is thus submitted that the present application has been filed on vexatious and baseless grounds with the intent to delay CIRP proceedings. The Respondent contends that the Applicant's remedy, if any, lies only in realization from winding up proceeds under the

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Companies Act, 1956. Accordingly, dismissal of the present application has been prayed for by the Respondent.

**REJOINDER ON BEHALF OF THE APPLICANT:**

22. In the rejoinder, Applicant made the following submissions:

- i. It has been contended that the Resolution Professional has proceeded on an erroneous premise in asserting that the amounts paid by the Applicant pursuant to the MoUs do not confer upon it the status of a creditor of the Corporate Debtor. The Applicant submits that such payments, having been made towards discharge of liabilities of the Corporate Debtor, including workers' dues and statutory obligations payable to the Government of Rajasthan, constitute liabilities of the Corporate Debtor towards the Applicant.
- ii. It is submitted that in terms of Section 3(11) read with Section 5(8)(f) of the Code, any amount raised under a transaction having the commercial effect of borrowing qualifies as a financial debt. The payments made by the Applicant were in furtherance of the revival of the Corporate Debtor and to improve its financial position, thereby bearing the commercial effect of borrowing. Reliance is placed on the judgment of the Hon'ble NCLAT in *Shailesh Sangani vs. Joel Cardoso Company Appeal (AT) (Insolvency) No. 616 of 2019*, wherein it has been held that funds advanced for improving the financial health of a corporate debtor fall within the ambit of financial debt.
- iii. It is further averred that the Resolution Professional, vide email dated 16.02.2019, expressed inability to verify the claim of the Applicant on the ground that the Applicant is not a creditor, and thereafter rejected the claim vide email dated 06.03.2019 despite clarifications furnished

by the Applicant. Further, it has been contended that the Resolution Professional does not even have access to the books and records of the Corporate Debtor and without having access to the same has rejected the claim of the Applicant which is arbitrary and uncalled for.

- iv. It is further submitted that the Hon'ble NCLAT in *Export Import Bank of India vs. Resolution Professional, JEKPL Private Limited in Company Appeal (AT) (Insolvency) 304 of 2017*, has held that all claims are required to be collated and verified from the records of the Corporate Debtor, irrespective of their maturity or default. Accordingly, the rejection of the Applicant's claim is stated to be arbitrary and without cogent reasons, thereby prejudicing the interests of the Applicant as well as other stakeholders in the corporate insolvency resolution process.

**DIFFERENCE OF OPINION BY THE HON'BLE MEMBERS OF THE NCLT BENCH:**

23. As briefly referred to in the opening of this order, it is noticed that the Hon'ble Member (Judicial) and Hon'ble Member (Technical) of NCLT, Jaipur Bench have passed orders of the same date i.e. 10.03.2026 by giving separate and divergent findings. The concluding paras of the order passed by the Hon'ble Member Judicial are reproduced as under:

*41. In view of the observations of the Hon'ble Supreme Court, and terms of the MoUs, and the money's equivalent that the Applicant was entitled to under the MoUs, this Adjudicating Authority is of the opinion that the instant transaction satisfies the requirement of time vale of money. Further, a perusal of the terms of the MoUs makes it conspicuous that the whole transaction was entered into by the Applicant with the intention of making profit and thus having the commercial effect of borrowing*

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42. At this juncture, it is relevant to refer to the Judgment of the Hon'ble NCLAT in the case of Adhunik Corporation Ltd. v/s Shivam India Ltd. (2025) ibclaw.in 129 NCLAT wherein it was observed that:-

*“24. When we peruse the clauses of the MoA, it is an undisputed fact that payment of interest against disbursal was not specifically mentioned in the clauses. Be that as it may, we are of the considered opinion that the IBC does not provide for any prescriptive requirement for the Financial Creditor to place on record formal written agreements/documents between the parties to establish that the disbursal made was in the form of loan with interest. It would be misconceived to hold that the fund infusion did not qualify to be a financial debt merely because loan component was not explicitly mentioned in the MoA. It is a well settled proposition of law that interest on loan is not the only binding criterion for determining time value of money. The question whether a credit facility without charging interest can be considered to be a financial debt in terms of Section 5(8) of the IBC is no longer res integra and has already been decided by the Hon'ble Supreme Court in Orator judgment supra to hold that the definition of “financial debt” in Section 5(8) IBC does not expressly exclude an interest free loan. Viewed against this backdrop, the contention of the Respondent that the disbursal of the fund was bereft of loan component and hence not in the nature of a financial debt does not have legs to stand on.*

25. The issue to be seen next is whether the disbursal made by the Appellant in the present context reflected consideration for time value of money. As per the Insolvency Law Report, 2018, time value of money means compensation or the price paid for the length of time for which money has been disbursed. Time value of money is not only a regular or timely return received for the duration for which the amount is disbursed as an amount in addition to the principal but also covers any other form of benefit or value accruing to the creditor as a return for providing money for a long duration. We need to see if the Appellant had envisioned enhancement

*of economic prospect in return for the funds disbursed and if so then the sum advanced would qualify to entail time value of money and acquire the colour and character of commercial borrowing.*

*26. The MoA is a matter of record. When we look at the MoA, it clearly provides for the Appellant to supply raw material and also the disposal of finished products. Merely because the MoA allowed the Appellant to monitor the production of the unit does not in any manner show that they were in control of the unit and were not entitled to receive back the funds infused by them. This in way diminished the obligation of the Corporate Debtor to discharge their debt liability. It is further clear from the terms of the MoA that the Appellant was required to infuse funds to the Corporate Debtor to render the Corporate Debtor operational from its dysfunctional state. Moreover, the credit so provided was in the form of working capital and the entire amount was fully refundable. Even the funds provided for purchase of raw material at prevailing market prices was towards operationalization of the Corporate Debtor. The right of the Appellant to enjoy sales commission was also a form of return for the amount financed. From the judgment of the Hon'ble Supreme Court in Pioneer judgment supra the ratio is clear that even if transactions are not necessarily loan transactions, they still attract Section 5(8) of the IBC as long as the transactions have the commercial effect of a borrowing. The essential condition which needs to be fulfilled is disbursement against the consideration for time value of money. Since in the present case, the infusion of funds was a transaction which has direct bearing on the business carried out by the Corporate Debtor, raising of the amount through the above agreement has the commercial effect of borrowing. The clauses of the MoA contain clear indication that the infusion of funds was being done with the intent of earning profits and the investments was therefore for consideration for the time value of money. Therefore, this transaction has the contours of a borrowing as contemplated under Section 5(8) of IBC. The investments*

made by the Appellant-Financial Creditor was with an eye for consideration for time value of money and therefore the transaction had commercial effect of borrowing.

27. Therefore, seen in totality, the disbursements clearly display commercial effect of borrowing. In our considered opinion the Adjudicating Authority committed an error in holding the transaction to be a business arrangement and non-suited of the Appellant on the ground of not being a financial creditor. The Appellant has been wrongfully ousted by the Adjudicating Authority on the ground that the Appellant was not a financial creditor and the infusion of fund was not in the nature of financial debt. We have no hesitation to observe that this is a case of financial debt and the Appellant is clearly a financial creditor in terms of statutory provisions of IBC.”

43. The facts of the instant case are squarely covered by the Judgment of the Hon'ble NCLAT and the Judgments of the Hon'ble Supreme Court. Further, as observed in the earlier paras, the transaction satisfies all the requirements of a financial debt under Section 5(8)(f) of the Code. Thus, I am of the opinion that the claim of the Applicant qualifies as a financial debt and hence, the Applicant is held to be a financial creditor. Thus, the Applicant's claim deserved to be admitted in the CIRP of the Corporate Debtor as a financial creditor. Thus, the Application bearing IA No. 11//JPR/2019 stands allowed and disposed of.”

24. The relevant/ concluding paras of order passed by the Hon'ble Member (Technical) are reproduced as under:

“Conclusion

20. In view of the foregoing discussion, and for the reasons already recorded in the preceding paragraphs of this order, I hold that the amounts paid by the Applicant pursuant to the RFP and the MoUs dated 07.11.2008 do not constitute "financial debt" within the meaning of section 5(8) of the IBC. The payments were not made pursuant to any borrowing transaction of the Corporate Debtor, nor has it been established that such

*payments were made pursuant to a transaction undertaken by the Corporate Debtor or at the instance of the Corporate Debtor so as to create a liability due from it in the nature of financial debt and hence it cannot grant Financial Creditor status to the Applicant (Genus Power Infrastructure Ltd.) as contended and prayed by it.*

*20.1 Accordingly, the decision of the Resolution Professional rejecting the claim of the Applicant as a Financial Creditor does not suffer from any infirmity and calls for no interference.*

*20.2 The question whether rejection would leave the Applicant remediless it is observed that the Applicant's claim under the Code does not extinguish any independent rights that may otherwise exist in law. The Code is not a mechanism for recoupment of losses arising from failed acquisition or revival attempts or poor investment decision.*

*20.3 The Interlocutory Application No. 110/JPR/2019 is dismissed. No order as to costs."*

25. It is in the aforesaid background of difference of opinion given by the Hon'ble Members vide their respective judgements/order that the present matter has come before me to hear and decide with respect to the difference of opinion in the orders passed by the Hon'ble Members.

**FINDINGS:**

26. I have heard the Ld. Counsels for the Applicant and the Respondent and perused the records, exhibits/annexures. I have also heard the Ld. Counsels on the points of difference arising from the separate orders passed by the Hon'ble Members.
27. Upon careful perusal of the judgments passed by the Hon'ble Members, I find that the point of difference of opinion arising from the two judgments,

which requires determination by me, can be culled out and configured in the form of a question in the following manner:

**Whether the amounts paid by the Applicant pursuant to the MoUs dated 07.11.2008 constitute “financial debt” under Section 5(8) of the Insolvency and Bankruptcy Code, 2016?**

28. In order to examine whether the amounts advanced by the Applicant herein constitute “financial debt” under Section 5(8) of the Code, it would be worthwhile to refer to Section 5(8) which is reproduced below:

*“5(8). financial debt means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

*(a) money borrowed against the payment of interest;*

*(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;*

*(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*

*(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*

*(e) receivables sold or discounted other than any receivables sold on non-recourse basis;*

*(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

*1 [Explanation. -For the purposes of this sub-clause, -*

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) 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) of this clause;

29. In this regard, the Hon'ble Supreme Court in ***Global Credit Capital Ltd. & Anr. vs. Sach Marketing Pvt. Ltd. & Anr. (2024 SCC OnLine SC 649)*** summarized its observations as under:

"20. Subject to what is held above, we summarize our legal conclusions:

a. There cannot be a debt within the meaning of sub-section (11) of section 5 of the IB Code unless there is a claim within the meaning of sub-section (6) of section 5 of thereof;

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; .....

30. Further, the Hon'ble Supreme Court in *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17 held as under:

*“42. 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) or otherwise, as Section 5(8) is an inclusive definition.”*

31. From a plain reading of Section 5(8) of the Code and the law laid down by the Hon'ble Supreme Court in this regard, it emerges that for a transaction to qualify as a “financial debt”, the following ingredients are broadly required to be satisfied: (i) there must be a disbursement or raising of an amount; (ii) such disbursement must be against consideration for the time value of money; and (iii) the transaction should possess the commercial effect of a borrowing.

32. In the case of *Global Credit Capital Limited (supra)*, the Hon'ble Supreme Court also emphasized the importance of examining the real nature of the transaction to determine whether a debt arising out of a written agreement qualifies as an operational debt or a financial debt. The relevant excerpts of the judgment in this regard are as follows:

*“20 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*

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*what is the real nature of the transaction reflected in the writing; and ....”*

33. Hence, in order to determine the real nature of the underlying transaction, it is necessary to examine the relevant clauses of the MoUs, since the MoUs constitute the underlying foundation of the transactions. The relevant excerpts of the MoU in this regard with the Government of Rajasthan dated 07.11.2008 are reproduced as follows:

*“Article 1*

*OBJECTS OF THE MOU*

*1. 1 The object of this MOU is to achieve the successful Revival of JEMEL within the period prescribed and terms in the RFP documents.*

*1. 2 During the currency of this MOU, the parties hereto shall take effective steps for the implementation of the Revival Plan/proposal of JMEL.*

*Article 2*

*OBLIGATION OF THE PARTIES*

*Obligation of the Successful Bidder*

*2.1 The Successful Bidder shall have to prepare a bankable revival scheme/proposal in the form of a draft rehabilitation Scheme/proposal for submission to BIFR/Court for revival of JMEL.*

*The draft rehabilitation Scheme/proposal shall be filed BIFR/Court within three months of signing of MoU. The Successful Bidder will also be required to pursue vigorously for obtaining approval of the said revival scheme/proposal of JMEL from BIFR/Court and other statutory authorities within eighteen months of signing of MOU..... The revival scheme/proposal should ensure that JMEL should become a financially viable company and provide employment to the workers of JMEL who are otherwise eligible to be employed and are willing to be employed in the new factory at the new location.....”*

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34. Upon perusal of the aforesaid MoU executed between the Applicant and Government of Rajasthan and similar MoUs with the Mazdoor Sangh and Thrift Society respectively, it is evident that the arrangement was conceived as part of a revival process through induction of a private participant and the Applicant was designated throughout as a “Successful Bidder”. The obligations cast upon the Applicant principally related to: (i) preparation of a rehabilitation scheme for revival of JMEL; (ii) assumption of liabilities; (iii) payment of workers’ dues and Government dues in accordance with specified milestones; and (iv) eventual acquisition of shares and management control subject to approval of the draft rehabilitation scheme. The Applicant was also required to submit the rehabilitation scheme before the Hon’ble Court/BIFR within three months, and was further required to pursue approval of the said revival scheme before the Hon’ble Court/BIFR diligently.
35. As it is evident, although the very object of the MoU was “*to achieve the successful Revival of JMEL within the period prescribed*”, the same admittedly never materialized and the payments made were confined only to initial milestone obligations. Therefore, when the foundational actions required for achieving the object itself failed, it cannot be established that the payments made would qualify the applicant as a creditor, as was also

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observed by the Hon'ble High Court of Rajasthan in its order dated 30.04.2013 as follows:

*“20. In the case in hand the appellant Genus claiming itself to be the majority shareholder and on the basis of payment of certain statutory and workmen dues, claiming itself to be creditor, sought directions for holding a meeting under Section 391. But the fact is that the shareholding was yet to be transferred and MOU entered into with State Government having 20.23% shareholding, had not been renewed and the transfer of shares was yet to take place. Just because certain payments were made by Genus towards statutory and employees' dues, it cannot claim itself to be a creditor or contributory of Company because every person who gives money to the company cannot be construed as creditor unless such a person is treated as “creditor to whom company owes debt”, or every person who has paid or given money to the company, otherwise than under any concluded contract, cannot be construed to be creditor of the company.”*

36. Hence, the structure of the transaction itself indicates that the payments were not advanced as financial accommodation to the Corporate Debtor. Significantly, transfer of shares itself was to take place only upon approval of the rehabilitation scheme by BIFR/Court which never took place: “2.2 The Successful Bidder agrees that the transfer of shares of JMEL held by GoR to the Successful Bidder shall be given effect to, only after the approval of proposed revival scheme/proposal by BIFR/Court.” Thus, the payments formed part of a conditional acquisition and revival arrangement rather than a pure financing transaction having commercial effect of borrowing.

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37. Now proceeding to examine the payments made under the MoU in light of the essential ingredients for classifying a debt as a 'financial debt' under the Code, namely that there must be a disbursal or raising of an amount against consideration for the time value of money. There is no dispute that payments aggregating to Rs. 7,69,81,028/- were indeed made by the Applicant pursuant to the MoUs dated 07.11.2008. However, the nature, extent and the context of these payments in which they were made assume significance. The details thereof are tabulated below:

MoU/Head of payment	Total amount payable under the MoU	% payable as per initial milestones	Amount actually paid by the Applicant
Government of Rajasthan MoU – Share consideration towards purchase of 58,511.3 shares of JMEL held by GoR (Clause 2.3)	Rs.19,42,00,000	Minimum 50% within 30 days of approval of revival scheme by BIFR/Court;	-
Government of Rajasthan MoU – Sovereign dues of JMEL (Clause 2.5)	Rs.20,18,00,000/-	5% on signing of MoU;	Rs.1,00,90,014 paid to State Government towards statutory dues (5%)
Mazdoor Sangh MoU – Workers' dues and package (Clause 2.2)	Rs.68,35,00,000/-	10% on signing of MoU;	Rs.6,39,29,525 paid towards salary/wages; + Rs.12,71,955 paid towards Provident Fund (9.54%)
JME Employees Cooperative Credit & Thrift Society MoU – Purchase of 1,72,083 shares (Clause 2.3)	Rs.1,72,08,300/-	Minimum 50% within 30 days of approval of revival scheme by BIFR/Court;	Rs. 16,89,534 (9.81%)
<b>Total</b>	Rs.109,67,08,300/-		Rs.7,69,81,028/- (7.01%)

38. Upon consideration of the terms of the respective MoUs and the payments admittedly made by the Applicant, it is noticed that the Applicant had undertaken multiple obligations under the revival framework, the aggregate value of which under the MoUs were approximately Rs. 109.67 crores, whereas the actual payments made by the Applicant amounted only to approximately Rs. 7.69 crores, constituting nearly 7.02% of the total obligations. The payments so made substantially correspond to the initial milestone obligations contemplated under the respective MoUs.
39. It is further noticed that a substantial part of the remaining obligations under the MoUs had become payable only upon the occurrence of specified future contingencies, namely approval of the rehabilitation/revival scheme by Hon'ble Court/BIFR, transfer of management and conversion of land use for commercial purposes. The material on record shows that the revival scheme itself never attained approval and the contemplated revival plan did not fructify. Consequently, the subsequent milestone obligations never matured for payment. Thus, the payments made by the Applicant cannot be viewed in as disbursements simpliciter carrying the commercial effect of borrowing.
40. It is also noteworthy that the Applicant admittedly did not disburse any amount directly to the Corporate Debtor, JMEL or on its instructions or behalf. The MoUs themselves were not executed by the Corporate Debtor,

hence, the Corporate Debtor was neither a contracting party nor did it undertake any reciprocal obligation to repay the Applicant under any contractual arrangement. In this regard it would be necessary to refer to the judgment of *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited and Ors. (2020 8 SCC 401)* wherein the Hon'ble Supreme Court observed as follows:

"48. It is also evident that what is being dealt with and described in Section 5(7) and in Section 5(8) is the transaction vis-à-vis the corporate debtor. Therefore, for a person to be designated as a financial creditor of the corporate debtor, it has to be shown that the corporate debtor owes a financial debt to such person. Understood this way, it becomes clear that a third party to whom the corporate debtor does not owe a financial debt cannot become its financial creditor for the purpose of Part II of the Code."

41. Applying the aforesaid principles to the present case, it is evident that the fact that Applicant had made payments as part of a revival plan of the Corporate Debtor does not ipso facto create a financial debt for the Corporate Debtor under Section 5(8) unless it is shown that the payments were in the nature of a borrowing or that the Applicant was subrogated to a creditor rights by operation of law or by valid assignment. The language of MoU's and surrounding conduct indicate that what stood performed was merely an initial part of a larger revival arrangement, which itself though remained incomplete and conditional, and was not in the nature of a loan directly advanced to JMEL.

42. The subsequent events further support this conclusion. The Hon'ble High Court of Rajasthan in its order dated 30.04.2013 specifically observed that the MoU with Government of Rajasthan had expired and the transfer of shares had not taken place. Though the MoUs with Workmen unions were renewed for a limited period, the MoU concerning transfer of Government shareholding admittedly was not renewed. Consequently, the transaction never culminated into a concluded arrangement whereby the Applicant acquired rights in the Corporate Debtor.
43. Further, the Hon'ble High Court of Rajasthan vide order dated 13.12.2010 held that merely making payments of workers' dues and statutory dues would not make the Applicant a creditor of JMEL. The Division Bench reiterated that there was no concluded contract and that the Applicant could not claim status as creditor merely because payments had been made.
44. While the Applicant has contended that the aforesaid findings arose in the context of Sections 391 and 393 of the Companies Act, 1956, where the term 'creditor' was also not defined, and therefore cannot bind adjudication under the Code, it is true that the statutory context differs. Nevertheless, the factual findings underlying those decisions cannot be ignored, namely: (i) nature and extent of payments under the MoUs; (ii) absence of a concluded contractual relationship with JMEL; (iii) absence of transfer of shares; and (iv) absence of any debt owed directly by JMEL to the Applicant. These

factual aspects continue to remain unchanged and are relevant and similar, even in the context of the essential ingredients of “financial debt” under the Code, as explained by the Hon’ble Supreme Court from time to time.

45. In this regard, the Hon’ble High Court of Rajasthan while dismissing the Applicant’s impleadment application in its order dated 13.12.2010, relying upon *G.Siva Ramakrishna Vs. Rushni Distilleries (P) Ltd (2008(3) Company Law Journal 231)* ad infra explained the term ‘creditor’ as under:

*“.....But, "every person" who gives money to the Company cannot be considered as a creditor unless such person is treated as "creditor to whom Company owes debt under contract"; or every person who has paid or given money to the Company otherwise than under any concluded contract, cannot be construed to be creditor of the company. In phrases, the terms "creditor" are defined, as quoted in para 10 of decision in G.Siva Ramakrishna Vs. Rushni Distilleries (P) Ltd (2008(3) Company Law Journal 231) ad infra:*

*"Credit" is a debt due in consequence of a contract of hire or borrowing of money, and according to business usage, connotes no more than a chose in action. Generally, the word means a sum credited on the books of a company to a person who appears to be entitled to it, and ordinarily a debtor-creditor relation is required."*

*Thus, only such of those persons having jural relationship with the company, either by reason of a concluded contract or quasi Contract alone can be said to be covered U/s 439 of Co. Act."*

46. The above principles, particularly with respect to the concept and attributes of a “creditor”, also broadly align with the scheme of the Code. Under Sections 3(10) and 5(7) of the Code, as interpreted through judicial precedents, a person can be treated as a financial creditor when a financial debt is owed to it by the Corporate Debtor. Thus, the observations of the

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Hon'ble High Court of Rajasthan demonstrating the underlying factual and legal principles regarding the existence of a debtor-creditor relationship remain substantially similar in the present context. As also recognized in *Anuj Jain (supra)*, the debt must necessarily be one which is owed by the Corporate Debtor itself and in the absence of any such debt being owed by JMEL to the Applicant, the essential foundation for treating the Applicant as a Financial Creditor under the Code also does not appear to be satisfied.

47. Further, the Hon'ble Supreme Court directed adjustment of amounts paid under the MoUs from proceeds of winding up, subject to the provisions of the Companies Act. Subsequently, when clarification seeking preferential treatment as first charge was sought, the same was also declined by the Hon'ble Supreme Court vide order dated 31.03.2017 as already reproduced in preceding paras.

48. Thereafter, the Hon'ble High Court of Rajasthan in its order dated 24.08.2017 while dismissing the impleadment application, also observed that the Hon'ble Supreme Court had neither treated the Applicant as creditor nor as secured creditor. These findings also assume relevance insofar as they indicate the absence of any recognized debtor-creditor relationship in favour of the Applicant. The relevant excerpts from the order dated 24.08.2017 are as follows:

*"13. Thus, neither the Supreme Court has treated the applicant as creditor nor it has treated it as a secured creditor and therefore,*

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*the provisions of Section 557 of the Companies Act are not attracted in any manner.*

...

*14. In view of the submissions made by Mr. Mr. Abhirup Das Gupta, Adv. and Mr. RC Joshi, Adv and in view of the said cases had already been reserved and the application has been filed by the applicant-Genus which has resulted in delaying the process, this Court finds that the application is frivolous and is an act of delaying of the process for which cost of Rs.50,000/- is imposed on the applicant M/s Genus Power Infrastructures Ltd ..*

*15. The application (No.25888 dt.04/08/2017) for impleadment read with application (No.27041 dt.22/08/2017) filed by the applicant-Genus are accordingly dismissed.”*

It may be worthwhile to notice that the aforesaid order dated 24.08.2017 has remained unchallenged.

49. The notes to the balance sheets as at 31.03.2012 relied upon by the Applicant also do not advance its case. The notes merely state that payments had been made by the Applicant pursuant to the MoUs and expressly record that no effect had been given to such transactions in the accounts of the Company. Hence, rather than acknowledging any liability of the Corporate Debtor towards the Applicant, the balance sheet specifically states that modalities relating to such transactions remained unresolved.
50. In view of the above discussion, the Applicant cannot be designated as a Financial Creditor of the Corporate Debtor, as no direct nexus is established between the payments made under the MoUs by the Applicant creating any financial debt. The Applicant has, however, contended that since such

payments were made towards discharge of liabilities of JMEL, the doctrine of subrogation would apply and consequently the Applicant should step into the shoes of a creditor. Reliance has been placed on *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.* (Civil Appeal No. 4565 of 2021) and *Mr. Rajeev Kumar Jain v. Uno Minda Ltd. and Anr.*, (Company Appeal (AT) (Insolvency) No. 947 of 2022).

51. Upon consideration of the ratio laid down in the aforesaid judgments, it is noticed that both decisions are distinguishable on material facts from the present case. In *Uno Minda Ltd.* (*supra*), the amounts disbursed by the creditor were expressly treated under the contractual framework as unsecured debt extended to the Corporate Debtor for meeting its working capital requirements, with the transaction documents specifically contemplating repayment obligations and the Corporate Debtor consented to be a party to these agreements. The Hon'ble NCLAT found a direct nexus between the disbursement and the commercial purpose of financing the Corporate Debtor's operations, thereby satisfying the element of disbursement against consideration for time value of money.

52. Likewise, in *BRS Ventures* (*supra*), there existed a loan transaction where a definite sum was advanced as a loan by the financial creditor to the principal borrower and secured through guarantees, thereby creating a

classic debtor-creditor relationship involving a financial debt under Section 5(8) of the Code.

53. The facts of the present case, however, stand on a materially different footing. Here, the payments made by the Applicant did not arise out of any loan transaction, working capital assistance or financing arrangement, nor were they contractually recognised as debts repayable by JMEL. The payments constituted only part-performance of obligations assumed under a conditional revival framework, where substantial obligations themselves remained contingent upon future events that admittedly never materialized. Moreover, no stipulation regarding repayment, interest, or independent obligation to return the amount is discernible from the MoUs. Thus, unlike *Uno Minda* (supra) and *BRS Ventures* (supra), the underlying transaction in the present matter does not disclose the essential attributes of a financial arrangement or a transaction having the commercial effect of borrowing with tacit understanding of its repayments. Consequently, reliance placed on the aforesaid judgments appears misplaced.
54. As regards the issue whether the disbursal made by the Applicant was against consideration for time value of money and whether the transaction possesses commercial effect of borrowing, the 2018 Report of the Insolvency Law Committee has discussed the interpretation of the term “time value of money” and stated as under:

*“1.4....The words “time value” have been interpreted to mean compensation or the price paid for the length of time for which the money has been disbursed. This may be in the form of interest paid on the money, or factoring of a discount in the payment.”*

55. The concept of time value of money is not confined merely to payment of interest but may also include any other form of return or economic benefit accruing to the lender. The issue which therefore requires examination is whether the Applicant contemplated any enhancement of economic prospects in return for the amounts paid and whether such payments carried the character of commercial borrowing.
56. Upon consideration of the MoUs, and as already discussed in the preceding paragraphs, the payments made by the Applicant were milestone obligations and not amounts made available for any use by the Corporate Debtor for creation of a fixed capital, meeting requirements for working capital etc. but rather it was meant for acquiring shareholding to become the incoming management as a part of implementation of rehabilitation scheme proposed by the Successful Bidder, after having been so declared upon consideration of his bids in response to RFP issued. The transfer of shares however itself remained contingent upon approval of the rehabilitation scheme and fulfilment of various conditions which admittedly never fully materialized. Although the Applicant may have contemplated an eventual commercial benefit in the form of successful revival of JMEL, acquisition of shareholding and consequential management rights, such expectations

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remained contingent and dependent upon the successful implementation of the revival proposal, for which certain conditions and payment obligations were required to be fulfilled at different stages. The expected benefits as referred to by the Applicant would have flowed from the successful acquisition of the Corporate Debtor, however, the acquisition has not been completed. In any case, acquisition of the Corporate Debtor by the Applicant whether completed or not would not bestow upon the Applicant the status of a creditor, much less that of a Financial Creditor.

57. It cannot, therefore, be said that the payments were made in return for a definite economic benefit constituting consideration for time value of money. It is also noteworthy that the MoUs contemplated consequences such as forfeiture of payments in certain circumstances, which further indicates that the rights and entitlements flowing from the MoUs were conditional upon the occurrence of specified events and were also exposed to risks inherent in the revival arrangement. This further demonstrates that the payments formed part of a conditional revival arrangement rather than an independent financing transaction.

58. Thus, unlike a borrowing transaction where funds are raised and utilized by the Corporate Debtor with a corresponding obligation of repayment, the present transaction was essentially part of a failed revival arrangement and acquisition process. There is no material to indicate that these initial

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payments were advanced as loans or carried any corresponding obligation of repayment from the Corporate Debtor. Rather, the payments appear to have been made in discharge of initial obligations undertaken under the revival framework and, therefore, merely by reason of such payments, they cannot be said to possess the contours of a financial debt as contemplated under Section 5(8) of IBC.

59. The argument that the Applicant made payments towards the revival of the Corporate Debtor and therefore the transaction had commercial effect of borrowing also does not appear sustainable. As discussed hereinabove, no direct lending structure or express borrowing arrangement exists and the underlying transaction does not disclose any independent financial assistance extended to the Corporate Debtor or any corresponding consideration representing the time value of money. Consequently, the essential attributes necessary to constitute a “financial debt” under Section 5(8) of the Code remain absent.
60. Therefore, viewed cumulatively, the payments made by the Applicant may, at best give rise to a claim or other independent rights in law, if otherwise available. However, the essential ingredients of a financial debt under Section 5(8), namely disbursal against time value of money and commercial effect of borrowing from the Corporate Debtor, remain unfulfilled.

61. In view of the foregoing discussion, I am of the considered view that the amounts paid by the Applicant pursuant to the MoUs dated 07.11.2008 do not constitute “financial debt” under Section 5(8) of the Code. Accordingly, the communication dated 05.03.2019 by the Resolution Professional rejecting the claim of the Applicant does not call for any interference. Consequently, decision conveyed by the Resolution Professional as per the aforesaid communication not collating the claim of the Applicant as a financial creditor submitted by the Applicant by way of Form-C deserves to be upheld.
62. Therefore, for the reasons stated hereinabove, I concur with the findings and conclusions recorded by Hon’ble Member (Technical) that the amounts paid by the Applicant pursuant to the RFP and MoUs dated 07.11.2008 do not constitute “financial debt” within the meaning of Section 5(8) of the Code, and consequently, the Applicant cannot be accorded the status of a Financial Creditor.
63. The reference (File No. 06/13/2026-NCLT (JPR)) as per the order of the Hon’ble President, is answered accordingly.
64. Let the matter be placed before the Concerned/Regular Bench for further proceedings, as per law.



**Praveen Gupta**  
**Member (Judicial)**

**Date: 09.06.2026**