**NATIONAL COMPANY LAW TRIBUNAL**
**CHANDIGARH BENCH, COURT-I, CHANDIGARH**

**I.A.(I.B.C)/1082(CH)2025**
**in**
**CP (IB) No. 248/Chd/Chd/2019**
**(Admitted)**

**(Application under Section 60(5) of the read with section 42 of the Insolvency and Bankruptcy Code, 2016)**

**<u>IN THE MATTER OF I.A(IBC) No. 1082 of 2025:</u>**

**Mona Portfolio Ltd.**
Through RP Mr. Kailash Shah
(IBBI/IPA-001/IP-00267/2017-18/10511)
Unit-1200, 12th Floor, Best Sky Tower,
Netaji Subhash Place, Pitampura,
Shakur Pur I Block,
North-West Delhi-110034
Email: monaportfoliolimited@gmail.com

Also at
505, 21st Century Business Center,
Near World Trade Center, Ring Road, Surat-395002
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**...Applicant Company**

**Vs.**

**Mr. Mohit Chawla**
**Resolution Professional ("RP")**
Chandigarh Overseas Private Limited
Address: SCO 26, Shri Balaji Complex, Old Ambala Road, Himmatgarh,
Dhakauli, Sub Tehsil Zirakpur, Sahibzada Ajit Singh Nagar,
Punjab ,140603
Reg. No. IBBI/IPA-001/IP-P00524/2017-2018/10949
Email- irpcpl@gmail.com **...Respondent**

**IN THE MAIN MATTER OF:**

**Kone Elevator India Private Limited**

**... Petitioner/Operational Creditor**

**Vs.**

**Chandigarh Overseas Private Limited**

**...Corporate Debtor**

**Order delivered on:10.07.2026**

**Coram: MR. KHETRABASI BISWAL, HON'BLE MEMBER (JUDICIAL)**
**MR. SHISHIR AGARWAL, HON'BLE MEMBER (TECHNICAL)**

**Present:**

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| For the Applicant: | Ms. Munisha Gandhi, Senior Advocate<br>Mr. Joel, Advocate<br>Mr. Chakitan Papta, Advocate<br>Ms. Salina Chalana, Advocate |
| For the RP/Respondent: | Mr. Atul V Sood, Advocate<br>Mr. Rohan Sood, Advocate |

**ORDER**

The present Application has been filed by Mona Portfolio Ltd.(hereinafter referred to as **the Applicant Company**), through its RP i.e Mr. Kailash Shah under section 60(5) read with section 42 of the Insolvency and Bankruptcy Code (hereinafter referred to as **the Code**) forseeking inter alia, to direct the Resolution Professional(RP) to take the claim of the Applicant on record against the Corporate Debtor under the category of Financial Creditor (as an unrelated party).

**BRIEF FACTS:**

2. Brief facts of the case, as averred by the Applicant, are as under:

(a) The Application is preferred on behalf of the Applicant Company- a public limited company and erstwhile Non Banking Financial Company which is under CIRP vide NCLT, New Delhi Order dated 05.12.2024 in *Plaza Commercial Private Limited vs. Mona Portfolio Limited* [CP (IB) No. 585 of 2024] (**Annexure A-1**) wherein Mr. Kailash Shah was appointed as the RP vide Order dated 11.02.2025 (**Annexure A-2**). The Applicant, being aggrieved by the arbitrary and non-speaking classification of its claim by the RP of the Corporate Debtor as a "Related Party" instead of an independent Financial Creditor. As recorded vide this Tribunal Order dated 15.04.2025 in the Applicant's earlier I.A. No. 561 of 2025, the Ld. Counsel for the RP stated that "the amount which is claimed by the applicant in this application has already been admitted by RP as a related party." The Applicant submits that such classification is legally untenable under the Code and gravely prejudices the Applicant's statutory rights, leaving the Applicant with no alternative but to file the present Application seeking directions to the RP to rectify the records and admit the Applicant company's claim as that of an independent Financial Creditor.

(b) The Applicant Company incorporated on 13.03.1996, was granted an RBI Certificate of Registration on 04.04.2001 to operate as a non-public deposit-accepting NBFC. In the ordinary course of business, the Applicant Company advanced credit facilities to the Corporate Debtor from FY 2014-2015 to FY 2023-2024 on a running account basis, reflecting periodic disbursements and repayments as evidenced by its ledger account. Subsequently, through a Memorandum of Understanding dated 17.06.2018 (Annexure A-5), the Applicant Company was completely taken over by a new management team for valuable consideration, whereby the shareholding and control of the erstwhile promoter-directors- who were related to the Corporate Debtor, were entirely transferred to unrelated individuals during FY 2018-2019, thereby severing any "related party" status.

(c) During FY 2018-2019, the Applicant Company effectuated the transfer of control through multiple share transfers, as evidenced by Board Resolutions dated 01.04.2018 and 22.09.2018 (Annexures A-6 & A-7) and the shareholder register as of 31.03.2019 (Annexure A-8), thereby demonstrating that the Applicant Company ceased to be a related party to the Corporate Debtor post-FY 2018-2019. The Applicant Company submitted that the delay in updating the Ministry of Corporate Affairs portal regarding the Memorandum of Understanding dated 17.06.2018 was strictly due to the statutory requirement for prior RBI approval, given the Applicant Company's status as a registered NBFC at the material time. The NBFC certification of the Applicant Company was cancelled by the Reserve Bank of India on 20.02.2019, which cancellation was unsuccessfully challenged through internal appeals before the RBI, constraining the Applicant Company to impugn the same via Writ Petition bearing W.P. (C) No. 4853 of 2022 before the Hon'ble High Court of Delhi; and though interim relief was declined at the initial listing on 24.03.2022 with liberty to press for the same post completion of pleadings (Annexure A-9), the Applicant Company subsequently continued operations as an ordinary non-NBFC entity and duly disclosed and updated the shareholding transfers on the Ministry of Corporate Affairs portal.

(d) Following the initiation of the Corporate Debtor's CIRP on 27.02.2023, the Applicant Company submitted its claim on 23.10.2023, comprising a principal amount of Rs. 11,41,87,577 and interest of Rs. 8,23,84,665 as of 30.09.2023. In response to the Interim Resolution Professional's (IRP) request dated 29.10.2023, the Applicant Company provided additional documents on 21.11.2023. Subsequently, via emails dated 20.11.2023 and 12.01.2024, the IRP alleged concealment of documents and stated that the final outcome was subject to the Committee of Creditors' decision, after which all communication ceased. In October 2024, during routine account finalization, the Applicant Company discovered on the IBBI website that its claim had been arbitrarily rejected without any reasons or adjudication, denoted merely by a "—" in the admitted claim column (Annexure A-15), demonstrating a complete failure of the IRP's statutory duties.

(e) Consequently, the Applicant Company preferred I.A. No. 561 of 2025 seeking directions for the verification and admission of its claim. While the Learned Counsel for the RP submitted on 15.04.2025 that the claim stands admitted, it was erroneously classified under the "Related Party" category. The Applicant Company is not a related party to the Corporate Debtor for the reasons detailed hereinabove, the Applicant Company is constrained to file the instant Application seeking explicit directions from this Tribunal to the RP to admit its claim strictly under the category of an independent, unrelated Financial Creditor.

(f) It is pertinent to mention that the learned RP has also filed a separate avoidance application, vide I.A. No. 1068 of 2024, seeking recovery against the Applicant Company under Section 43 of the Code based on the false assertion of its "related party" status- a claim the Applicant Company has vehemently contested via a detailed reply already on record. The RP's assertion is erroneously predicated on the premise that the Corporate Debtor’s director, Tejinder Setia, along with his family members, continue as directors and shareholders of the Applicant Company as per the outdated balance sheet dated 31.03.2022. The RP has vexatiously concealed the subsequent balance sheet for the financial year ending 31.03.2023, which explicitly discloses that these individuals have not only resigned from the directorship but have also entirely relinquished their shareholding in favor of a new management team. Currently, the independent, extant Board of Directors of the Applicant Company comprises of:

- **Varsha Bansal** (Appointed: 22.08.2022)
- **Prashant Kumar** (Appointed: 27.02.2024)
- **Dolly** (Appointed: 29.04.2024)

(g) Furthermore, the current management and directorship status stand duly updated on the Ministry of Corporate Affairs portal, as substantiated by the MCA Company Master Data accessed on 14.09.2024 (Annexure A-16), alongside Form AOC-4 (Annexure A-17), the Directors' Report (Annexure A-18), Audited Financial Statements (Annexure A-19), the AGM Notice (Annexure A-20), and Form MGT-14 (Annexure A-21) for FY 2022-2023. This statutory transition is mirrored by a complete overhaul in the shareholding pattern, wherein the erstwhile promoter-directors related to the Corporate Debtor entirely transferred their stakes to the incoming promoter team, as verified by the Shareholder List as of 31.03.2023 (Annexure A-22) and Form MGT-7 (Annexure A-23). Consequently, in view of these incontrovertible changes in ownership and control, it is respectfully prayed that the Applicant Company be explicitly taken on record as an independent, unrelated Financial Creditor.

**3. <u>Reply of the Respondent (RP):</u>**

(a) The Respondent has raised a preliminary objection regarding the maintainability of the present Application, contending that it has been filed under Section 42 read with Section 60(5) of the Code whereas Section 42 is applicable only during liquidation proceedings and provides an appeal against the decision of a Liquidator regarding admission or rejection of claims.

(b) It is submitted that the Corporate Debtor is presently undergoing CIRP and the Respondent is functioning as the Resolution Professional and not as a Liquidator. Therefore, invocation of Section 42 for challenging the classification of the Applicant's claim during CIRP is stated to be legally untenable and the Application is liable to be rejected at the threshold.

(c) The Respondent contends that the Applicant Company has failed to place on record any document establishing that the alleged debt constitutes a "financial debt" under Section 5(8) of the Code. It is stated that there is no loan agreement, sanction letter, agreed rate of interest, repayment schedule, security document, evidence of interest servicing or TDS deduction to prove disbursement against consideration for the time value of money. It is further stated that mere reliance on ledger extracts and self-serving assertions is insufficient to establish the existence of a financial debt and, therefore, the prayer seeking classification as a Financial Creditor is misconceived. Although the Applicant Company claims to be an NBFC registered with the RBI, the Respondent submits that no material has been produced to demonstrate that the alleged transactions were undertaken in accordance with RBI regulations or that the transactions possessed the attributes of lending against time value of money.

(d) The Respondent further contends that the Applicant Company does not qualify as an Operational Creditor under Sections 5(20) and 5(21) of the Code as admittedly no goods were supplied and no services were rendered by the Applicant Company to the Corporate Debtor. Consequently, it is averred that the Applicant Company is neither a Financial Creditor nor an Operational Creditor and, at best, may fall within the category of "Other Creditors", disentitling it from the relief sought.

(e) It is specifically pleaded that the Applicant Company was a related party of the Corporate Debtor at the relevant time, as Mr. Tejinder Setia, Director of the Corporate Debtor, held 10.94% shareholding in the Applicant company, while his wife Mrs. Himani Setia held 9.11% shares and his son Mr. Sagar Setia held 13.28% shares. In support of the aforesaid contention, the Respondent has relied upon Annual Returns in Form MGT-7 for the financial years 2018-19 to 2021-22 and a shareholding chart prepared from the records available on the MCA portal. The Respondent alleges that the Resolution Professional of the Applicant deliberately suppressed the Annual Returns in Form MGT-7 for the financial years 2018-19 to 2021-22, despite the same being publicly available on the MCA portal.

(f) It is further contended that the Applicant Company failed to place on record statutory financial statements in Form AOC-4 for the relevant years, which would have reflected the historical pattern of control, beneficial ownership and promoter shareholding and would have assisted in determining whether the Applicant Company continued to be a related party. The Respondent alleges that the Applicant selectively relied upon documents pertaining only to FY 2022-23 to project a belated change in shareholding and control while suppressing earlier records showing continued control by the Setia family. It is further alleged that the Applicant

Company deliberately withheld the complete lists of shareholders for FY 2018-19 to FY 2021-22 and instead produced only the shareholding position as on 31.03.2023 to conceal the continued shareholding and control of persons related to the Corporate Debtor. According to the Respondent, these selective disclosures were deliberately made to create a false impression that the Applicant Company had ceased to be a related party after FY 2018-19. The Respondent has also challenged the genuineness of documents annexed as Annexures A-5 to A-8, including the Memorandum of Understanding dated 17.06.2018, Board Resolutions and share transfer records, alleging that the signatures appearing therein do not tally with signatures available in statutory filings made before the MCA. It is further alleged that these documents are fabricated and have been created merely to support a false narrative of takeover and change in promoters in June 2018. The Respondent points out that the alleged list of shareholders as on 31.03.2019 is inconsistent with the Form MGT-7 filed before the Registrar of Companies, which shows that members of the Setia family remained shareholders of the Applicant Company till at least 31.03.2022.

(g) The Respondent has also disputed the alleged Board Meeting dated 22.09.2018, asserting that no such meeting was held, as reflected from the Annual Return in Form MGT-7 and, therefore, the alleged Board Resolutions are fabricated and incapable of proving any transfer of control. It is further contended that the Applicant's story of transfer of shareholding in favour of new promoters in 2018 is contradicted by its own Annual Return in Form MGT-7 for FY 2018-19, wherein no such transfer of shares has been disclosed.

(h) The Respondent has also challenged the authenticity of the ledger account relied upon by the Applicant, contending that the ledger reflects accrued interest of Rs. 7,75,18,397/- whereas the audited financial statements of the Applicant for FY 2022-23 disclose total Revenue from Operations of only Rs. 4,57,40,480/-. It is thus alleged that the ledger is manipulated and unreliable. The Respondent further maintains that the Applicant remained a related party throughout the relevant period and that any subsequent change in shareholding cannot efface the related-party status in view of the law laid down by the Supreme Court, particularly when the transactions in question originated and substantially continued during the period of such related-party relationship.

3. The Applicant has filed the Rejoinder which substantially reiterates the facts as is stated in the Application. The Applicant and the Respondent have also filed the Short Written submissions.

**ANALYSIS AND FINDINGS**

4. We have considered the rival submissions and perused the record and have also gone through the provisions of the Code and the rules and regulations made thereunder.

5. On the basis of the submissions made by the learned Counsels appearing for the Parties the following issues arise for consideration which are as follows:

(i) Whether the Applicant has established that the amount claimed constitutes a "Financial Debt" within the meaning of Section 5(8) of the Code?

(ii) Whether the Applicant has been able to prove that it ceased to be a related party of the Corporate Debtor pursuant to the alleged Memorandum of Understanding dated 17.06.2018 and consequent transfer of shares and control?

6. At the outset, it is pertinent to note that the Applicant had earlier instituted I.A. No. 561 of 2025 seeking substantially the same reliefs as are sought in the present application, namely, a declaration that it had ceased to be a related party of the Corporate Debtor and ought to be treated as an unrelated Financial Creditor. The said application was subsequently withdrawn vide order dated 17.02.2026 without obtaining liberty to institute a fresh application on the same cause of action. The present application, founded on the same alleged Memorandum of Understanding dated 17.06.2018 and the same plea of transfer of shareholding and management, is therefore a re-agitation of the very same claim, albeit supported by additional documents. Although the provisions of the Code of Civil Procedure, 1908 are not strictly applicable to proceedings under the Insolvency and Bankruptcy Code, 2016, the principles underlying Order XXIII Rule 1(4) CPC are well recognised and apply to prevent repeated institution of proceedings on the same cause of action after unconditional withdrawal of an earlier proceeding. Consequently, the filing of the present application, without liberty having been obtained in the earlier proceedings, is a relevant circumstance which militates against its maintainability.

**ISSUE No.(i)**

7. In the present case, the Applicant has primarily relied upon ledger extracts showing debit and credit entries over a period of time. However, except for such ledger entries, no primary documentation evidence for the creation of a financial debt has been produced. It is an admitted fact that there is neither a loan agreement, nor

a sanction letter, no repayment schedule, no agreed rate of interest, no security document, no acknowledgment of debt by the Corporate Debtor, nor any evidence of deduction of tax at source on the alleged interest component.

The mere existence of accounting entries or a running account cannot by itself establish the essential ingredients of financial debt, namely: (i) disbursement against consideration for the time value of money; and (ii) commercial effect of borrowing.

Further, the Respondent has pointed out material inconsistencies in the Applicant's own financial statements. The ledger reflects accrued interest exceeding Rs.7.75 crores, whereas the audited financial statements for FY 2022-23 disclose revenue from operations substantially lower than the alleged interest income. No explanation worth acceptance has been furnished regarding such glaring discrepancies. Therefore, this Tribunal is unable to conclude that the Applicant has established a Financial Debt within the meaning of Section 5(8) of the Code.

**ISSUE NO.(ii)**

8. The case of the Applicant is founded upon the alleged Memorandum of Understanding dated 17.06.2018 whereby the control and shareholding of the Applicant Company are stated to have been transferred from the Setia family to an unrelated group. There are so many inconsistencies in the said MoU. Firstly, the Applicant has failed to establish the very foundation of the alleged transfer, namely the existence of lawful consideration. Though extensive submissions have been made in the written pleadings regarding alleged payments by members of the Jindal family to members of the Setia family. The MoU itself does not unequivocally establish the

consideration actually paid, the mode of payment, the valuation of shares, or the date of completion of the transaction. In absence of proof of consideration, the alleged transfer of ownership and control remains shrouded in doubt.

Secondly, the statutory records maintained with the Registrar of Companies assume considerable significance. The Annual Returns in Form MGT-7 for FY 2018-19 to FY 2021-22 consistently demonstrate that Mr. Tejinder Pal Setia, Mrs. Himani Setia, Mr. Sagar Setia and Setia Buildcon Pvt. Ltd. continued to hold substantial shareholding in the Applicant Company. Collectively, the Setia group held an overwhelming majority stake even after the alleged MOU of June 2018. The explanation furnished by the Applicant that the delay in reflecting the change in MCA records was on account of RBI approval requirements is unpersuasive. Even assuming that certain regulatory approvals were pending, the fact remains that the Applicant has failed to produce conclusive evidence showing actual transfer of beneficial ownership and cessation of control in the year 2018 itself.

Thirdly, the documents relied upon by the Applicant, namely the Memorandum of Understanding, Board Resolutions and shareholders' list, have been specifically disputed by the Respondent. The Respondent has pointed out discrepancies between these documents and the statutory filings made before the Registrar of Companies. The alleged Board Meeting dated 22.09.2018 does not find mention in the statutory Annual Return and the alleged share transfers are also not reflected in the statutory list of transfers. These inconsistencies cast a serious doubt on the authenticity and evidentiary value of the documents relied upon by the Applicant.

Most importantly, even if the Applicant's version regarding subsequent change in management is accepted, the underlying transactions admittedly commenced when the Applicant was a related party of the Corporate Debtor. The alleged loans were advanced during the period when the Setia family exercised substantial control over both entities. The subsequent restructuring of shareholding cannot retrospectively obliterate the character of the relationship existing at the time when the transactions were entered into. Related-party status must be assessed with reference to the relationship subsisting at the time the underlying transactions were entered into, and cannot be retrospectively cleansed by subsequent cosmetic changes in shareholding or directorship. Therefore, this Tribunal is not persuaded to hold that the Applicant has discharged the burden of proving cessation of related party status.

9. In the result, **I.A. (I.B.C) No. 1082 of 2025** is hereby **dismissed** and **disposed of.**

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| **Sd/-** | **Sd/-** |
| **SHISHIR AGARWAL**<br>**MEMBER (TECHNICAL)** | **KHETRABASI BISWAL**<br>**MEMBER (JUDICIAL)**<br>Sudesh |