IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.04
I.A No. 341 & 1079/2026
CP (IB) No.249/BB/2024

IN THE MATTER OF:

Maximus ARC LTd	…	Petitioner
Vs		
Sri Balaji Cement & Power Ltd	…	Respondent

Petition under Section 7 of the I & B Code, 2016

Order delivered on: 02.11.2026

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the RP	:	Ms. JVL Bharathi
For Suspended Board of Director	:	Shri Srinivasulu

ORDER

I.A No. 341/2026 :
The Application is allowed in terms of separate order and disposed of.

IA No. 1079/2026

1. This application has been filed by the Resolution Professional of the Corporate Debtor against Superintendent of Police, Kalaburagi, Karnataka and Station House Officer, Malkhed Police Station, Kalaburagi, Karnataka. under Section 60(5) and Section 25 of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs:-

    a. *Take on record the facts and circumstances set out herein concerning repeated unauthorised entry, attempted theft/theft, damage to and threatened removal of the remaining assets at the Factory Premises.*

b. *Direct Respondent No. 1, the Superintendent of Police, Kalaburagi District, to issue appropriate directions to the concerned police authorities, including Respondent No. 2, to take necessary preventive measures to protect the Factory Premises and remaining assets from further unauthorised entry, theft, damage or removal.*

c. *Direct Respondent No. 1 and/or Respondent No. 2 to investigate the incident(s), including the incident reported on 26.09.2026 and connected allegations of threats to security personnel, and to take action against persons found involved, strictly in accordance with law.*

d. *Direct the concerned police authorities to provide such preventive patrolling/assistance in and around the Factory Premises, particularly during vulnerable/night hours, as may be considered necessary having regard to the location and circumstances.*

e. *Direct Respondent No. 2 to act upon complaints/reports made by the Applicant in relation to further incidents and, subject to applicable law, keep the Applicant informed of the status of investigation/action taken.*

f. *Take note of the steps already taken by the Applicant for protection of the assets, including engagement of SIS Limited and enhanced private security deployment.*

g. *Pass such other or further order(s) as this Tribunal may deem fit and proper in the facts and circumstances of the case, in the interest of preservation*

2. The Applicant submits that pursuant to the order dated 01.08.2025 passed by this Authority admitting the Corporate Debtor into CIRP. he took custody and control of the Factory Premises and the assets situated at **Survey No. 367, Malkhed Village, Sedam Taluk, Kalaburagi District, Karnataka,** comprising factory buildings, plant and machinery and other assets on 26.08.2025. The operations of the Factory Premises had ceased in or about May 2022, and thereafter, it remained non-operational for a prolonged period without effective security arrangement. During the period between cessation of operations and taking over of custody by the IRP, a substantial portion of the removable assets had already disappeared, including motors, transformer/electrical equipment, copper wiring, furniture and fixtures, staircase railings and other machinery components.

3. The Applicant submits that despite the aforesaid security arrangements, incidents of unauthorised entry and attempted removal of assets

continued at the Factory Premises such as on 26.09.2026, Applicant received photographs and videos showing the use of gas-cutter for cutting and removing portions of the iron staircase railings and parts of the clinker cooling bucket conveyor which was reported to the police authorities. The Police had visited the Factory Premises, conducted an inspection, prepared a Panchanama/record of the condition of the site and seized the vehicle and cutting equipment found in connection with the incident and the **FIR No. 55/2026** is registered at Malkhed Police Station on 28.09.2026, in connection with the incident dated 26.09.2026, under Sections 329(3), 303(2) and 62 of the Bharatiya Nyaya Sanhita, 2023.

4. Thereafter, **M/s GSF Security & Consultancy Pvt. Ltd** by communication dated 30.09.2026, informed him that certain persons were repeatedly entering the Factory Premises in an intoxicated condition and threatening the security guards with physical harm if they resisted. Due to which they cannot continue to provide Security services. In this background, after discussions with the CoC members, new Security Agency M/s SIS Limited has been deployed for securing the Factory Premises of Corporate Debtor vide engagement letter dated 29.09.2026
5. Notwithstanding the engagement of a professional private security agency, the isolated location of the Factory Premises, absence of electricity and lighting, repeated incidents of unauthorised entry and the threats extended to the security personnel necessitate preventive police assistance and patrolling by the local police authorities. In view of the abovementioned reasons, applicant prays the Authority to take note of the alleged incidents of unauthorised entry, theft and damage to the assets; direct the police authorities to take preventive measures and patrolling, investigate the incident dated 26.09.2026 and act upon further complaints; and take note of the steps undertaken by the RP, including engagement of SIS Limited for enhanced private security.
6. We have heard the Applicant and perused the material placed on record.
7. Having considered the submissions and the material on record, we are of the view that local police cannot be deployed on regular basis for

protection and safeguard of the factory premises and assets of the Corporate Debtor. In this regard, we are guided by the decision of the Hon'ble National Company Law Appellate Tribunal in ***Modern Syntex (India) Ltd. v. Superintendent of Police, Anandpura, Vadodara, Gujarat & Ors., Company Appeal (AT) (Insolvency) No. 682 of 2023***, decided on 29.05.2023, wherein it has been held that:

> *2. This Appeal has been filed against the Order dated 28th March, 2023 by which I.A. No. 614/JPR/2022 & I.A. No. 10/JPR/2023 has been disposed of. The Applications were filed by the Appellant-Resolution Professional where the following prayers were made in I.A. No. 614/JPR/2022: "*
>
> > *(a) The necessary directions may kindly be issued to respondents for deployment of adequate police/gunmen's at site address located at Petrofils Division, Bamangam, Taluka; Karjan, Distt. Baroda (Gujarat) for safeguarding the site premises along with entire assets therein belonging to the corporate debtor which is presently in the custody of the applicant resolution professional.*
> > *(b) Any other order which this hon'ble tribunal deem fit in the light of facts and circumstances of case may also be passed in favour of applicant."*
>
> *5. We are of the view that Resolution Professional should know that what prayers may be granted by the Adjudicating Authority and prayers which were made by the Resolution Professional requesting the Adjudicating Authority to direct deployment of police/gunmen at the site was wholly uncalled for. For security of private property, the RP has to hire security personnel for which payment has to be made for them. Prayers in the Applications were wholly inappropriate and has rightly been not considered. The Appeal is dismissed.*

8. The primary responsibility of making appropriate arrangements for the security and preservation of the assets of CD rests with the Resolution Professional, who is required to make necessary arrangements through private security personnel. The RP with the approval of CoC has engaged private security agency SIS Limited for the purpose. Since the neighbouring local ruffians appear to have become used to unhindered access to the property and take away valuable articles therefrom, they appear to be causing ruckus and extending threats to Security Personnel in an endeavour to shoo them away and have their way.
9. In this backdrop, following directions are issued:

1) The Security measure of factory premises of CD should be strengthened by deploying few of the Security Persons with licenced arms. There should be adequate lighting arrangement and if possible, recording cameras be installed at appropriate places to monitor access to the premises.
2) The factory premises be bound from all sides except one or may be two gates for access with Embedded barbed wire, if not a wall, up to reasonable height.
3) The concerned Police Authorities arrayed in the application are directed to take adequate measures as to maintain law and order in and around the Factory premises including by taking a round of the area during their regular day/night patrolling.
4) The Police Authorities are also enjoined to take suitable action on the complaints/FIR of the RP/Security Personnel by apprehending the culprits.

10. **Accordingly, I.A. No. 1079 of 2026 is disposed of.**
11. List the case along with remaining IA's on **05.01.2027**.

-Sd/-	**-Sd/-**
RADHAKRISHNA SREEPADA	**SUNIL KUMAR AGGARWAL**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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tIN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

I.A. No. 341/2026

in

C.P. (IB) No. 249/BB/2024
(filed under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Mr. V.V.S.R. Anjaneyulu Vattem
Erstwhile Promoter & Suspended Director of
M/s Sri Balaji Cement and Power Limited
R/o. H.No.5/5/81/12/B, Plot No.60, Saibaba Colony
Behind Metro Kukatpally, Hyderabad – 500072, …Applicant

Versus

1. **Mr. Gullapalli Kishore Babu**
   Resolution Professional of
   M/s Sri Balaji Cement and Power Limited
   H.No.11-11-169, Sowbhagyapuram,
   Road No.1, Kothapet, Hyderabad – 500035, … Respondent No.1/RP

2. **M/s. P.D. Enterprises**
   Rep. through MD Shri K. Uma Maheshwara Rao,
   R/o. H. No. 40-3-1/46/2, Rohini Apartments,
   K.L. Street, Krishna Nagar,
   Vijayawada – 520010 … Respondent No.2/CoC member

3. **M/s. Maximus ARC Limited**
   302B, Jain Sadguru Image's Capital Park,
   VIP Hills, Image Gardens Road,
   Madhapur, Hyderabad,– 500081 ...Respondent No.2/ CoC Member

IN THE MAIN MATTER OF:

M/s. Maximus ARC Limited
302B, Jain Sadguru Image's Capital Park,
VIP Hills, Image Gardens Road,
Madhapur, Hyderabad,– 500081 …Petitioner / Financial Creditor

Versus

M/s. Sri Balaji Cement and Power Limited
Regd. Office - Survey No.367,
Village Malkhed, Sedam Taluk,
Kalaburagi, Gulbarga– 585317 … Respondent / Corporate Debtor

Order Delivered on: 02.11.2026

Coram: Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)
Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

Counsels Present:
For the Applicant : Shri Ch. Srinivasulu
For the Respondent No.1 :Ms. J.V.L Bharati

O R D E R

1. This Interlocutory Application was filed on 17.04.2026 under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 ("IBC/Code") by Mr. V.V.S.R. Anjaneyulu Vattem, Suspended Director of Corporate Debtor *M/s. Sri Balaji Cement and Power Limited* ("Applicant") against the Respondents for following reliefs: -

INTERIM RELIEF:
Pending disposal of the present Application, the Applicant prays that this Hon'ble Tribunal may be pleased to stay the functioning of the present Committee of Creditors and restrain Respondent No.1 from taking any further decisions bascd on the existing constitution of the Committee of Creditors.

MAIN PRAYER
a. *Declare that Respondent No.2 is an Operational Creditor and not a Financial Creditor;*
b. *Set aside the classification of Respondent No.2 as a Financial Creditor;*
c. *Direct Respondent No.1 to reconstitute the Committee of Creditors in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016;*

d. Declare that all decisions taken by the improperly constituted Committee of Creditors are invalid and non-est in law;
e. Grant interim relief by staying further proceedings of the Committee of Creditors; and
f. Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. Brief facts of the application are as hereunder

a) The Corporate Debtor, originally known as ***M/s. South India Cements Limited***, had availed Cash Credit and Letter of Credit facilities from ***Bank of Maharashtra***, MSME Cell, Koti, Hyderabad. The said facilities were sanctioned after due diligence, including verification of the RBI defaulters list and CIBIL reports of the Corporate Debtor and its Directors. The name of the Company was subsequently changed to ***M/s. Sri Balaji Cement and Power Limited*** and the credit facilities were enhanced from time to time.

b) It is stated that ***HDFC Bank Limited*** subsequently took over the said facilities from Bank of Maharashtra and enhanced the total exposure of the Corporate Debtor after carrying out credit verification. Due to coal supply disruptions, liquidity stress and operational losses, the Corporate Debtor could not service its loan obligations. The loan was thereafter assigned by HDFC Bank Limited to ***M/s Maximus ARC Limited***, which initiated proceedings under Section 7 of the Code.

c) The Corporate Insolvency Resolution Process of the Corporate Debtor commenced pursuant to order dated 01.08.2025. The Resolution Professional caused publication of Form-G inviting Expressions of Interest ("EOI") and, subsequently, a fresh Form-G was published on 11.01.2026.

d) The Applicant, being the erstwhile Promoter and Suspended Director of the Corporate Debtor, submits that he is aggrieved by the decision of RP/Respondent No. 1 in admitting the claim of M/s. P.D. Enterprises/ Respondent No. 2 as a Financial Creditor and including it in the CoC with a voting share of approximately 69.73% because the transactions between the Corporate Debtor and Respondent No. 2 had originated from the supply of coal and transportation services in the ordinary course of business from the financial year 2016–17 onwards. The supplies were made against purchase

orders issued by the Corporate Debtor, and the transportation of coal was also arranged in connection with the said commercial transactions.

e) Due to non-payment of the amounts in respect of the coal supplies and transportation services, Applicant and the Respondent No.2 had executed two Memorandums of Understanding dated 25.10.2020 referring to the dues of ₹13,27,71,840/- and another in respect of separate amount of ₹2,40,00,000/-. It is contended that the MOU's recorded the existing liabilities and repayment terms and did not alter the underlying nature of transactions.

f) The Applicant further refers to the execution of a mortgage deed in favour of Respondent No. 2 and creation and registration of a charge over the immovable properties of Corporate Debtor to contend that the creation of a mortgage or security interest does not, convert an operational liability arising from the supply of goods and services into a 'financial debt'.

g) The Applicant also refers to the issuance and dishonour of cheques towards the alleged outstanding dues and the proceedings in C.C. No. 2129 of 2021 stated to be pending in the Court of I Additional Chief Metropolitan Magistrate, Vijayawada.

h) The Respondent No. 2 had submitted its claim in Form C on 14.08.2025 for **₹47,36,21,600/-**, which was admitted by Respondent No. 1 as a Financial Creditor. Consequently, Respondent No. 2 was included in the CoC with a voting share of approximately 69.73% despite the classification being contrary to the true nature of the underlying transactions.

i) The Applicant relies upon Sections 5(21) and 5(8) of the Code to assert that the amounts arising from the supply of coal and transportation services fall within the definition of "Operational Debt". The essential ingredients of "Financial Debt", particularly disbursement against consideration for the time value of money, are absent in the present case, placing reliance upon the decisions in ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited*** and ***Pioneer Urban Land and***

Infrastructure Limited v. Union of India and ***Shailesh Sangani v. Joel Cardoso*** *(*NCLAT).

j) Further, the classification of Respondent No. 2 as a Financial Creditor has materially affected the constitution of CoC by conferring upon it a dominant voting share. The proper constitution of the CoC is fundamental to the CIRP and the decisions taken by CoC constituted on the basis of an erroneous classification are liable to be set aside. Ref. ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta***.

k) The issue of classification was brought to the notice of Respondent No. 1 through a representation dated 27.03.2026 and in 11th meeting of CoC held on 31.03.2026. The error was not rectified, thereby necessitating the filing of present Application on 15.04.2026.

3. The Respondent No.1/Resolution Professional has filed his statement of objections on 19.05.2026 contending that: -

a) On commencement of CIRP of the Corporate Debtor on 01.08.2025 a public announcement was published by him on 06.08.2025 inviting claims from the creditors of the Corporate Debtor wherein Respondent No. 2 had lodged its claim in Form C on 14.08.2025 for ***Rs.47,36,21,600*** by classifying itself as a Financial Creditor and in support of its claim furnished various documents, including mortgage deed, two Memorandums of Understanding dated 25.10.2020, the GST registration certificate of the Corporate Debtor, a Board Resolution authorising confirmation of the debt and execution of MoU, balance confirmation, interest reconciliation statement and other supporting documents.. Upon verification of claim and the documents furnished by Respondent No. 2, the Respondent No.1/RP had admitted the claim as a Financial Debt and included it in the CoC with a voting share of 69.73%.

b) The Respondent No.1 acknowledged that the transactions between the Corporate Debtor and Respondent No. 2 originated from the supply of coal from the financial year 2016–17 onwards against purchase orders issued by the Corporate Debtor which was transported ***by M/s. Siva Sai***

Transport, for which separate payments were made as agreed by the Corporate Debtor. As the payments against the supplies remained unpaid and accumulated over time, Respondent No. 2, after discussions with M/s. Siva Sai Transport, merged the relevant accounts and upon reconciliation, the outstanding amount to be paid by the Corporate Debtor to Respondent No.2 was recorded as **Rs.13,27,71,840** as on 25.10.2020.

c) Thereafter, the Corporate Debtor and Respondent No. 2 entered into a MoU dated 25.10.2020 containing a payment schedule and the Managing Director of the Corporate Debtor was authorised to enter into the said MoU's vide Board Resolution dated 20.10.2020.

d) A second charge over the immovable properties of Corporate Debtor was created and registered in favour of Respondent No. 2 on 03.02.2023 and on basis of the same RP considered the arrangement between the Corporate Debtor and Respondent No. 2 to have the characteristics of a commercial borrowing. because, the security reinforced the financial character of the debt, and the Memorandums of Understanding appeared to constitute a novation of the original operational liability.

e) Thereafter, First report certifying the constitution of the CoC which included Respondent No. 2 as a Financial Creditor, was taken on record by this Authority on 22.08.2025 and Form G inviting expressions of interest was initially published on 22.10.2025 but as no resolution plans were received by the stipulated deadline, a fresh invitation was published through Form G on 11.01.2026 and the Suspended Director of the Corporate Debtor, being an MSME, submitted an expression of interest on 27.01.2026, which was rejected by CoC terming him to be a wilful defaulter which issue is separately pending in I.A. No. 150/2026.

f) During the course of CIRP and upon further scrutiny of claims, the RP obtained legal opinion dated 17.03.2026 from ***M/s Shree Law Services*** Respondent No. 2 was an Operational Creditor and not a Financial Creditor, as the underlying transactions originated from the supply of coal and transportation services from the financial year 2016–17 onwards and the mortgage deed merely acknowledged or settled operational dues and

did not convert the same into financial debt. On that basis, a notice was issued to Respondent No. 2 communicating the proposal to reconstitute the CoC by classifying Respondent No. 2 as an Operational Creditor which was objected by them vide communication dated 13.04.2026 and the said issue was also recorded in the minutes of the 11th CoC meeting.

g) The RP denies that he acted improperly because, upon obtaining the legal opinion, he took steps to correct the classification and was in the process of initiating appropriate proceedings for reconstitution of the CoC after providing an opportunity to Respondent No. 2 and he has no objection to reconstitution of the CoC in accordance with law and is willing to file a fresh memorandum/report reflecting the revised constitution.

h) The RP submits that eleven meetings of the CoC have been conducted and all decisions therein were taken unanimously, with requests that, while permitting reconstitution of the CoC and classifying Respondent No. 2 as an Operational Creditor, the decisions taken in the previous CoC meetings may be protected because reopening or nullifying the earlier decisions would result in delay in CIRP, prejudice the interests of other stakeholders, particularly Respondent No. 3 and disrupt the ongoing resolution process.

4. The Applicant has filed the Rejoinder on 20.05.2026 contending as under:

a) The RP has acknowledged that the transactions between the Corporate Debtor and Respondent No. 2 originated from the supply of coal and transportation services against purchase orders, and the dues arose from unpaid invoices relating to coal supplies and transportation charges due to which the debt falls within the definition of Operational Debt under Section 5(21) of the Code and not “Financial Debt” under Section 5(8).

b) The essential ingredients of a Financial Debt are absent in the present case, as there was no loan transaction, financial facility, disbursement of money, borrowing arrangement, lending transaction or consideration for the time value of money which are essential elements for a debt to qualify as

Financial Debt as no money had been disbursed by Respondent No. 2 to the Corporate Debtor in the capacity of a lender or financier.

c) The Memorandums of Understanding, mortgage deed, Board Resolution and registration of charge with the Registrar of Companies or the Ministry of Corporate Affairs do not satisfy the statutory requirements of Section 5(8) of the Code because security may be created in respect of trade dues but the creation of such security does not alter the underlying character of the debt.

d) The RP's subsequent decision to seek reconstitution of CoC, after obtaining the legal opinion dated 17.03.2026, supports Applicant's contention that the original classification of Respondent No. 2 as a Financial Creditor was erroneous and the admission of its claim with a voting share of approximately 69.73% materially affected the constitution of the CoC and enabled Respondent No. 2 to exercise dominant influence over the CIRP.

e) The Applicant therefore opposes RP's submission that the decisions taken in the previous CoC meetings be protected because they were unanimous as such decisions taken by a CoC constituted on erroneous classification cannot automatically be insulated from scrutiny on the ground of convenience or expediency and commercial supply transactions cannot be converted into financial debt through settlement arrangements or security documentation.

f) The classification of Respondent No. 2 as a Financial Creditor is contrary to the provisions of the Code because the relationship between the Corporate Debtor and Respondent No. 2 remained that of purchaser and supplier and not borrower and lender and the decisions taken during CIRP on the basis of the erroneous constitution of the CoC cannot be accepted. The Applicant thus reiterates the prayers made in the Application.

5. Vide order dated 20.04.2026 notice of the application was directed to be issued to the Respondents who were enjoined to file reply/ objections within three weeks of being served. Respondent No.2/PD enterprise and Respondent No.3/Maximus

ARC were served through speed-post on 19.05.2026 but neither appeared to participate in the application proceedings nor filed objections.

6. We have heard the submissions of learned Counsels for the Applicant and the Respondent/RP and have perused the material on record.

7. There is no dispute between the parties represented in this application that the underlying transactions between the Corporate Debtor and Respondent No. 2 originated from the supply of coal and the arrangement of transportation services from the financial year 2016–17 onwards and the supplies were made against purchase orders issued by the Corporate Debtor leaving their outstanding dues from such supplies and transportation at Rs.13,27,71,840.

8. Pursuant to the public announcement dated 06.08.2025, M/s. P.D. Enterprises had submitted a claim for an amount of Rs. 47,36,21,600/- by classifying itself as a Financial Creditor in Form C on 14.08.2025, and furnished two Memorandums of Understanding dated 25.10.2020, a deed of mortgage dated 21.03.2021, GST certificate of the Corporate Debtor, Board Resolution authorising confirmation of the debt and execution of the Memorandums of Understanding, balance confirmation, interest reconciliation statement and authorization documents of the Managing Director. Upon verification thereof RP had admitted the said claim as Financial Debt perceiving the Memorandums of Understanding to have the characteristics of a loan-like arrangement, the outstanding amount carried interest reflecting the time value of money, the transaction indicating the character of commercial borrowing and creation of second charge over the immovable properties of the Corporate Debtor.

9. We have examined the transactions between the Corporate Debtor and M/s. P.D. Enterprises. Undisputedly Respondent No. 2 was engaged in the business of supplying coal and the Corporate Debtor had been procuring coal from it from time to time since FY 2016–17 against various purchase orders and the transportation of coal was arranged by M/s. P.D. Enterprises through M/s. Siva Sai Transport, for which separate payments were agreed to be made by the Corporate Debtor but as the payments against the supplies were not made and the

outstanding amounts accumulated over a period of time. On negotiations, the parties had executed Memorandums of Understanding dated 25.10.2020 containing an acknowledgment and payment schedule of Rs. 13,27,71,840.

10. Section 5(8) of the Code as on 17.04.2026 defines 'Financial Debt' as follows:-

> *S.5(8) "financial debt" means a debt along with 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;*
>
> *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;*

11. It is evident from the material on record that a second charge over the immovable properties of the Corporate Debtor was created vide registered Mortgage deed dated 23.03.2021 recording that the Corporate Debtor owes an amount of Rs. 13,27,71,840. The existence of Memorandums of Understanding, registered charge by way of Deed of Mortgage do not establish that the original transaction was a financial transaction because the essential requirements of Section 5(8) of the Code are that there must be a disbursement against consideration for the time value of money or a transaction falling within the

categories contemplated under the said provision. Existence of an outstanding amount, interest component or repayment arrangement does not dispense with these statutory requirements and the nature of liability must be determined by examining the transaction in the light of the statutory definition of Financial Debt under the Code.

12. In this context, the Hon'ble NCLAT in the case of ***Amrit Kumar Agrawal v. Tempo Appliances Pvt. Ltd., (2020) ibclaw.in 425 NCLAT***, has held that:

> *4. Mere obligation to pay does not bring the liability within the ambit of 'financial debt'. The debt, along with interest, if any, should be disbursed against the consideration for the time value of money. Breach of terms of an agreement including a Settlement Agreement whereunder payment may be due would not fall within the ambit of Section 5(8) so as to constitute a 'Financial Debt'. Admittedly,* inter se *the parties, there is no disbursement against the consideration for the time value of money. Principal borrower is not a party to Settlement Agreement. Viewed in the context of Settlement Agreement, there is no borrowing on the part of Respondent from the Appellant. Mere obligation to pay under a Settlement Agreement would not amount to disbursal of amount for consideration against the time value of money and breach thereof would not entitle the Appellant in the instant case to trigger Corporate Insolvency Resolution Process against the Respondent. ……..*

13. The initial perception of RP that creation and registration of second charge over the immovable properties of the Corporate Debtor on 23.03.2021 had the characteristics of a commercial borrowing and amounted to novation of the original operational liability, was flawed in view of the aforestated legal proposition.

14. Further, a coordinate bench of NCLT Delhi in the case of ***IPK Exports Pvt. Ltd. v. HSB Home Solutions Ltd., (2025) ibclaw.in 1011 NCLT*** has held that

> ***15.*** *This Adjudicating Authority is unable to accept the contention that an Operational Debt can be converted into a Financial Debt by way of a subsequent agreement between the parties. Permitting such a transformation would be contrary to the express intent and scheme of the Insolvency and Bankruptcy Code, 2016, Recognising such arrangements as valid would open the floodgates for misuse and would undermine the fundamental distinction drawn by the Code between Operational Creditors and Financial Creditors, thereby defeating its very object and purpose.*

15. In view of the fact that the character of a debt is determined by the nature of the underlying transaction and the statutory requirements and a subsequent agreement recording or acknowledging the existing liability, providing a repayment schedule

or stipulating interest for delayed payment cannot transform an Operational Debt into a Financial Debt, we hold that the claim of Respondent No. 2 - M/s. P.D. Enterprises having arisen from supply of coal and transportation services to the Corporate Debtor is an 'Operational Debt' within the meaning of Section 5(21) of the Code. As an obvious corollary, the Respondent No. 1 is required to immediately reconstitute the Committee of Creditors by applying the legal principle that once CoC is constituted, the RP has no independent authority to alter the status of a Creditor without the approval of Adjudicating Authority enunciated in ***Byju Raveendran v. Aditya Birla Finance Limited & Ors, (2025) ibclaw.in 610 NCLAT.***

16. As the original petitioner/financial creditor – Maximus, has abstained from these proceedings reflecting that given its stage, the CIRP is not going to be materially affected with change in constituents of CoC, we do not propose to undo its deliberations so far leaving it to reconstituted CoC to have a relook.

17. As a result, **the application is allowed** with the following directions:

I. M/s. P.D. Enterprises is held to be an **Operational Creditor** of Corporate Debtor in the factual matrix of this case.

II. The classification of M/s. P.D. Enterprises as a Financial Creditor and inclusion in the Committee of Creditors with consequential voting share of 69.73% is **set aside.**

III. Resolution Professional shall accordingly reconstitute the Committee of Creditors and submit report within two weeks.

IV. The re-constituted CoC obviously may have a relook at its previous deliberations and take remedial steps, if necessary and remove creases including reduction in the remuneration of RP for the relevant duration.

-Sd/-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd/-

SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)