NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 27.07.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM : SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

IN THE MATTER OF : **M/s. Swach Environment Pvt Ltd**
Vs
M/s. AMRL Hitech City Ltd

PETITION NUMBER : **CP(IB)/78(CHE)2023**

UNDER SECTION : **Sec 9 Rule 6 of IBC, 2016**

APPLICATION NUMBER:

Sl. No	I.A. NO.	SECTION	NAME OF THE PARTIES
1.	IA/1849/IBC/2023	Sec 60(5) of IBC, 2016, r/w Rule 11 of NCLT Rules, 2016	SREI Infrastructure Finance Ltd VS Mukul Kumar, (RP) M/s.AMRL Hitech City Ltd & Anr
2.	IA/1848/IBC/2023	Sec 60(5) of IBC, 2016, r/w Rule 11 of NCLT Rules, 2016	SREI Equipment Finance Ltd VS Mukul Kumar, (RP) M/s.AMRL Hitech City Ltd & Anr

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ORDER

701.1. IA/1849/IBC/2023 IN CP(IB)/78(CHE)2023

701.2. IA/1848/IBC/2023 IN CP(IB)/78(CHE)2023

Present: Ld. Counsel Ms. Poornima Devi.T. for the Applicant.

Vide separate order pronounced in open court, **IA/1849/IBC/2023 & IA/1848/IBC/2023** are Allowed.

Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)

Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)

jp

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

IA (IBC) 1848/ (CHE)/ 2023
In
CP (IBC) 78/ (CHE)/ 2023

(Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of ***M/s. AMRL Hitech City Limited***

M/s. SREI EQUIPMENT FINANCE LIMITED,
Viswakarma, 86C, Topsia Road, (South),
Kolkata – 700 046.

… Applicant

-vs-

1. Mr. MUKUL KUMAR,
Resolution Professional of the M/s AMRL Hitech City Limited,
Resolution Professional having address at:
D-3/1304, The Legend, Sushant Lok Phase 3,
Sector 57, Gurgaon, Haryana – 122 011.

…Respondent No.1

2. Mr. K. GAURAV KUMAR,
Resolution Professional of the M/s AMRL Hitech City Limited,
Resolution Professional having address at:
New No.151, Old No,68, 1st Floor, TTK Road, Alwarpet,
Chennai, Tamil Nadu – 600 018.

…Respondent No.2

Along with

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

IA (IBC) 1849/ (CHE)/ 2023

In

CP (IBC) 78/ (CHE)/ 2023

(Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of ***M/s. AMRL Hitech City Limited***

M/s. SREI INFRASTRUCTURE FINANCE LIMITED,
Viswakarma, 86C, Topsia Road, (South),
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Resolution Professional having address at:
New No.151, Old No,68, 1st Floor, TTK Road, Alwarpet,
Chennai, Tamil Nadu – 600 018.

…Respondent No.2

Order pronounced on 27th July 2026

<u>CORAM</u>

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Petitioners: *Anant Merathia, Poornima Devi. T, Rishi Srinivas and Divya Ganapathy, Advocates*

For Respondents: *Rajiv K. Virmani and Anuj Malhotra, Advocate*

ORDER

(Hearing through hybrid mode)

This Application has been filed by **M/s. SREI EQUIPMENT FINANCE LIMITED,** under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 challenging the communication dated 12.09.2023 issued by the Respondent rejecting the claim submitted by the Applicant and the classification of the Applicant herein as a related party of the Corporate Debtor, **M/s. AMRL Hitech City Limited**, seeking following reliefs:

> *"**8. PRAYERS:***
>
> *a) Direct the Resolution Professional / Respondent No.1 of the Corporate Debtor herein to admit the entire Claim of the Applicant, including the interest component and the overdue instalments;*
>
> *b) Direct the Resolution Professional / Respondent No.1 of the Corporate Debtor herein to reverse his decision of classifying the Applicant herein as a 'related party' of the Corporate Debtor vide email dated 22.09.2023 and reclassify the Applicant as a non-related party, financial creditor of the Corporate Debtor;*
>
> *c) Direct the Resolution Professional / Respondent No.1 to properly constitute the Committee of Creditors of the Corporate Debtor in a fair and transparent manner;*
>
> *d) Pass such other order/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case."*

2. SUBMISSIONS OF THE APPELLANT

2.1. The Applicant/ Financial Creditor, SREI Equipment Finance Limited, submitted that the Corporate Debtor, AMRL Hitech City Limited, approached it for financial assistance, pursuant to which a Sanction Letter dated 28.09.2019 was issued sanctioning a loan facility of Rs. 450 crores.

2.2. It is submitted that a Rupee Loan Agreement dated 21.10.2019 was executed between the Applicant and the Corporate Debtor for a facility of Rs. 450 crores, followed by a Deed of Hypothecation dated 21.10.2019, creating security over the Corporate Debtor's assets and properties to secure repayment of the loan, interest and allied dues.

2.3. It is further submitted that a Deed of Undertaking dated 24.10.2019 was executed between the Corporate Debtor, its obligors and the Applicant, inter alia restraining transfer or encumbrance of the obligors' 74% shareholding in the Corporate Debtor.

2.4. It is submitted that pursuant thereto, the Applicant disbursed an amount of Rs. 277.86 crores to the Corporate Debtor. However, the Corporate Debtor committed defaults in repayment obligations.

2.5. It is also submitted that the Corporate Debtor was admitted into CIRP vide order dated 01.08.2023 passed in a Section 9 proceeding, wherein Mr. K. Gaurav Kumar was appointed as IRP. The Applicant became aware of the CIRP through the public announcement dated 03.08.2023.

2.6. It is submitted that the Applicant filed its Form-C claim dated 11.08.2023, within the stipulated period. Subsequently, the IRP sought various clarifications and supporting documents regarding the claim, security interest, disbursement records, overdue calculations and related-party status.

2.7. It is contended that it duly furnished all clarifications and documents through multiple emails and clarified that neither SREI Equipment Finance Limited (SEFL) nor SREI Infrastructure Finance Limited (SIFL) were related parties of the Corporate Debtor. It was also explained that SREI Alternative Investment Trust – Infrastructure Resurrection Fund (SAIT-IRF) is a SEBI-registered AIF managed by Trinity Alternative Managers Limited for consideration and that neither Trinity, SIFL nor SEFL qualified as related parties of the Corporate Debtor under the IBC framework.

2.8. It is submitted that, despite the above, the IRP admitted its claim only to the extent of the principal component of Rs. 414.91 crores, while completely excluding the interest component, overdue instalments and overdue charges, without assigning reasons.

2.9. It is also submitted that the Rupee Loan Agreement, particularly Clauses 2.6, 2.7 and Schedule-I, expressly provided for payment of interest, charges and other dues, and that upon occurrence of an event of default, including initiation of insolvency proceedings, the entire outstanding dues, accrued interest and other monies became immediately payable under Clauses 8.1.11, 8.3.1 and 8.4.

2.10. It is submitted that the IRP wrongly failed to admit the overdue instalments of Rs. 7,96,46,241/- and overdue charges/interest of Rs. 1,80,45,823/-, despite contractual provisions entitling the Applicant to acceleration and recovery upon insolvency-related default.

2.11. It is further submitted that, owing to partial admission of its claim, the Applicant was excluded from the first Committee of Creditors (CoC) meeting and denied corresponding voting rights, although its claim had been filed within time and all requisitions of the IRP had been duly complied with.

2.12. It is further submitted that the 1st CoC meeting was conducted without proper constitution of the CoC, resulting in a CoC allegedly consisting only of operational creditors, which thereafter resolved to replace the IRP with Mr. Mukul Kumar as RP. The Applicant contends that the said actions caused grave prejudice to its interests.

2.13. It is submitted that the IRP/RP failed to comply with Regulation 13(1A) of the CIRP Regulations, which mandates recording reasons where a claim is not collated after verification, no such reasons having been furnished for rejection of substantial portions of the Applicant's claim.

2.14. It is contended that the improper rejection of the claim components and exclusion of the Applicant from the CoC warrant intervention by this Tribunal, including determination and admission of the Applicant's full claim in a fair and transparent manner.

2.15. On the issue of "related party" classification, the Applicant submitted that the RP, by email dated 22.09.2023, classified the Applicant as a related party. It is contended that it is not a shareholder of the Corporate Debtor, does not participate in management or investment decisions of SAIT-IRF, does not render services to the trust, and merely shares a common parent entity (SIFL) with Trinity Alternative Managers Limited, which is only the fund manager of the AIF.

2.16. It is finally submitted that SAIT-IRF is a Category-I Alternative Investment Fund under SEBI (AIF) Regulations, 2012, whose beneficiaries are the contributors to the fund, and that Trinity functions only as a remunerated fund manager placing proposals before an independent committee. Accordingly, neither Trinity nor the Applicant exercises control over the Corporate Debtor to attract the definition of "related party" under the Code.

<u>3. SUBMISSIONS OF THE RESPONDENT IN THE REPORT</u>

3.1. The Respondent No.1/ RP stated that he was appointed as the Resolution Professional of the Corporate Debtor pursuant to order dated 12.09.2023, replacing the Interim Resolution Professional, and has been managing the affairs of the Corporate Debtor during the CIRP.

3.2. It is stated that, during the hearing on 16.04.2024, it was brought to the notice of this Tribunal that SREI Infrastructure Finance Limited (SIFL) had undergone proceedings under the Banking Regulation Act, 1949, wherein the RBI appointed an Administrator and the matter was referred to NCLT, Kolkata. Since SEFL is a subsidiary of SIFL, and SIFL underwent a change in management pursuant to the said proceedings, the question of the Applicant's related party status required fresh examination.

3.3. It is stated that pursuant to the direction of this Tribunal dated 16.04.2024, he examined the related party status of SEFL afresh in light of the changed management and with reference to the scheme and intent of the IBC, 2016.

3.4. The Respondent referred to the definition of "related party" under Section 5(24A) of the IBC, 2016, and submitted that the issue involves a mixed question of law and fact, there being no direct statutory provision or precedent governing the precise situation arising in the present case.

3.5. It is further stated that the averments of the Applicant seeking to negate its related party status run contrary to the underlying principles governing exclusion of related parties under the Code.

3.6. It is stated that Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. & Ors., (2021) 3 SCC 475***, wherein it was held that the interpretation of Section 21(2) of the IBC must advance the object of the statute and prevent circumvention of the prohibition against participation of related parties in the CoC through artificial arrangements or changes undertaken before commencement of CIRP and also the judgment of the Hon'ble NCLAT in ***Pankaj Yadav v. Brainer Impex Ltd. (Company Appeal (AT) (Ins.) No. 28 of 2018)*** held that, in a debt assignment, the assignee steps into the shoes of the assignor, acquiring not only its rights but also the attendant burdens and disadvantages associated with the debt.

3.7. The Respondent also relied on the decision of NCLT, Chennai in ***Radha Industries Pvt. Ltd. v. Ms. Jayashree S. Iyer (IA/344/2020 in IBA/967/2019)***, wherein it was observed that an assignee's rights are no better than those of the assignor and that the assignee assumes the rights together with the corresponding disadvantages.

3.8. It is stated that applying the above principles to the present case, the Respondent submitted that the change in management of SEFL occurred through its own resolution process, and the debt owed by the Corporate Debtor to AMRL Hitech City Limited stood assigned under the resolution plan. Consequently, the new management of the Applicant merely steps into the position of the earlier entity and assumes the debt together with all associated disadvantages.

3.9. It is therefore stated that the legislative intent under the IBC is to determine related party status with reference to the time of the transaction/ disbursement of debt, and that a subsequent assignment of debt or change in management would not automatically convert a related party into a non-related party.

4. WRITTEN SUBMISSIONS OF THE APPLICANT

4.1. The Applicant submitted that SREI Infrastructure Finance Limited ("SIFL") and its wholly owned subsidiary SREI Equipment Finance Limited ("SEFL") had collectively extended financial assistance to the Corporate Debtor aggregating to about Rs. 1142.98 crores, and that the Corporate Debtor was admitted into CIRP pursuant to a Section 9 application.

4.2. It is also submitted that under an approved Resolution Plan and Business Transfer Agreement, the loans originally advanced by SIFL were transferred to SEFL, and SEFL was substituted in place of SIFL pursuant to Tribunal orders.

4.3. It is submitted that these funds originate from public sector banks and, because both SIFL and SEFL have themselves undergone insolvency resolution, the involvement of substantial public money requires careful consideration by the Tribunal.

4.4. It is submitted that SEFL had filed its Form-C claim before the IRP, while the claim of SIFL was kept "under verification". The Applicant contended that despite substantial financial exposure, the claims of SEFL/ SIFL were not properly considered, resulting in their exclusion from the CoC.

4.5. The RP classified the Applicant as a related party via email dated September 22, 2023, relying on a transaction audit report and an avoidance application filed under Sections 66 and 60(5) of the IBC before NCLT Kolkata. However, the Applicant points out that the audit report and avoidance application merely referenced the Corporate Debtor as "potentially connected" to the SREI/ Kanoria Group, rather than a statutory related party. Highlighting that "connected person" and "related party" are legally distinct concepts under the IBC, the Applicant asserts it fails to meet any statutory criteria under Section 5(24).

4.6. It is submitted that the Applicant is not a shareholder of the Corporate Debtor, is not reflected as a related party in its financial statements, and has never exercised dominant or management control over it. Additionally, the Applicant distinguished the judicial precedent in ***Hari Vitthal Mission v. Ravi Sethia & Ors***., noting that the facts do not apply since SEFL and the Corporate Debtor do not share a common holding company.

4.7. It is further submitted that addressing the structure of the investment fund, the Applicant explains that SAIT-IRF is a Category-I Alternative Investment Fund managed by Trinity Alternative Managers Investment Limited (TAIML). Under the Trust Deed, Investment Management Agreement (IMA), and SEBI (AIF) Regulations, TAIML acts strictly in a fee-based fiduciary capacity on behalf of trust beneficiaries. Investment decisions are made independently by an Investment Committee composed of independent members and contributor representatives, which binds the manager. TAIML has no independent say in these decisions, while the Applicant itself provides no services to the trust and exercises no role in its management.

4.8. It is submitted that a fundamental change in governance, pointing out that the NCLT Kolkata approved the combined resolution plan for SIFL and SEFL on August 11, 2023. Under this approved plan, the National Asset Reconstruction Company Limited (NARCL), a government-backed entity registered with the RBI, became the successful resolution applicant and assumed management. Ultimately, the Applicant reiterates that it does not fall within the definition of a "related party" under Section 3(24) or 5(24) of the IBC, exercises no direct or indirect control over the Corporate Debtor, and should not be wrongfully excluded from participating in the CIRP.

5. ADDITIONAL WRITTEN SUBMISSIONS OF THE APPLICANT

5.1. The Applicant, in addition to its main written submissions, submitted that Respondent No.1/ RP, after completion of pleadings and at the stage of filing written submissions, sought to place on record new facts, information and documents which were not part of the original pleadings in the present proceedings.

5.2. It is submitted that such additional facts and documents introduced by Respondent No.1, being outside the scope of the pleadings already completed, ought not to be considered by this Tribunal while adjudicating the matter.

I.A.(IBC)1849/(CHE)2023

This Application has been filed by **M/s. SREI INFRASTRUCTURE FINANCE LIMITED,** under Section 60(5) of the Insolvency and

Bankruptcy Code, 2016 challenging the communication dated 12.09.2023 issued by the Respondent rejecting the claim submitted by the Applicant and the classification of the Applicant herein as a related party of the Corporate Debtor, **M/s. AMRL Hitech City Limited**, seeking following reliefs:

> *"**8. PRAYERS:***
>
> *a) To direct the Respondent to take a decision on the claim form submitted by the Applicant in a time bound manner and consequently reconstitute the Committee of Creditors in an impartial manner in accordance with the law;*
>
> *b) To stay the Corporate Insolvency Resolution Process of the Corporate Debtor herein until the entire claims of the Applicant herein are determined and admitted in a fair and transparent manner; and*
>
> *c) To pass any other order/direction in favour of the Applicant herein that the Hon'ble Tribunal deems necessary and fit in the interest of justice and equity."*

6. SUBMISSIONS OF THE APPLICANT

6.1. The Applicant, SREI Infrastructure Finance Limited ("SIFL"), submitted that the Corporate Debtor, AMRL Hitech City Limited, had availed substantial financial assistance from the SREI entities and that the Applicant had lodged its claim pursuant to commencement of CIRP against the Corporate Debtor.

6.2. It is submitted that the Corporate Debtor was admitted into CIRP by order dated 01.08.2023, following which a public announcement was issued, and the Applicant filed its Form-C claim dated 11.08.2023 together with supporting documents and annexures before the IRP.

6.3. It is also submitted that despite filing its claim within time and furnishing the requisite documents and clarifications sought by the IRP/RP, its claim was not duly considered, and the Applicant was treated as a related party, resulting in exclusion from participation in the CoC.

6.4. It is submitted that the Applicant does not fall within the ambit of "related party" under Section 5(24) of the IBC, and that the classification adopted by the Respondents is legally untenable and contrary to the factual position.

6.5. It is contended that the alleged linkage through Trinity Alternative Investment Managers Limited ("TAIML"), SREI Alternative Investment Trust ("SAIT") and the investment structures associated therewith does not establish control, management influence or related-party status vis-à-vis the Corporate Debtor.

6.6. It is submitted that the investment and trust structures relied upon by the Respondents are governed by contractual and regulatory arrangements, and that the Applicant neither exercises direct nor indirect control over the management, policy decisions, board composition or affairs of the Corporate Debtor.

6.7. It is further submitted that the mere existence of historical financial transactions, group associations, trust arrangements, or common investment platforms cannot, by themselves, justify exclusion of the Applicant from the CoC absent satisfaction of the statutory ingredients of Section 5(24) of the Code.

6.8. It is submitted that the Applicant's exclusion from the CoC has caused serious prejudice to a substantial financial creditor and has distorted the constitution of the CoC, thereby affecting the conduct of the CIRP.

7. SUBMISSIONS OF THE APPLICANT IN THE MEMO

7.1. The Applicant, SREI Equipment Finance Limited (SEFL), submitted that, pursuant to the liberty granted by this Tribunal during the hearing held on 02.03.2026, it sought to place on record the Annual Reports of SREI Infrastructure Finance Limited ("SIFL") for FY 2023–2024 and FY 2024–2025, prepared on the basis of audited financial statements.

7.2. It is submitted that the said annual reports disclose the complete list of trusts/ funds in which SIFL had made investments and demonstrate that SIFL is not an investor in SREI Alternative Investment Trust – Infrastructure Resurrection Fund ("SAIT-IRF"), which is the fund relevant to the present proceedings.

7.3. It is further submitted that extracts from the FY 2023–2024 Annual Report of SIFL were reproduced for the assistance of this Tribunal to establish that SIFL had not invested in SAIT-IRF, specifically the Infrastructure Resurrection Fund, and a copy of the said Annual Report was annexed to the Memo as Annexure-1.

7.4. It is submitted that extracts from the FY 2024–2025 Annual Report of SIFL were likewise placed on record to show that SIFL had not made any investment into SAIT-IRF/Infrastructure Resurrection Fund, and the corresponding Annual Report was annexed as Annexure-2.

7.5. It is additionally submitted that no allegation had been made by the Resolution Professional concerning contributions by SEFL to SAIT-IRF and reiterated its stand that SEFL had never contributed to SAIT-IRF.

<u>8. SUBMISSIONS OF THE APPLICANT (AFFIDAVIT FILED BY THE APPLICANT)</u>

8.1. The Applicant submitted that the present affidavit was filed pursuant to the directions issued by this Tribunal in I.A.(IBC)1848/2023 and 1849/2023 in CP(IB)78(CHE)/2023, and by virtue of the liberty granted to place additional information on record for adjudication of the applications.

8.2. It is submitted that this Tribunal, vide order dated 01.07.2025, had reserved the applications for orders, and thereafter listed the matters on 18.09.2025 under the caption "For Clarification". The Tribunal directed the parties to clarify by way of affidavit:

> (i) whether the Corporate Debtor is a portfolio company under the Trust Deed and Investment Management Agreement.
>
> (ii) the shareholding and voting percentage of SAIT-IRF in the Corporate Debtor; and
>
> (iii) the detailed particulars of the investors to the trust.

8.3. It is submitted that, in compliance with the aforesaid directions, it had already filed its reply affidavit containing the requisite clarifications through e-filing dated 03.11.2025.

8.4. It is further submitted that, when the matter was taken up on 24.11.2025, the Applicant informed this Tribunal that the clarification affidavit had been filed and sought permission to place on record additional material information relevant for adjudication. The Tribunal permitted filing of additional information by way of affidavit and directed service upon the Respondent.

8.5. It is submitted that an application dated 08.02.2024 bearing No. IN/AIF2/13-14/0077 had been filed by Ms. Anita Chatterjee, Trustee of SREI Alternative Investment Trust ("SAIT"), before the Securities and Exchange Board of India (SEBI) seeking approval for change of the Investment Manager of SAIT from Trinity Alternative Investment Managers Limited ("TAIML") to Tavasya Capital Managers LLP.

8.6. It is submitted that SEBI, vide letter dated 16.09.2025 bearing No. AFD-RAC-2/P/OW/2025/24850/1, initially declined to accord approval for change of Investment Manager in respect of SREI Multiple Alternative Investment Trust, on the ground that one of the schemes, namely India Growth Opportunities Fund, had not received approval of the requisite super-majority of contributors by value of investment; however, liberty was granted to file a fresh application upon obtaining the necessary approvals.

8.7. It is further submitted that, after obtaining the requisite approvals, a fresh application bearing No. IN/AIF2/12-13/0041 was filed before SEBI. Thereafter, SEBI vide letter dated 16.09.2025 bearing No. AFD-RAC-

2/P/OW/2025/24848/1 informed that the competent authority had accorded approval for the change of Investment Manager of SREI Alternative Investment Trust.

8.8. It is submitted that consequent to the aforesaid approval, the Investment Manager of SREI Alternative Investment Trust stood changed from Trinity Alternative Investment Managers Limited ("TAIML") to Tavasya Capital Managers LLP.

9. FINDINGS OF THE TRIBUNAL

9.1. We have heard the Learned Counsel appearing for the Applicants and the Learned Counsel appearing for the Resolution Professional, perused the pleadings, reports, affidavits, written submissions and documents placed on record.

9.2. The principal issue arising for consideration is whether the Applicants, namely SEFL and SIFL, can be treated as related parties of the Corporate Debtor within the meaning of Section 5(24) of the Insolvency and Bankruptcy Code, 2016, thereby justifying their exclusion from participation in the Committee of Creditors.

SIFL (51% Shareholding)

|

TAIML

(Investment Manager)

|

SAIT

(Trust)

|

SAIT-IRF (Investment in)

|

▼

AMRL Hitech City Ltd.

(Corporate Debtor)

9.3. This Tribunal has carefully considered the rival contentions on the question of whether SEFL is a "related party" of the Corporate Debtor under Section 5(24) of the IBC, 2016. The Resolution Professional, in his email dated 22.09.2023 and subsequently in his Report dated 01.05.2024 filed pursuant to the directions of this Tribunal dated 16.04.2024, has classified SEFL as a related party of the Corporate Debtor.

9.4. It is observed that the basis of this classification, as it emerges from the materials on record, is the following chain of alleged control, that is, SREI Infrastructure Finance Limited (SIFL), the parent company of SEFL, holds 51% shares in Trinity Alternative Investment Managers Limited (TAIML); TAIML manages SREI Alternative Investment Trust (SAIT), a SEBI-registered Alternative Investment Fund; and SAIT, through its scheme Infrastructure Resurrection Fund (IRF), holds 58.61% of the shares of the Corporate Debtor. On this basis, the Resolution Professional contended that SIFL controls the Corporate Debtor through TAIML and SAIT, thereby making SEFL a related party of the Corporate Debtor under Section 5(24) of the Code.

9.5. From the pleadings and documents placed on record, the aforesaid structure broadly emerges as the relationship between the relevant entities. While the existence of the said structure is largely undisputed, the controversy in the present applications pertains to whether the same results in such direct or indirect control over the Corporate Debtor as would attract the provisions of Section 5(24) of the Code.

9.6. The case of the Respondent/ Resolution Professional is founded substantially on the proposition that by reason of the relationship between SIFL, TAIML, SAIT and SAIT-IRF, the Applicants possess indirect control over the Corporate Debtor and consequently fall within the scope of Section 5(24) of the Code. The Applicants, on the other hand, contend that the said conclusion proceeds on assumptions arising out of historical association and investment architecture, without satisfying the statutory ingredients contemplated under Section 5(24).

9.7. This Tribunal notes with concern that the Resolution Professional, in his own Report dated 01.05.2024 filed before this Tribunal, has candidly admitted that "there is no supporting judgement or legal provisions to facilitate the Respondent RP to submit its report as sought by this Hon'ble Bench" and has described the situation as "a peculiar situation involving a mixed question of law and fact."

9.8. This admission by the Resolution Professional himself is significant, as it reveals that the classification of SEFL as a related party was not based on a clear legal provision or established precedent, but rather on an inference drawn from a chain of corporate relationships. This Tribunal is of the view that such an inference, which has the effect of excluding a financial creditor with a claim of over INR 424 crores from the Committee of Creditors, must be grounded in clear and unambiguous legal provisions. In the absence of such grounding, the classification cannot be sustained.

9.10. This Tribunal finds that the chain of control breaks irreparably at the TAIML-SAIT link for the reasons that as per Clause 3.1 of the Amended IMA in express terms provides that

> *"the powers conferred by the Trustees on the Investment Manager shall be delegated powers to facilitate the management and administration of the*

> *relevant Scheme and as detailed in Schedule A hereto. The Investment Manager shall not hold and exercise the aforesaid powers independent of the Trustees but shall derive the same from the Trustees."*

Thus, TAIML's management powers are strictly delegated by and derived from the Trustee, i.e, the relationship between TAIML and SAIT is therefore one of agency, TAIML acts as an agent of the Trustee and not one of control.

9.11. It is also noted that the Schedule A preamble of the Amended IMA confirms TAIML is only a "***lawful attorney***" acting on behalf of the Scheme and the Trustee, not in its own right or in the interest of its shareholder (SIFL).

9.12. This Tribunal has carefully examined the board nomination power under Clause 29 of Schedule A of the Amended IMA, which the Resolution Professional has specifically relied upon. The same is reproduced hereinbelow:

> *"(29) To nominate or get appointed directors on the board of directors of the Portfolio Companies in accordance with the terms and conditions agreed to by the Investment Manager or otherwise to protect the interests of the Trust in any manner it may deem fit."*

9.13. This clause does confer upon TAIML the power to "nominate or get appointed directors on the board of directors of the Portfolio Companies." However, this power must be read in the context of Clause

3.1 (which makes all Schedule A powers delegated powers derived from the Trustee) and the Trust Deed at Clause 2.1.4, which has been reproduced hereinbelow:

> *"2.1.4. The Trust shall not engage in any business or trade save as is contemplated in this Indenture. Provided however that* ***the relevant Scheme shall make investments in shares*** *or projects, conduct due diligence on potential investment opportunities, divest holdings and appoint representatives on the management or board of the Portfolio Companies for the surveillance or protection of such investments."*

which expressly states that it is "the relevant Scheme" and not the Investment Manager that has the authority to "appoint representatives on the management or board of the Portfolio Companies for the surveillance or protection of such investments." The purpose of such board representation is explicitly protective, it is for the surveillance and protection of the Scheme's investment and not for the purpose of enabling SIFL or SEFL to exercise control over the Corporate Debtor. Any directors placed on the Corporate Debtor's board through this mechanism are the Scheme's nominees, placed in the Scheme's interest, and owe their duties to the Scheme's contributors, not to TAIML or SIFL.

9.14. This Tribunal notes that under Clause 4.4 of the Trust Deed as given hereinbelow, *"4.4 Investments in the name of the Trustee: All investments of the Trust or the Scheme shall be registered in the name of the Trustee or the Trust, if permissible, as soon as reasonably practicable.* ***The voting powers under the investments shall vest with the Trustee****."*

says that "the voting powers under the investments shall vest with the Trustee." That implies, voting rights over the Corporate Debtor's shares belong entirely to the independent Trustee, placing control completely outside the SIFL-TAIML chain.

9.15. The Amended IMA at Clause 11.1,

"11.1 The Trustee shall constitute an Investment Committee for each Scheme as per the provisions of the respective Private Placement Memorandum and in the manner mentioned herein below. Investment Manager, based on the due-diligence undertaken by it, shall refer the investment proposals to the Investment Committee. The decision of the Investment Committee ***shall be final and binding****. However, investments will be made only if the proposal to invest receives the affirmative vote of a majority of the members of the Investment Committee in favour of the proposal. In the event of a tie, the Chairperson of the Investment Committee shall have a casting vote"*

states that the IC's decision *"shall be final and binding"* on TAIML. Clause 11.5,

"11.5 The Chairperson of the Investment Committee ***shall be nominated by the Trustee and shall not be from amongst the nominees appointed by the Investment Manager****. When it would not be possible for such nominee to be present at a meeting to chair it, the Committee would nominate a person from members present in the meeting but the same shall not be from the nominees of Investment Manager."*

mandates that the Chairperson of the IC *"shall be nominated by the Trustee and shall not be from amongst the nominees appointed by the Investment Manager"*.

9.16. It is also observed that in Clause 11.7,

> *"11.7 The meeting of the Investment Committee shall be convened by the Chairperson or such other Person nominated as Chairperson by the Investment Committee. For any meeting to be properly convened* ***the number of Independent Members should be more than members nominated by the Investment Manager and the Contributors of the scheme****. In the event, the same is not there, the meeting shall stand adjourned."*

a provision that this Tribunal finds particularly significant, states it requires that for any IC meeting to be validly convened, *"the number of Independent Members should be more than members nominated by the Investment Manager and the Contributors of the scheme,"* failing which the meeting shall stand adjourned. This structural safeguard, built into the IMA itself, ensures that TAIML's nominees can never form a majority in the IC and cannot therefore determine outcomes in respect of the Corporate Debtor. Under Clause 11.11, the Trustee may reconstitute the IC at any time. Therefore, even within the management structure of SAIT, TAIML exercises no controlling influence over decisions relating to the Corporate Debtor.

9.17. It is also observed the Resolution Professional's specific claim that TAIML, in its capacity as Settlor, has the power to appoint and remove Trustees under Clauses 4.2 and 5.2.8 of the Trust Deed is not borne out by the actual text of these provisions, the same are reproduced hereinbelow:

> *"4.2 Management of the Trust Fund: The Trustee shall appoint the Investment Manager to manage and administer each Scheme in consultation with the Settlor and shall execute with it the Management Agreement to record the terms and conditions of such appointment. The Trustee shall pay to the Investment Manager the management fee in accordance with the terms set out in the Management Agreement. The Trustee in consultation with the Settlor may appoint different Investment Managers with respect to different Schemes."*
>
> *"5.2.8. Power to employ an Investment Manager: The Trustee may appoint an Investment Manager, by the execution of the Management Agreement, to manage one or more Schemes."*

Clause 4.2 merely says that the Trustee shall appoint the Investment Manager in consultation with the Settlor. Clause 5.2.8 says that the Trustee may appoint an Investment Manager. Neither of these clauses confers any power on the Settlor/ TAIML to remove or appoint Trustees. The actual power to remove and appoint new Trustees, as set out in Clauses 5.5.2.3 and 5.5.4.1 of the Trust Deed as brought hereinbelow:

> *"5.5.2.3. If all the Contributors jointly decides to remove the Trustee from office due to a cause in favour of all the Contributors."*

"5.5.4.1. All the Contributors jointly may for a cause beneficial to all the Contributors discharge the Trustee and appoint a new trustee in its place."

belongs to *"all the Contributors jointly"* and not to the Settlor or TAIML. This Tribunal therefore finds that the Resolution Professional has misread and mischaracterized the Trust Deed provisions he relied upon.

9.18. The Tribunal observed that, independent of the contractual terms under the Trust Deed and the Investment Management Agreement (IMA), the regulatory framework under the SEBI (Alternative Investment Funds) Regulations, 2012 conclusively severs the chain of control alleged by the Resolution Professional between SIFL/ SEFL and the Corporate Debtor. SAIT is a Category-I AIF registered under Regulation 3(4)(a) of the SEBI AIF Regulations. Under Clause 2(d) of the Fourth Schedule and Clause 21 of the Regulations, expressly incorporated via Clause 10.1(k) of the Amended IMA which is reproduced hereinbelow:

"(k) The Investment Manager shall manage the Fund in compliance with the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 as amended from time to time."

the Investment Manager (TAIML) is bound by a statutory mandate to act in a fiduciary capacity towards the fund's investors and manage decisions strictly in their interest, while disclosing all potential conflicts of interest.

9.19. The Resolution Professional's contention that SIFL controls SAIT and the Corporate Debtor through TAIML, erroneously presumes TAIML can act on the instructions of its shareholder, SIFL. Since SEBI Regulations strictly prohibit TAIML from prioritizing SIFL's interests over those of the scheme's investors, any attempt by SIFL to exert influence would trigger mandatory regulatory consequences and conflict disclosure obligations. Consequently, a holding-subsidiary or shareholder relationship that cannot be operationalized to dictate fund management without violating statutory duties does not constitute "control" within the meaning of Section 5(24) of the Insolvency and Bankruptcy Code, 2016 (IBC).

9.20. This Tribunal noted that Clause 10.2 of the Amended IMA as brought below,

> *"10.2 The Investment Manager shall at all times ensure that the assets of each Scheme are segregated from assets of the Investment Manager or any other assets managed by the Investment Manager. For this purpose, the Investment Manager shall, as soon as practicable, appoint an appropriate Custodian (and on the resignation / termination appoint such replacement) to hold all documents evidencing ownership of the assets of each Scheme."*

enforces asset segregation, ensuring that the assets of the Scheme, including the shares of the Corporate Debtor are legally ring-fenced from TAIML's assets and remain beyond SIFL's reach. Furthermore, the structural safeguards governing the Investment Committee (Clauses 11.5 and 11.7 of the Amended IMA) stem directly from Regulation 20(6) of the SEBI AIF Regulations, 2012. These requirements are statutory mandates rather than waivable contractual terms, thereby preventing SIFL from overriding committee decisions through its shareholder rights over TAIML.

9.21. Relying on ***Ministry of Corporate Affairs (MCA) General Circular No. 20/2013 dated 27.12.2013,***

Annexure-2

COMPENDIUM OF CIRCULARS UNDER THE COMPANIES ACT, 2013 (2013 TO 2021)

General Circular No. 20/2013

No. 1/12/2013-CL-V
GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi-110001
Dated: 27th December, 2013

To

All Registrar of Companies,
All Regional Directors.

Subject:- Clarification with regard to holding of shares or exercising power in a fiduciary capacity - Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013.

Sir,

This Ministry has received a number of representations consequent upon notifying section 2(87) of the Companies Act, 2013 which defines "subsidiary company" or subsidiary". The stakeholders have requested this Ministry to clarify whether shares held or power exercisable by a company in a 'fiduciary capacity' will be excluded while determining if a particular company is a subsidiary of another company. The stakeholders have further pointed out that in terms of section 4(3) of the Companies Act, 1956, such shares or powers were excluded from the purview of holding-subsidiary relationship.

2. The matter has been examined in the Ministry and it is hereby clarified that the shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

3. This issues with the approval of competent authority.

Yours faithfully,
(KMS Narayanan)
Assistant Director

the Tribunal highlighted that shares held or powers exercised in a "fiduciary capacity" cannot be counted toward establishing a holding-subsidiary relationship under Section 2(87) of the Companies Act, 2013. Because Section 5(24)(i) of the IBC imports the concept of holding-subsidiary relationships from the Companies Act, and given that TAIML's powers over SAIT are exercised strictly in a fiduciary capacity as required by SEBI, such fiduciary powers cannot be relied upon to establish a holding-subsidiary chain or related-party relationship between SIFL/ SEFL and the Corporate Debtor.

9.22. Therefore, in terms of the question of "related party", this Tribunal holds that SEFL does not satisfy any of the criteria for classification as a "related party" of the Corporate Debtor under any sub-clause of Section 5(24) of the Insolvency and Bankruptcy Code, 2016. The chain of alleged control constructed by the Resolution Professional breaks at the TAIML-SAIT link and TAIML's powers over SAIT are delegated, fiduciary, and exercised under SEBI's mandatory regulatory framework that prohibits TAIML from acting in SIFL's interest. The voting rights over the Corporate Debtor's shares vest with the Trustee, the investment decisions are made by an independently constituted Investment Committee, the board representation power belongs to the Scheme and not TAIML, and the MCA Circular expressly excludes fiduciary capacity powers from holding-subsidiary determination.

9.23. The Hon'ble Supreme Court in ***Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd.*** has held that the provisions concerning related-party exclusion must receive a purposive interpretation so as to prevent abuse of the insolvency process. Equally, the decision does not dispense with the necessity of demonstrating the factual foundation necessary to attract the statutory definition.

9.23. Similarly, the Hon'ble Supreme Court in ***ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*** recognised that control may be direct or indirect and may arise through contractual arrangements. Nevertheless, the concept of control cannot be stretched to mean every form of commercial association, influence, business relationship or historical linkage. Control, in its legal sense, necessarily imports the ability to determine, direct or materially influence management, policy or affairs of the entity concerned.

9.24. In the considered view of this Tribunal, the distinction between association and control assumes particular significance in the present case. Commercial law frequently recognises situations where entities may be economically connected, commercially aligned or historically associated without one possessing the legal ability to dictate the affairs of the other. If every commercial association were to be equated with control, the carefully structured statutory definition contained in Section 5(24) would become otiose.

9.25. The material relied upon by the Resolution Professional undoubtedly establishes that the entities in question formed part of a broader commercial ecosystem and shared certain historical and institutional linkages. However, the existence of such linkages, by itself, does not answer the statutory enquiry. The enquiry required under Section 5(24) is not whether entities are connected in a broad commercial sense, but whether they stand related through a legally cognizable relationship involving management, control, decision-making authority or other circumstances specifically contemplated by the statute.

9.26. The Tribunal also takes note of the judgment rendered by the Learned District Judge, South 24-Parganas at Alipore, wherein the trust structure was examined and it was observed that the trust as has stated that,

> *"Therefore, it can be well ascertained that the decision as regards the investments to be made by the Trust ultimately rests with the Investment Committee which approves and disapproves the investments to be made by the Trust. The respondent no.2 is not entitled to nominate members of the Investment Committee.*

The Investment Committee appears to be ultimately making decisions in so far as the investments to be made by the Trust is concerned. The Contributors are found to have no say in the matter of investment of funds of the Trust and are not entitled to give any directions in this regard either directly or indirectly (Clause 7.2, 7.3 and 7.4 of the Trust Deed).

…

Therefore, it cannot be said that the Trust and the Investment Manager are acting in concert as connected or related parties. And if the Investment Manager cannot be termed as a related or connected entity of the Trust, the shareholder or the Investment Manager i.e. respondent no.2 or 3 and so on, finds no place claiming to be related or connected entity of the Trust."

9.27. That is, the trustee and investment manager are distinct legal actors operating within the framework contemplated under the applicable regulatory regime. While the said judgment is not determinative of the controversy arising under the IBC, the findings therein lend support to the proposition that the existence of shareholding in an investment manager cannot automatically result in attribution of control over the trust or its investments.

9.28. The Resolution Professional has further relied upon transaction audit observations, statements recorded in investigative proceedings and allegations forming subject matter of proceedings under Section 66 of the Code. While such materials may justify scrutiny and investigation, this Tribunal is unable to accept the proposition that pending allegations or unadjudicated findings can, by themselves, constitute conclusive proof of related-party status.

9.29. The Tribunal note that rejecting the interest and overdue installment portions of the Applicant's claim is legally unsustainable. The Rupee Loan Agreement explicitly establishes the Corporate Debtor's obligation to pay interest, while the initiation of insolvency acts as an event of default that accelerates all outstanding dues. Thus, SEFL's contractual right to these components is clear and unambiguous.

9.30. Furthermore, the Tribunal also noted that the Resolution Professional violated Regulation 13(1A) of the IBBI Regulations by providing no reasoning for rejecting these contractually stipulated amounts. Consequently, the Tribunal directed the Resolution Professional to re-examine SEFL's claim in its entirety, admit the interest and overdue installments subject to verification, and formally record reasons for any unadmitted portion.

9.31. Insolvency jurisprudence undoubtedly discourages artificial separation of entities created for the purpose of defeating the objectives of the Code. At the same time, **the doctrine of substance over form cannot be transformed into a doctrine of presumption**. The burden to establish related-party status continues to rest upon the party asserting it, and such burden must be discharged through cogent material demonstrating satisfaction of the statutory requirements.

9.32. Upon an overall consideration of the pleadings and documents on record, this Tribunal finds that the Resolution Professional has established the existence of historical association, commercial interconnectedness and institutional linkage between the concerned entities. However, the material falls short of conclusively establishing that the Applicants possessed such direct or indirect control over the affairs of the Corporate Debtor as would attract the disqualification contemplated under Section 5(24) of the Code.

9.33. We are therefore unable to subscribe to the proposition that the Applicants can be excluded from participation in the insolvency process merely because they form part of a wider commercial network having historical connections with the entities involved. Such an approach would risk expanding the statutory concept of related party beyond the contours intended by Parliament.

9.34. In view of the findings, it is held that:

i. The classification of the Applicant, M/s. SREI Equipment Finance Limited (SEFL) and SREI Infrastructure Finance Limited (SIFL), as a "related party" of the Corporate Debtor, M/s. AMRL Hitech City Limited, by the Resolution Professional as related parties of the Corporate Debtor, and the consequential exclusion of the Applicants from the Committee of Creditors, are hereby set aside.

ii. The Resolution Professional is hereby directed to re-examine the full claim of the Applicant including the interest component and overdue installments in accordance with the Rupee Loan Agreement dated 21.10.2019 and the applicable provisions of the Code and Regulations and is directed to reconsider and admit the claims of the Applicants, including the portions of the claims, if any, which were not admitted earlier, in accordance with the provisions of the Code and the applicable Regulations, upon verification of the supporting documents.

iii. The Resolution Professional is hereby directed to treat the Applicants as eligible financial creditors of the Corporate Debtor, without exclusion under Section 21(2) read with

Section 5(24) of the Insolvency and Bankruptcy Code, 2016 and to take all consequential steps in accordance with law.

iv. The Resolution Professional is hereby directed to reconstitute the Committee of Creditors of the Corporate Debtor by including the Applicant herein as a Financial Creditor with appropriate voting share, after admitting its full claim, within four weeks from the date of this order.

v. It is made clear that the observations contained in this order are confined to the adjudication of the present Applications and shall not prejudice the merits of any avoidance proceedings, proceedings under Section 66 of the Code, or any other proceedings pending before the competent forum, which shall be decided independently in accordance with law.

9.35. Accordingly, **I.A.(IBC)1848/(CHE)/2023** and **I.A.(IBC)1849/(CHE)/2023** stand **allowed**.

-Sd-	-Sd-
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

svh/ LRA