

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

**Company Appeal (AT) (CH) (Ins) No. 323/2021
(IA Nos. 667, 668 & 669/2021)**

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of the Impugned Order dated 01/11/2021 in IA/694/CHE/2021
in IBA 1099/2019, passed by the ‘Adjudicating Authority’, National
Company Law Tribunal, Chennai Bench)**

In the matter of:

Giriraj Enterprises

1, Modibaug Commercial, Ganeshkhind Road,
Maharashtra

Represented by its CEO

Mr. Prafulla Premchand Khinvasara

Email : prafulla@malpani.com

...Appellant

Versus

1. Regen Powertech Private Limited

Represented by Resolution Professional

Mr. Ebenezar Inbaraj

397, Precision Plaza, No. 23, 3rd Floor,

Teynampet, Annasalai

Chennai – 600 018

Email : ebiadvocate@gmail.com

regenpowercirp@gmail.com

...Respondent No. 1

2. ReGen Infrastructure and Services Private Limited

Represented by Resolution Professional

Ms. Renuka Devi Rangaswamy

“Sivanandam”, 1st Floor, New No. 1

Pulla Avenue, Shenoy Nagar,

Chennai – 600 030

Email : jrassociatescbe@gmail.com

...Respondent No. 2

Present :

For Appellant : P.S. Raman, Sr. Advocate
For Ms. A. Vidya, Advocate
M/s Viruksham Legal
For Respondents : Mr. P.H. Arvindh Pandian, Sr. Advocate
Mr. A.G. Sathyanarayana, Advocate, For R1
Mr. T.K. Bhaskar, Advocate,
Mr. B. Dhanaraj, Advocate, For R2

WITH

Company Appeal (AT) (CH) (Ins) No. 96/2022

(IA Nos. 224, 225 & 226/2022)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**Against the Impugned Order dated 01/11/2021 in MA/91/2021 in
IBA/1099/2019 & MA/92/2021 in IBA/1424/2019, passed by the
'Adjudicating Authority', (National Company Law Tribunal, Division
Bench – II, Chennai)**

In the matter of :

M/s. TVH Energy Resource Private Limited

Represented by its authorized signatory Mrs. K. Radha

No. 21, C.V. Raman Road,

Alwarpet

Chennai 600 018

...Appellant

Versus

1. Mr. Ebenezer Inbaraj,

Resolution Professional of M/s Regen Powertech Private Limited

having its registered office at

No. 397. Precision Plaza, No. 23.

Third Floor, AnnaSalai, Teynampet, Chennai

Email- ebiadvocate@gmail.com

...Respondent No. 1

2. Mrs. Renuka Devi Rangaswamy,

Interim Resolution Professional (IRP)

M/s Regen Infrastructure and Services Pvt. Ltd.

No.9, Arthi Illam, Jothi Nagar, 3rd Street, Upplilipalayam,

Coimbatore – 641 015

Email: jrassociatescbe@gmail.com

...Respondent No. 2

Present :

For Appellant : Mr. Ramaswamy Meyyappan, Advocate
For Respondent : Mr. P.H. Arvindh Pandian, Sr. Advocate
For Mr. A.G. Sathyanarayana, Advocate, for R1
Mr. T.K. Bhaskar, Advocate
Mr. B. Dhanaraj, Advocate for R2

WITH

Company Appeal (AT) (CH) (Ins) No. 334/2021

(IA Nos. 692/2021 & 453/2023)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Against the impugned Order dated 01/11/2021 in IA/720/2021 in
IBA/1424/2019, passed by the ‘Adjudicating Authority’ (National Company
Law Tribunal, Chennai Bench)

In the matter of :

Clean Wind Power (Devgarh) Pvt. Ltd.

201, 1st Floor, Okhla Industrial Estate,

Phase – III,

New Delhi-110020

...Appellant

Versus

1. Regen Infrastructure and Service Private Limited (RISPL)

Represented by its Resolution Professional

Ms. Renuka Devi Rangaswamy

Aarthi House, No-9, Jyothi Nagar, 3rd Street,

Uppilippalayam Post,

Coumbatore – 641 015

...Respondent No. 1

2. Regen Powertech Private Limited(RPPL)

Represented by its Resolution Professional,

Mr. Ebenezer Inbaraj,

No. 397, Precision Plaza,

No.23, 3rd Floor, Anna Salai,

Teynampet, Chennai – 600018

...Respondent No. 2

Present :

For Appellant : Mr. K. Subbu Ranga Bharathi, Advocate
For Respondents : Mr. P.H. Arvindh Pandian, Sr. Advocate, For R2
Mr. A.G. Sathyanarayana, Advocate, For R2

WITH

Company Appeal (AT) (CH) (Ins) No. 335/2021

(IA No. 693/2021)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Against the Impugned Order dated 01/11/2021 in IA/721(CHE)/2021 in IBA/1424/2019, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Chennai Bench)

In the matter of:

Bhilwara Green Energy Ltd.

201, 3RD Floor, Okhla Industrial Estate,

Phase – III,

New Delhi-110020

...Appellant

Versus

1. Regen Infrastructure and Services Private Limited (RISPL)

Represented by its Resolution Professional

Ms. Renuka Devi Rangaswamy

Aarthi House, No-9, Jyothi Nagar, 3rd Street,

Upplippalayam Post,

Coumbatore – 641 015

...Respondent No. 1

2. Regen Powertech Private Limited (RPPL)

Represented by its Resolution Professional,

Mr. Ebenzer Inbaraj,

No. 397, Precision Plaza,

No. 23, 3rd Floor, Anna Salai,

Teynampet, Chennai – 600018.

...Respondent No. 2

Present :

For Appellant : Mr. K. Subbu Ranga Bharathi, Advocate

For Respondent : Mr. P.H. Arvinth Pandian, Sr. Advocate

For Mr. A.G. Sathyanarayana, Advocate, For R2

WITH

Company Appeal (AT) (CH) (Ins) No. 340/2021
(IA Nos. 703 & 704/2021 & 219/2022)
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Against the Impugned Order dated 01/11/2021 in IA/548(CHE)/2021 in
IBA/1424/2019, passed by the ‘Adjudicating Authority’, (National
Company Law Tribunal, Chennai Bench)

In the matter of :

M/s. Regen Infrastructure and Services Pvt. Ltd.,

Rep. by. Ms. Renuka Devi Rangaswamy

Resolution Professional of

M/s Regen Infrastructure and Services Pvt. Ltd.,

No.9, Arthi Illam, 3rd Street, Jothi Nagar,

Uppilipalayam, Coimbatore – 641 015

Tamil Nadu.

Email: jrassociatescbe@gmail.com

...Appellant

Versus

M/s. Regen Powertech Private Ltd.,

Having its Registered Office at Sivanandam, 1st Floor,

New No.1, Pulla Avenue, Shenoy Nagar, Chennai – 6-- -3-

Rep. by its Resolution Professional Mr. Ebenezar Inbaraj

Email: regenpowercirp@gmail.com

...Respondent

Present:

For Appellant : Mr. T.K. Bhaskar, Advocate
Mr. B. Dhanaraj, Advocate

For Respondent : Mr. P.H. Arvindh Pandian, Sr. Advocate
For A.G. Sathyanarayana, Advocate

WITH

Company Appeal (AT) (CH) (Ins) No. 06/2022

(IA Nos. 16, 17 & 218/2022)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**Against the Impugned Order dated 01/11/2022 in IA/548(CHE)/2021 in
IBA/1424/2019, passed by the ‘Adjudicating Authority’, (National
Company Law Tribunal, Chennai Bench)**

In the matter of :

Asset Reconstruction Company (India) Limited,

Having its registered office at:

The Ruby, 10th Floor, 20 Senapati Bapat Marg,

E-MAIL: rajesh.kumar@arcil.co.in

Phone No.: +91 8695056209.

...Appellant

Versus

1. Ms. Renuka Devi Rangaswamy, Resolution Professional of

M/s Regen Infrastructure and Services Private Limited,

No.9, Arthi Illam, 3rd Street, Jothi Nagar,

Uppilipalayam, Coimbatore – 641015, Tamil Nadu.

Phone No.: +91 9443027751.

....Respondent No. 1

2. M/s Regen Powertech Private Limited,

Represented by its Resolution Professional, Mr. Ebenezar Inbaraj,

Sivanandam, 1st Floor, New No. 1,

Pulla Avenue, Shenoy Nagar, Chennai – 600030.

E-MAIL : regenpowercirp@gmail.com

...Respondent No. 2

Present :

For Appellant : Mr. E. Om Prakash, Sr. Advocate
Mr. Chethan Sagar, Advocate

For Respondents : Mr. T.K. Bhaskar, Advocate
Mr. B. Dhanaraj, Advocate, For R1,
Mr. P.H. Arvindh Pandian, Advocate,
For Mr. A.G. Sathyanarayana, Advocate, For R2

WITH

Company Appeal (AT) (CH) (Ins) No. 104/2022

(IA No. 530/2022)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**Arising out of the Impugned Order dated 01/11/2021 in IA/518(CHE)/2021
in IBA/1099/2019, passed by the ‘Adjudicating Authority’, (National
Company Law Tribunal, Division Bench – II, Chennai)**

In the matter of :

Sulochana Cotton Spinning Mills Pvt. Ltd.

424, 426 (Old No. 483, 484), Kamaraj Road,
Tiruppur – 641 604, Tamil Nadu

...Appellant

Versus

1. M/s Regen Powertech Private Ltd.,

Rep. by its Resolution Professional Mr. Ebenezar Inbaraj
Sivanandam, 1st Floor,
New No.1, Pulla Avenue, Shenoy Nagar,
Chennai – 600 030.

....Respondent No. 1

2. M/s Regen Infrastructure and Services Pvt. Ltd.,

Represented by its Resolution Professional
Ms. Renuka Devi Rangaswamy
No.9, Arthi Illam, 3rd Street, Jothi Nagar,
Uppilipalayam, Coimbatore – 641 015 Tamil Nadu.
Email: irassociatescbe@gmail.com

...Respondent No. 2

Present :

For Appellant : Mr. Vidhya Shankar, Advocate
For Ms. Ramani & Shankar, Advocates

For Respondents : Mr. P.H Arvindh Pandian, Sr. Advocate
For A.G. Sathyanarayana, Advocate, For R1
Mr. T.K. Bhaskar, Advocate
Mr. B. Dhanaraj, Advocate, For R2

WITH

Company Appeal (AT) (CH) (Ins) No. 328/2021
(IA Nos. 679/2021 & 181, 190 & 521/2022 & 29/2023)

Arising out of the Impugned Order dated 01/11/2021 in
IA No. 617(CHE)/2021 in IBA/1099/2019, passed by the ‘Adjudicating
Authority’, (National Company Law Tribunal, Division Bench – II,
Chennai)

In the matter of :

Echanda Urja Private Limited,

Having its registered office at 618,
Makers Chambers V, Nariman Point
Mumbai – 400 021.

And also, office at, 4/64/1st Floor, 4th Cross Street,
Chennai – 600 024.

...Appellant

Versus

1. ReGen Powertech Private Limited

Acting through the RP Ebenezar Inbaraj
397, Precision Plaza, No. 23, 3rd Floor,
Teynampet, Anna Salai, Chennai – 600 018.

...Respondent No. 1

2. Committee of Creditors Of

Regen Powertech Private Limited

...Respondent No. 2

3. ReGen Infrastructure and Services Pvt. Ltd.

Acting through the RP Renuka Devi Rangaswamy
“Sivanandam”, 1st Floor, New No. 1,
Pulla Avenue, Shenoy Nagar, Chennai – 600 030.

...Respondent No. 3

4. Committee of Creditors of

ReGen Infrastructure and Services Pvt. Ltd.

...Respondent No. 4

Present :

For Appellant	:	Mr. E. Om Prakash, Sr. Advocate For Mr. N. P. Vijaykumar, Advocate
For Respondents	:	Mr. P.H. Arvinth Pandian, Sr. Advocate Mr. A.G. Sathyanarayana, Advocate, For R1
For Committee of Creditors of RPPL	:	Mr. M.S. Krishnan, Sr. Advocate Mr. Pranava Charan M.G., Advocate Mr. Vipin Warriar, Advocate

WITH

Company Appeal (AT) (CH) (Ins) No. 88/2022

(IA No. 189/2022)

(Filed Under Section 61 of the Insolvency and Bankruptcy Code. 2016)

Arising out of the Impugned Order dated 01/11/2021 in
IA No. 664(CHE)/2021 in IBA/1424/2019, passed by the ‘Adjudicating
Authority’, (National Company Law Tribunal, Division Bench – II,
Chennai)

In the matter of:

GAIL(India) Limited,

SWAN, 323, Kodigehalli Main Road,

Sahakar Nagar,

Bengaluru – 560 092

...Appellant

Versus

1. Regen Powertech Private Limited (RPPL)

Sivanandam, 1st Floor, New No.1,

Pulla Avenue, Shenoy Nagar,

Chennai – 600 030.

...Respondent No. 1

2. Mr. Ebenzer Inbaraj

Resolution Professional,

Regen Powertech Private Limited (RPPL)

No. 397, Precision Plaza,

No. 23, 3rd Floor, Anna Salai,

Teynampet, Chennai – 600018.

...Respondent No. 2

3. Regen Infrastructure and Service Private Limited (RISPL)

Sivanandam, 1st Floor, New No.1,

Pulla Avenue, Shenoy Nagar,

Chennai – 600030.

....Respondent No. 3

4. Ms. Renuka Devi Rangaswamy

Resolution Professional,

Regen Infrastructure and Service Private Limited (RISPL)

Aarthi House, No.-9, Jyothi Nagar, 3rd Street,

Upplippalayam Post,

Coimbatore – 641015.

...Respondent No. 4

Present :

For Appellant : Mr. PVS Giridharan, Sr. Advocate

For M/s Pooja P. & Sheik Mohammed Rafiq A.M.,
Advocates

For Respondents : Mr. P.H. Arvindh Pandian, Sr. Advocate

For Mr. A.G. Sathyanarayana, Advocate, For R1 & R2

Mr. T.K. Bhaskar, Advocate

Mr. B. Dhanaraj, Advocate, For R3 & R4

J U D G M E N T

(Physical Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Challenge in this Company Appeal (AT) (CH) (Ins) No. 323/2021 is to the Impugned Order dated 01/11/2021 passed in IA/694/CHE/2021 in IBA/1099/2019 whereby the ‘Adjudicating Authority’ has dismissed the Application filed by the Appellant / Applicant, seeking consolidation of the ‘Corporate Insolvency Resolution Process’ (CIRP) in relation to both the Companies, namely ‘Regen Powertech Private Limited’ (hereinafter referred to as ‘RPPL’) and ‘Regen Infrastructure and Services Private Limited’ (hereinafter referred to as ‘RISPL’). Company Appeal (AT) (CH) (Ins) No. 328/2021, Company Appeal No. 06/2022, Company Appeal (AT) (Ins) No. 88/2022, Company Appeal (AT) (CH) (Ins) No. 96/2022, Company Appeal (AT) (CH)

(Ins) No. 104/2022, Company Appeal (AT) (CH) (Ins) No. 323/2021, Company Appeal (AT) (CH) (Ins) No. 335/2021 and Company Appeal (AT) (CH) (Ins) No. 340/2021 are all Appeals preferred by the Appellants challenging the impugned order in IA/694/CHE/2021 in IBA/1099/2019 which is a ‘Common Impugned Order’, ‘Rejection’ of the prayer for consolidation of the CIRPs between RISPL and RPPL and hence are being disposed of by this common Order.

2. C.A. (AT) (CH) (Ins) No. 323/2021 is being treated as the lead case. It was averred that the Appellant/Applicant had entered into various supply Agreements for procurement and supply of Wind Turbine Generators with RPPL. Admittedly, RPPL has supplied three wind turbines to the Applicant/ Appellant, pursuant to which delivery, the Appellant had entered into an Agreement for Operation and Maintenance (O & M) of the said wind turbines, with RISPL, on 12/10/2018 for a period of 10 years. The Learned Senior Counsel for the Appellant submitted that at the time of hearing of this Application, the Resolution Plan in respect of RPPL was pending Adjudication before the ‘Adjudicating Authority’.

3. Succinctly put, the factual matrix of the case is that RPPL is the extensive licence holder for production and sale of Vensys Wind Turbines in India having obtained the licence from Vensys AG, the Chairman Company, which is the owner of the design and copyright of Vensys V87-1500 KW Wind Turbine and its components. It is stated that RPPL has its exclusive manufacturing and repair facility at Tada, Andhra Pradesh. The Appellant had purchased Wind Turbine

Generators from RPPL, which is in the business of manufacturing, supply, operation and maintenance of these Turbines. It is stated that RISPL is a wholly owned subsidiary of RPPL with the sole objective of managing the Operation and Maintenance Services of the Wind Turbines, which arrangement was entered into for ease of operation. RPPL was admitted into CIRP on 09/12/2019 and RISPL was admitted into CIRP on 19/02/2020. Subsequently, the Applicant / Appellant had filed their Claim in Form B on 20/12/2019 for an amount of Rs. 25,18,56,602/- with RPPL which was submitted in full by the Resolution Professional (hereinafter referred to as 'the RP'). It was submitted that the Applicant had agreed to take part in the various windfarm projects of RPPL by purchasing the Wind Turbine only because RISPL promised a comprehensive package of supply, erection, commissioning, operation and maintenance of the Wind Turbines for a period of 10 years.

4. It is submitted by the Learned Senior Counsel that RISPL is only an extended arm of RPPL and has no access of its own and that the facilities for Services and repairs are only availed with RPPL and RISPL makes use of the same to fulfil its obligations under various contracts that it has entered into for operation and Maintenance Services. It is submitted that without the support and existence of RPPL, the contract entered into with RISPL for Operation and Maintenance Services would be rendered futile and impossible.

5. The ‘Adjudicating Authority’ has dismissed the Application, IA No. 694/2021, along with the other Applications with the following conclusion:

CONCLUSION:

To sum up, the upshot of the above discussions would lead us to the following conclusion;

(i) All the Applicants, except the Application filed by RP of RISPL (IA/548/CHE/2021), being customers of either RPPL and RISPL have no locus standi to maintain the present Application seeking consolidation or simultaneous CIRP of the Corporate Debtors, since they are neither a ‘Financial Creditor’ nor an ‘Operational Creditor’.

*(ii) Furthermore, on perusal of the Judgment of **Videocon** (supra) and **Radico Khaitan** (supra) and **Oase Asia Pacific** (supra), it emerges that it is a fit case for ordering for consolidation, considering the views expressed by the customers of both the Companies. However, the CoC of RPPL, the suspended Directors of both the Companies or any Operational Creditor have not expressed their support for consolidation. Also, in view of the reasoning stated supra and in the absence of ‘equity’ jurisdiction being vested upon this Tribunal under the provisions of IBC, 2016 and in the absence of specific provisions under IBC, 2016, this Adjudicating Authority is unable to order for consolidation or simultaneous of CIRP of the Corporate Debtors viz. RPPL and RISPL at the fag end of CIRP.*

(iii) When the Resolution Plan in respect of RPPL has been approved by the CoC and also the Resolution Plan in respect of RISPL is in the offing, ordering for simultaneous CIRP at this

stage would amount to gross delay of Corporate Insolvency Resolution Process of both the Companies.

*For the aforesaid reasons, all the Applications are arrayed in the cause title stands **dismissed**. No costs.*

6. The Learned Senior Counsel appearing for the Appellant submitted that the finding of the ‘Adjudicating Authority’ that the Appellant having not ‘rendered’ services to the Corporate Debtor but having received services from the Corporate Debtor and hence, cannot be termed as an ‘Operational Creditor’, is *exfacie* contrary to what is provided for under Section 5(21) of the IBC Code, 2016 wherein, an Operational Debt is defined as a ‘*Claim in respect of the provision of goods or services...*’. It is submitted that the definition is wide enough to include goods or services rendered by both the Operational Creditor and the Corporate Debtor and it does not stipulate anywhere that the goods or services should have been provided only by the Operational Creditor. The Learned Senior Counsel relied on the Judgment of the Hon’ble Supreme Court of India in the matter of ‘**Consolidated Construction Consortium Limited Vs. Hitro Energy Solutions Pvt. Ltd.**’, in Civil Appeal No. 2839/2020 wherein it was held that ‘Debt’ which arises out of advance payment made to a Corporate Debtor for supply of goods and services would be rendered as an ‘Operational Debt’ and thus the Claimant would be an ‘Operational Creditor’ under Section 5(20) of IBC Code, 2016. It is contended by the Learned Senior Counsel that the ratio of this case is applicable

to the facts of the attendant matter and therefore the observation by the ‘Adjudicating Authority’ that the Appellant is not an ‘Operational Creditor’ is incorrect.

7. The Learned Senior Counsel submitted that the ‘Adjudicating Authority’ ought not to have relied on the decision of the Hon’ble Supreme Court in the matter of **‘Pratap Technocrats (P) Ltd. Vs. Monitoring Committee of Reliance Infratel Limited and Anr.’** in **Civil Appeal No. 676/2021** wherein the Hon’ble Apex Court has held that the ‘Adjudicating Authority’ does not have ‘Equity jurisdiction’ for the simple reason that the said Judgment was rendered regarding Section 31 of the IBC with specific preference to approval of the Resolution Plan whereas in the instant case, the fact of the matter is ‘Consolidation of CIRP’ under Section 60(5) of the Code. The ‘Adjudicating Authority’ is empowered with sweeping powers under Section 65 of the Code to adjudicate upon all situations arising out of or in relation to CIRP. The Learned Counsel placed reliance on the Judgment of the English Court in the matter of **‘Scottish Cooperative Society [1959] AC 324’**, in support of his case that it is the obligation of the holding company to take care of the interest of the subsidiary company. It is also submitted that the NCLT, Mumbai Bench, in the matter of **‘State Bank of India vs. Videocon Industries Ltd. & Ors.’** reported in **[(2018) SCC Online NCLT 13182]** and the NCLAT, Delhi Bench in the matter of **‘Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.’** in **Company Appeal (AT) (Ins) No. 919/2020** and

also in the matter of '*Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors*' in *Company Appeal (AT) (Ins) No. 783/2020* have ordered Consolidation of CIRP, but the 'Adjudicating Authority' while referring to these decisions has wrongly concluded that the finding with respect to consolidation was done only in exercising equity jurisdiction, which this Tribunal does not possess. It is vehemently contended that the consolidation / simultaneous CIRP was ordered in the aforementioned cases, not in the exercise of any equity Jurisdiction but to retain the commercial viability and maximisation of value of assets, which is the main objective of the IBC, 2016.

8. The Learned Senior Counsel representing the Resolution Professional of RPPL/ the 1st Respondent submitted that the said Appeals are infructuous as the Resolution Plan was approved, vide Order dated 01/02/2022 and that the Appeals challenging the interim Applications [filed in the IA seeking approval of Resolution Plan], can now challenge the Resolution Plan only. It is submitted by the Learned Senior Counsel that the Appellant who has filed the Application IA No. 694/2021 had chosen to submit the Resolution Plan for RISPL and having chosen not to file any Resolution Plan for RPPL cannot now seek a direction for consolidation of CIRP. As regarding the facts of the case, the Learned Senior Counsel submitted that RPPL is engaged in the business of manufacture and sale of wind energy generators, while post sale repairs and maintenance, these generators were handled by RPPL initially and subsequently were taken by RISPL

since 2014. RISPL is a wholly owned subsidiary of RPPL. The role of RPPL stops with the sale and delivery of the wind energy generators, the role of RISPL commences thereafter. It is submitted that there is no obligation for RISPL to avail services only from RPPL and can avail the same from others if the commercial terms of RPPL are at any stage acceptable to RISPL. It is submitted that as RPPL could not discharge the financial loans, it was placed under CIRP on 09/12/2019 and RISPL, by an independent Order, was placed into CIRP on 19/02/2020. Each of the two Companies were proceeded independently as all the shareholder rights stand suspended with the initiation of CIRP, RPPL has presently no control or role in the affairs of RISPL which is solely managed by the Resolution Professional. The CoC of RPPL is comprised entirely of banks with SBI being the lead bank. The CoC of RISPL is comprised of non-banks with majority share controlled by NBFC, L&T Finance Limited which has assigned the debt to 'Asset Reconstruction Company Limited' (ARCIL). SBI is a minor stakeholder in the CIRP of RISPL.

9. It is submitted by the Learned Senior Counsel that after over 18 months from the time of commencement of CIRP when all that was left in both the CIRPs, was only to finalise the Successful Resolution Applicant (SRA), based on the Proposed Plans, received a slew of Applications filed by persons claiming to be the Creditors / O & M Customers of RISPL. The reliefs sought for by these Applicants was the consolidation of both the CIRPs / CIRPs to be integrated as a

simultaneous CIRP for ease of reference set out in a joint CIRP. It is submitted that the Appellants having missed the post at the initial stage have now sought for joint CIRP contended that the operations of RPPL & RISPL are deeply intertwined and integrated and that only a combined CIRP would maximise the value.

10. It is argued by the Learned Senior Counsel that the proposal for combined CIRP on the ground that combined CIRP was not part of the statutory mandate of the Code; that the persons seeking simultaneous CIRP have no locus to maintain these Applications; that these Applications were not maintainable given the laches of delay as they were filed 18 months after the commencement of the CIRPs; that the Claims of intertwining and integrated are false; that the CoCs of RPPL and RISPL were controlled by different Financial Creditors; that CIRP of RPPL had received viable Resolution Plans and the CoC had voted for the same with 94% majority, if at all, and the CoC comprising of Financial Creditors, exercise their commercial wisdom in approving the Resolution Plan of RPPL and finally that ARCIL, the assignee of L & T Finance Limited which had a majority share of 70.27% in the CoC of RISPL itself had set out that independent CIRP of RISPL should go on unless RPPL CoC consents to simultaneous CIRP.

11. It is submitted that the ‘Adjudicating Authority’ had extensively considered the position in law that the Tribunal could not act beyond the provisions of the Code and has rightly dismissed all the Applications. It is contended that as

independent Resolution Plans have come for both RPPL and RISPL, it shows that both are capable of operating as standalone companies without any need for simultaneous Resolution. The Learned Senior Counsel vehemently opposed to the idea of consolidated CIRP on the ground that none of the Appellants/ Applicants (except for RP of RISPL) have locus in filing these Applications as none of them are part of the CoC of the two Companies, being mere Operational Creditors, mostly of RISPL and they are not competent to decide on how a Resolution should progress and their wisdom cannot override the wisdom of the Financial Creditors of the CoC. The issues of joint CIRP have been dealt with by the ‘Adjudicating Authority’ on merits and not only for reason of ‘Locus’. The ‘Adjudicating Authority’ has rightly observed that it does not have equity jurisdiction and the argument of the Appellants that the ratio in the matter of **‘Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.’** is applicable to the facts of this case, cannot be accepted as in the case of **‘Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.’**, one company was the land owner and the other operating Company was situated on the land of the first Company and the consolidation was passed as the Company was staring at Liquidation, not having received any Resolution Plans, as in these cases, both the Companies have received Resolution Plans on their own strength. Reliance on the case of **‘Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors’** (Supra) is also misplaced as in that case there were no Financial Creditors and the CoC had only Operational

Creditors, whereas the Parent Company CoC was a CoC of Financial Creditors which had sought for consolidation and therefore, the Tribunal had allowed the plea for consolidation and this ratio will not attract in this case as both RPPL & RISPL have CoCs comprising of Financial Creditors. Lastly, it is submitted that the entire effort of the Appellants is only to try and scuttle the Resolution of the CIRP of RPPL and to prevent value maximisation and that the claims of the Appellants are mere hogwash, only raised to delay the process.

12. The Learned Counsel for the Appellant in C.A.(AT) (CH) (Ins) No. 96/2022 representing M/s. TVH Energy Resource Private Limited, submitted that RPPL at the time of its integration is responsible for Manufacturing, Supply, Operation and Maintenance of the Wind Turbines and subsequently set up a wholly owned subsidiary namely, RISPL with the objective of procuring the land needed for Wind Energy Farm, Facilitation, Erection and Commissioning of Wind Energy Farms. An Assignment Agreement dated 09/10/2015 was entered into between the Parties and the Operations and Maintenance activities guaranteed under the Agreement by RPPL was assigned in favour of RISPL. Under Clause 3.7 of the Assignment Agreement, in the event of failure of RISPL to rectify the defects, repairs or non-fulfilment of any of the obligations as a Contractor, RPPL shall be liable to cure such defects. Both RISPL and RPPL failed in their obligations resulting in severe losses to the Appellant which led to failure of 8 out of 10 Wind Energy Converters. As per O & M Agreement, RISPL is under an

obligation to ensure a minimum of 95% of Production capacity and failure to meet these targets, would result in liability to pay liquidated damages. As a result of the failure to abide by the obligations under Contract, the Appellant and other similarly placed entities have suffered continuous losses in production of electricity.

13. The Learned Counsel for the Appellant in this Appeal filed IA 452/2020 and IA 457/2020 seeking a direction from the Respondent to repair the generators of the Appellant and hand over the generators on or before 31/05/2021. The same is also recorded in the daily Order of the ‘Adjudicating Authority’ dated 27/04/2021. Thereafter, it was submitted vide Status Report filed in IA/452/2020 that the pandemic has disrupted the functioning of RPPL and therefore, it was unable to continue as a going concern and requested some amount from the Appellant i.e., Rs. 2.85,00,00,000/- to service three generators and Rs. 4,84,00,00,000/- to service the remaining four generators and an initial advance of Rs. 1,25,39,000/- was also remitted. Additionally, further amounts were also paid. It is submitted by the Learned Counsel that an Application was moved by them seeking Consolidation of CIRP of both the Respondents which was dismissed by the ‘Adjudicating Authority’ vide the Impugned Order.

14. The Learned Counsel for M/s TVH Energy Resources Private Limited vehemently argued that the reasoning given by the ‘Adjudicating Authority’ that the Applicant is not an ‘Operational Creditor’ is erroneous as the ‘Adjudicating

Authority’ had not taken into consideration that almost all of them had an ‘Operational Claim’ against RISPL for failure to adhere to the O&M Agreement and moreover there was a performance guarantee given by M/s RPPL and therefore, they had a right of action against RPPL as well. The Locus under Section 60(5) has not been circumscribed in any manner to be limited to only Creditors. The wide residuary powers given under Section 60(5) has been dealt with in detail by the Hon’ble Supreme Court in ‘*Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & Ors.*’ reported in [(2021) 7 SCC 209] at para 87. The observations of the ‘Adjudicating Authority’ that it cannot order ‘Consolidation’ as it did not have equity jurisdiction, is equally erroneous as it was given without relying upon the decisions of the co-ordinate benches of the NCLT and pending decisions of NCLAT and the Hon’ble Supreme Court. Further Para 3.3.1 of the Report of the Working Group on Group Insolvency expressed the view that there need not be a separate statutory framework to Order Consolidation. The NCLAT has ordered for consolidation in ‘*Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.*’ (Supra) whereunder an ‘Operational Creditor’ had moved an Application for consolidation in respect of BT & FC Private Limited and though it was opposed by the Financial Creditors and the CoC, the NCLAT at the behest of an ‘Operational Creditor’ overruled the objections of the Financial Creditors and had ordered for consolidation of equitable grounds. Therefore, the Impugned Order is directly at the teeth of the Judgment of the NCLAT in ‘*Radico Khaitan Ltd. vs.*

BT & FC Pvt. Ltd. & 6 Ors.’ (Supra). It is also submitted that the Hon’ble Supreme Court and NCLAT in different cases, set the clock back and permitted the CIRP Process to be conducted in a different manner. It is also submitted that the Resolution Professional sought for approval of the Resolution Plan in a haste, ignoring the mediation process. RPPL has absolved all the assets of RISPL and this is a brazen act of fraud and misrepresentation and therefore, the Impugned Order ought to be set aside.

15. The Learned Counsel appearing for the Appellant in C.A. (AT) (Ins) No. 334/2021 appearing for Clean Wind Power (Devgarh) Private Limited submitted that the ‘Adjudicating Authority’ ought to have ordered for Consolidation on the basis of the Judgments passed in the matter of ‘***State Bank of India vs. Videocon Industries Ltd. & Ors.***’ (Supra), ‘***Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.***’ (Supra), and in the matter of ‘***Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors***’ (Supra) but instead in clear violation of judicial hierarchy, has dismissed the Applications. It is submitted that vide Award dated 02/04/2019, the Appellant was awarded a recovery of a sum of Rs. 12,10,55,648/- from RISPL, together with interest at 15 % p.a. and is thus clearly an ‘Operational Creditor’. The Appellant has also made a Claim on the basis of this Award and Section 3(10) of the Code provides for a ‘Decree Holder’ to file a Claim and therefore, the observation of the ‘Adjudicating Authority’ that the Appellant is not an ‘Operational Creditor’ is erroneous. It is

also submitted that RPPL vide its letter dated 09/07/2014 issued to the Appellant and that entities stated that RPPL is transferring the O&M Services to its wholly owned subsidiary-RISPL and therefore, post facto assignment of these services, the existing employees and management of RPPL continued to be in-charge and responsible for providing O&M Services. It is vehemently argued that the directors of RPPL and RISPL being the same persons that is Mr. Sundaresh Ramanathan and Mr. Madhusudan Khemka, the signatories also being the same persons and the bank accounts also being handled by these very same persons, both the Companies are integrated into each other. RPPL has pledged 51 % equity shares of RISPL for a charge amount of Rs. 3,75,00,00,000/- and this is clearly visible from the Company Master Data available on the portal of Ministry of Corporate Affairs which shows inter-looping of debts and co-existence for survival between the two Companies. Therefore, the ‘Adjudicating Authority’ ought to have ordered consolidation instead of dismissing the Applications.

16. The Learned Counsel appearing for the Appellant / M/s Bhilwara Green Energy Ltd. in Company Appeal (AT) (CH) (Ins) No. 335/2021, while reiterating the statements made by the Appellants in the other Appeals further submitted that the Appellant had on 04/03/2020 submitted its Claim amounting to Rs. 21,26,95,018/- against RISPL as an Operational Creditor under Form -B before the Resolution Professional of RISPL; who has expected the Claim for Rs. 2,24,06,622/- and an Application was also filed before the ‘Adjudicating

Authority’ against the arbitrary reduction of the Claim amounts which is pending Adjudication and therefore, it cannot be said that the Appellant herein is not an Operational Creditor of RISPL. It is settled Law that the NCLT can *suo moto* direct consolidation on insolvency proceedings if the said Companies fall within the parameters as propounded by NCLAT in ‘*Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.*’ (Supra).

17. The Resolution Professional of RISPL preferred Company Appeal (AT) (CH) (Ins) No. 340/2021, supporting the case of the Appellant regarding Consolidation of CIRP of RPPL and RISPL. It is submitted by the Learned Senior Counsel that vide Order dated 19/02/2021, the Adjudicating Authority highlighted the need for a joint Meeting and by Order dated 05/04/2021 a need was expressed for an external observer of these proceedings and therefore, the retired High Court Judge was appointed. On 23/04/2021, the Mediator submitted his Report and made certain suggestions for value addition. In the meantime, NCLT noted that the RP of RPPL has surreptitiously carried out meetings and had its own Resolution Plan approved. The Tribunal castigated this conduct and while at the same time allowed RPPL to take advantage of its conduct reaching a stage where it would be impossible for coordination. The BTA dated 21/02/2019 by virtue of which, erection and commissioning business was transferred to ROMSL has been challenged as a fraudulent and a preferential Transaction before the NCLT in IA No. 1056/2020 in IBA No. 1424/2019. RISPL has got rights of Operation and

Maintenance for the Wind Energy Generators by virtue of execution of the BTA dated 05/03/2014 for a consideration of Rs. 310,00,00,000/-. A common suspended Directors of RPPL, RISPL and ROMSL transferred the businesses and gross assets worth of Rs. 251,00,00,000/- through ROMSL and liabilities of RPPL were nullified in the Resolution Plan. Initiation of CIRP of RISPL is fraudulent for reason that no amount is payable to the Creditor who initiated since the amount has already gone into the account of ROMSL, pursuant to the execution to the BTA in 2019. There is no record to show whether the amounts given to RISPL for providing services to various customers in the year 2019-20, have gone. The account statements post March 2017 have not been filed by RPPL till date which is in violation of Section 134, 137 of Companies Act, read with Rule 12 of Companies (Account) Rules, 2014.

18. The Learned Senior Counsel also submitted that O& M Equipment is in possession of RISPL, though actually owned by RPPL. Despite the O&M Agreement, RPPL continues to have obligation towards the customers of RISPL. RISPL received huge sums on liquidation damages every year solely because RPPL has not refurbished failed Wind Energy Generators on time. The NCLT in its Order dated 19/02/2021 categorically observed that the nature of work and difficulties faced by both the Parties are interlinked. NCLT has power to adjudicate and decide the consolidation of two CIRPs simultaneously under Section 60 (2) and 60 (5) of the Code, read with Rule 11 of the NCLT Rules,

2016. The NCLT has inherent power to pass such Orders which are necessary for cause of Justice or to prevent abuse of process. It was the Tribunal which framed the issue of consolidation with respect to equity jurisdiction. There was no such bidding made by any of the parties. In the instant case, it is not Group Insolvency which is being proposed but simultaneous CIRP with the objective of having both Companies as running concerns filing which it would lead to death of RISPL which is contrary to the scheme and purpose of the Code. The Learned Senior Counsel in support of his contentions has placed reliance on Para 8 in the matter of '*Union of India Vs. Paras Laminates (P) Limited*' reported in [(1990) 4 SCC 453] r/w Para 32 in the matter of '*Haryana Suraj Malting Limited Vs. Phool Chand*' reported in [(2018) 6 SCC 567] wherein it was held that "*legislature has intended and has conceded certain incidental and ancillary powers to the tribunal in their field of jurisdiction for efficacious and meaningful exercise of their power.*"

19. The Learned Senior Counsel appearing for the Appellant / Asset Reconstruction Company (India) Limited in Company Appeal (AT) (CH) (Ins) No. 06/2022 submitted that the Appellant is a Financial Creditor of RISPL and RPPL and holds charge on the movable and immovable assets of both the Corporate Debtors and is aggrieved by the Impugned Order. The Appellant had executed an Assignment Agreement dated 12/03/2021 that M/s L & T Finance Limited whereby it has been assigned the loans disbursed by L&T Finance

Limited to RISPL amounting to Rs. 2,95,00,00,000/-, vide Sanction letter dated 25/03/2017 against the specific securities including the Pledge of share of RPPL in RISPL. The said facility is also secured by way of Corporate Guarantee dated 05/06/2017 executed by RPPL. The Appellant was clandestinely kept out of the CIRP of RPPL by not considering its Claims as a Financial Creditor. The Original Lender filed a proof of Claims before the Resolution Professional of both the Respondents being the borrower and guarantor and both the Claims were accepted by the respective Resolution Professionals. The Original Lender / Assignor of Appellant was a member of CoC in both the Corporate Debtors. The Original Lender on the advise that a Financial Creditor cannot proceed against the Corporate Guarantor and the Principal Debtor simultaneously withdrew its Claim from the CIRP of RPPL, vide email dated 02/03/2020 with liberty to file it afresh at a later stage and accordingly the CoC of RPPL was reconstituted and informed, vide email dated 11/03/2020. The Appellant challenged the rejection of its Claim before the 'Adjudicating Authority', vide M.A. No. 61 of 2021, seeking directions to the 2nd Respondent for admitting its Claim, and the 'Adjudicating Authority', vide Order dated 05/05/2021 directed the 2nd Respondent to accept the resubmission of the Appellant's Claim and decide it on merits. Due to the delay caused by the 2nd Respondent, the Appellant was left with no other option, but to file two Applications before the 'Adjudicating Authority', vide IA No. 350 of

2021 seeking stay of Meetings of CoC of RPPL and IA No. 737/2021 seeking stay of the approval of the Resolution Plan by RPPL CoC.

20. It is submitted that the ‘Adjudicating Authority’ has failed to appreciate that there is an interconnected and interwoven nexus between the control, business, operation and Financials of both the Corporate Debtors and Resolution could be achieved in a more amicable way if the Impugned Application is allowed. The ‘Adjudicating Authority’ failed to appreciate that the object of the Code is the Resolution and Rehabilitation of the Companies which turn Corporate Debtors into going concerns as opposed to the Liquidation of the assets and in this context, the Impugned Order may be a death knell to one of the group Companies. The Appellant in its capacity of Financial Creditor in the RISPL CoC has supported simultaneous CIRP of both the Companies, in case, the ‘Adjudicating Authority’ had adjudicated the aforesaid Applications filed by the Appellant prior to passing of the Impugned Order, the Appellant’s voting share in RPPL CoC would be around 15.04 % and it could have otherwise positively influenced the decision of RPPL CoC for the betterment of both the Corporate Debtors and other stakeholders. The ‘Adjudicating Authority’ has erred in passing the Impugned Order without considering the Applications bearing numbers M.A. No. 61 of 2021 and IA No. 350 of 2021. The ‘Adjudicating Authority’ has failed to appreciate that the IBBI’s Working Group on Group Insolvency recommends a comprehensive framework for insolvency at any stage of the Insolvency

Resolution Process. The Learned Senior Counsel placed reliance on the Judgment of the NCLAT in the matter of '*Edelweiss Asset Reconstruction Company Limited Vs. Sachet Infrastructure Pvt. Ltd.*' in *Company Appeal (AT) (Insolvency) No. 377/2019*, wherein this Tribunal allowed simultaneous CIRP of the Holding Companies and its five statutory Companies under a common Resolution Professional due to commonalities established therein, which directly applies to facts of the present case.

21. The Learned Counsel appearing for the Appellant / M/s Sulochana Cotton Spinning Mills Pvt. Ltd. in Company Appeal (AT) (CH) (Ins) No. 104/2022, while reiterating the submissions made by the other Appellants submitted that the CoC of RISPL was also of the opinion that consolidation of CIRP Process of RPPL and RISPL would result in maximisation of value and preferred IA/548/CHE/2021 seeking simultaneous CIRP. It is submitted that the Appellant is the owner of fifteen Wind Mills supplied by RPPL and ever since the purchase, the O&M Services are provided by RISPL, wholly owned subsidiary of RPPL. It is also stated that the Appellant had submitted a Resolution Plan in respect of RISPL and the same is pending consideration before CoC. The Appellant became interested in submitting a consolidated Resolution Plan, combining both RPPL and RISPL preferred Applications IA/517/(CHE)/2021 and IA/518/(CHE)/2021 seeking consolidation of the CIRP Process. The Appellant herein is both a prospective Resolution Applicant as well as an Operational

Creditor and is willing to submit a consolidated Resolution Plan. But for the pandemic situation when the EOI last date was 15/06/2020, the Appellant would have submitted a Resolution Plan for RPPL as well.

22. It is submitted by the Learned Counsel for the Appellant in C.A.(AT) (CH) (Ins) No. 104/2022 that from a long term perspective, having an integrated enterprise, would hold any maximisation of value of the assets and have capacity building. RISPL has a large number of existing O&M Contracts and if the same is sourced from third Parties, it would lead to value depletion of RISPL's assets. The entire Equity Capital of RISPL is owned by RPPL and therefore, RPPL is an investor in RISPL and a stakeholder. There is a common control, common Directors, common assets interlacing and interdependence between the business of the two companies and therefore, consolidation of the CIRPs is the only solution for value addition. It is also submitted that though the CoC of RISPL considered the prospect of simultaneous CIRP, the CoC of RPPL is proceeding with the Resolution Plan and has made no effort towards consolidation. The finding of the 'Adjudicating Authority' that the Appellant had no locus is erroneous as the Appellant is not only an Operational Creditor but also a prospective Resolution Applicant who was willing to submit a 'Consolidated bid'. Despite undertaking given by the Appellant that it would submit a consolidated bid, the 'Adjudicating Authority' has erroneously recorded that there was no such Application for a consolidated Plan.

23. The Learned Senior Counsel for the Appellant in C.A. (AT) (CH) (Ins) No. 328/2021 representing Echanda Urja Private Limited, submitted that RPPL was incorporated on 27/12/2006 and RISPL on 04/11/2008, having common Directors and having interconnected businesses, became a holding and subsidiary Company respectively. RISPL is an extended arm of RPPL created for Operational convenience and for receiving funds. RPPL alone has the technology, manufacturing plan, the men, material and resources for effective functioning of the business and RISPL is dependent on RPPL for repair, services of generators and also for funds and therefore, they are both cojoined twins and cannot be separated. It is submitted that this position has been admitted by the ‘Adjudicating Authority’ in their Orders dated 19/02/2021, 05/04/2021 and 27/04/2021.

24. As regarding the issue of *locus standi*, the Learned Senior Counsel for Echanda Urja Private Limited, submitted that RPPL supplied the generators to them during CIRP and the Appellant is the recipient of services for both RPPL and RISPL and is an Operational Creditor. The Learned Counsel placed reliance on the Hon’ble Apex Court in the matter of ‘**Consolidated Construction Consortium Limited Vs. Hitro Energy Solutions Pvt. Ltd.**’ (Supra) wherein it was held that an Operational Creditor may have been a receiver of goods or services from the Corporate Debtor. The Appellant has a Claim as against RPPL which is pending Adjudication in MA/918/2020 since September 2020 and this Application was filed much before the issue of consolidation or Resolution Plan

was even considered by the CoC of RPPL. It is also submitted that for filing an Application of Consolidation, which is an issue of law, no such requirement is contemplated under Section 60(5) of the Code. When RPPL and RISPL are one and the same as a single economic unit and the ‘Adjudicating Authority’ does not recognise the true intent behind the true existence of RISPL and RPPL, the Appellant and other entities would put to loss. The Appellant being a 100 MW installed capacity of wind energy is an important stakeholder in the process of CIRP of both RPPL and RISPL. The ‘Adjudicating Authority’ had created an artificial bar to file Application for consolidation, which does not exist in law. The share of consolidation of CIRP has nothing to do with equity jurisdiction, but a legal principle. Consolidation is a consequence of piercing the Corporate Veil between Holding and Subsidiary Company and there is no equity jurisdiction in ordering the same. The Hon’ble Supreme Court of India in the matter ‘***Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta***’ reported in [(2019) 2 SCC 1] held that ‘*whether a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations imposed by the law, the Court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole.*’

25. It is submitted by the Learned Senior Counsel that there is no necessity that CoC should approach the ‘Adjudicating Authority’ for consolidation of CIRP, as it is a judicial determination and not based on the commercial wisdom of CoC.

26. The Learned Senior Counsel addressing to the issue of the CIRP Company at an advanced stage and therefore, consolidation of CIRP would amount to starting the process de novo, submitted that it was the pandemic which had delayed the filing of any Application and further the Appellants were not privy, to any of the processes being followed by RP of RPPL or RP of RISPL as observed by the ‘Adjudicating Authority’ in its Order dated 27/04/2021. The entire process of approval of Resolution Plan by RP of RPPL were hastened after the Order dated 19/02/2021 was passed. It is seen from the minutes of Meeting of the CoC of RPPL dated 05/03/2021 and 06/03/2021 that the CoC of RPPL had never considered the issue of consolidation despite the Order dated 19/02/2021 and did not provide any details regarding the said consolidation. It is submitted that the issue of delay cannot be looked myopically, but must take into account the following factors:

- a) RPPL and RISPL are Single economic unit;*
- b) Consolidation would result in maximising value of Corporate debtor;*
- c) Public interest involved as 2000 MW wind industry is based on Vensys model of generators which can be serviced by combined entity and technology is only with RPPL;*
- d) Usage of independent CIRP of RPPL and RISPL to hide the single economic unit existence;*

- e) Combined Value and its benefits for industry and stakeholders*
- f) Report of Retired Judge;*
- g) Consolidation required in view of MNRE regulations as manufacturer has to provide O&M services;*
- h) Conduct of RP of RPPL despite orders of 'Adjudicating Authority' in rushing to approve the Plan by CoC.*

27. The Learned Senior Counsel appearing for GAIL (India) Limited

submitted that the Appellant had entered into a Contract for supply, erection and commissioning of Wind Turbine Generators, arrangement of land for setting up of Commercial Wind Energy project and comprehensive O&M for 10 years, vide Letter of Acceptance, vide 19/09/2011, with RPPL for seventeen WEGs at Periyapatti, Tamilnadu. It is submitted that after commissioning the project on 09/07/2014, RPPL by their letter requested GAIL to transfer the Operation and Maintenance part of the Contract dated 19/09/2011 to their Wholly Owned Subsidiary, M/s. RISPL as the Operations and Maintenance business of RPPL was been transferred to the Subsidiary Company. The Operations and Maintenance Contract is valid upto March 2022. After consideration of the request of the Respondent / Corporate Debtor, GAIL accepted the request subject to the following conditions:-

- a) Assignor to provide indemnity to GAIL for acts and services of its Wholly Owned Subsidiary, i.e. Assignee.

- b) An Undertaking from the Assignor that their existing Management and expertise will continue to offer the Operations and Maintenance Services and the point of contact shall continue to be the same.
- c) Execution of a Tripartite Agreement.

28. It is submitted that they are single entity by ownership, corporate control, functionally and operationally and that the doctrines of substantial Consolidation and piercing of Corporate Veil need to be applied. It is contended by the Learned Senior Counsel that the Corporate Veil needs to be pierced to protect the Public Interest and Financial Statements have not been filed with the RoC under Section 137 of the Act by the RP of RPPL for the last three years. It is submitted that there is an element of fraud in the transaction which has not been addressed to by the 'Adjudicating Authority'. It is submitted that as per the extract of Dividends Trust Deed dated 26/05/2017 (particularly Clause 17.4) among RPPL, RISPL, Mr. Madhusudan Khemka & Mr. Sundaresh (Promoters) and IDBI Trusteeship Services, RPPL undertook to provide ancillary services and supply spareparts and assistance in procurement of spare parts in relation to the O&M business and undertook to bare all costs and expenses for warranty repairs, maintain insurance for MBD repair until final settlement date, and maintain adequate inventory of components of Wind Turbine to be in full compliance with requirements under O&M Agreements. As such, it is clear that RPPL is liable for the O&M Contract and the Promoters are also personally liable. Hence, RPPL and RISPL are

conjoined in their liabilities. These and connected issues can be effectively and comprehensively adjudicated upon only if the Resolution process of the two entities are consolidated in Joint Proceedings in order to maximise the value of the assets of the Corporate Debtors and balance the interests of all Stakeholders. In any case, any entity of person to whom RPPL is transferred as part of a Resolution Plan, would need the expertise and resources of RISPL; the vendors and customers are also common.

29. It is also learnt that the RP of RPPL has filed an Application for avoidance of certain payments to RISPL under Section 45 of the IBC, 2016 which could further drain the resources of RISPL and its ability to pay Claims of its Creditors, particularly Operational Creditors like the Applicant herein, who is a Public Sector Undertaking, dealing in Public Funds. It is also learnt that the RP of RISPL has filed an Application to declare certain transactions as fraudulent under Section 66 of the IBC, 2016. If the proceedings are not consolidated into a Joint Resolution Process, the Stakeholders, particularly, Operational Creditors, like the Applicant (who have little control over the Resolution Process, since the CoCs are entirely comprised of Financial Creditors), would serve grave prejudice. Thus, it would also be in public interest to have Joint Proceedings.

30. The CoC of RPPL in Company Appeal (AT) (CH) (Ins) No. 328/2021 submitted that the Appellants have no locus standi to maintain the Application seeking Consolidation of Simultaneous CIRP; that in the absence of Equity

Jurisdiction, the ‘Adjudicating Authority’ could not have ordered for Consolidation of CIRP; that the Resolution Plan in respect of the Corporate Debtor has been approved on 01/02/2022; that RPPL and RISPL are distinct Legal Entities; that RISPL is a Wholly Owned Subsidiary with its distinct set of businesses and is distinct from the Holding Company; the affairs of the Subsidiary Company cannot include the affairs of the Parent Company; lifting of Corporate Veil is not permissible beyond the essential requirement of the Statute; that the provisions of the Code does not recognise the concept of ‘Substantiative Consolidation’ nor permits the ‘Adjudicating Authority’ to employ any Equitable measures in CIRP; the Working Group on Group Insolvency had consolidated various Stakeholders and observed that the comprehensive framework for Group Insolvency could include procedural co-ordination, substantive Consolidation, rules against perverse behaviour and in more detail stated regarding whether this framework should be implemented legislatively, may need to be done; extensive capacity building of Insolvency Professionals and Creditors is required to implement this Group Insolvency; that what is expressly part by a statute cannot be allowed by this Tribunal; that the ‘Adjudicating Authority’ cannot be legislated on a subject not contemplated by the legislature and placed reliance on the following Judgments in support of these Submissions.

1. ‘Pratap Technocrats (P) Ltd. Vs. Monitoring Committee of Reliance Infratel Ltd.’ reported in [(2021) SCC OnLine SC 569]

2. ***‘Arunkumar Jagatramka Vs. Jindal Steel and Power Ltd.’*** reported in [(2021) 7 SCC 474]

3. ***‘K. Sashidhar Vs. Indian Overseas Bank’*** reported in [(2019) 12 SCC 150]

4. ***‘Kalparaj Dharamshi Vs. Kotak Investments Advisors Ltd. & Anr.’*** reported in 2021 (10 SCC 401)

5. ***‘Vallal RCK Vs. Siva Industries and Holdings Limited’*** reported in [(2022) SCC OnLine SC 717]

31. The Learned Counsel placed reliance on the Judgment of Hon’ble Apex Court in ***‘Pratap Technocrats (P) Ltd. Vs. Monitoring Committee of Reliance Infratel Ltd.’*** reported in [(2021) SCC OnLine SC 569] , in which the Hon’ble Apex Court has observed as follows:

“22. The resolution plan was approved by the CoC, in compliance with the provisions of the IBC. The jurisdiction of the Adjudicating Authority under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2). The NCLT is within its jurisdiction in approving a resolution plan which accords with the IBC. There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC.

...

Hence, once the requirements of the IBC have been fulfilled, the Adjudicating Authority and the Appellate Authority are duty bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the Adjudicating Authority nor the Appellate Authority have an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.”

...
“In the present case, the resolution plan has been duly approved by a requisite majority of the CoC in conformity with Section 30(4). Whether or not some of the financial creditors were required to be excluded from the CoC is of no consequence once the plan is approved by a 100% voting share of the CoC. The jurisdiction of the Adjudicating Authority was confined by the provisions of Section 31(1) to determining whether the requirements of Section 30(2) have been fulfilled in the plan as approved by the CoC. As such, once the requirements of the statute have been duly fulfilled, the decisions of the Adjudicating Authority and the Appellate Authority are in conformity with law.”

32. The Learned Counsel in support of his submissions that jurisdiction of the ‘Adjudicating Authority’ is limited to the scheme of the Code and placed reliance on the Judgment of the Hon’ble Apex Court in **‘Arunkumar Jagatramka Vs. Jindal Steel and Power Ltd.’** reported in [(2021) 7 SCC 474] which observed as follows:-

“95. At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of Nclat in *Y. Shivram Prasad* [*Y. Shivram Prasad v. S. Dhanapal*, 2019SCCOnLine NCLAT 172]. Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for NCLT and Nclat, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime

in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and Nclat should be kept at its bare minimum and should not disturb the foundational principles of the IBC. ... This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

*An adjudicating authority ensures adherence to the process At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the PART F adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating **authority will adjudicate on fraud, particularly during the process resolving bankruptcy.** Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator. Once again, we must clarify that our observations here are not on the merits of the issue, which has not been challenged before us, but only limited to serve as guiding principles to the benches of NCLT and NCLAT adjudicating disputes under the IBC, going forward.”*

33. With respect to the aspect of Commercial Wisdom of the CoC, the Learned Senior Counsel placed reliance on the Judgment of the Apex Court in

‘K. Sashidhar Vs. Indian Overseas Bank’ reported in [(2019) 12 SCC 150] where it was laid down that unless there is a violation of Section 30(2) of the Code, the Commercial Wisdom of the CoC is not justiciable.

34. The Learned Senior Counsel Mr. M.S. Krishnan vehemently argued that the essential prerequisite to examine the need for Consolidation is the of not possible and that directing the Consolidation would be against the Commercial Wisdom of the CoC.

35. A Common Counter was filed by the Resolution Professional of RISPL in all these Appeals. It is submitted by the Learned Senior Counsel appearing for the RP of RISPL / the 2nd Respondent that there are no dues payable in the Books of Accounts of RISPL, but the common suspended Directors of RISPL and RPPL agreed that there was a default in payment and did not oppose for the initiation of CIRP against RISPL. Hence, the initiation of separate CIRP for RISPL is itself a fraudulent act on behalf of the common suspended Directors to defraud the Creditors and Customers. This fact was brought to the notice of the ‘Adjudicating Authority’ in IA/1056/2020 in IBA/1424/2019 filed and pending Adjudication. It is submitted that RISPL is 100 % wholly owned subsidiary Company of RPPL.

36. It is submitted by the Learned Senior Counsel that RISPL and RPPL entered into an ‘Memorandum of Understanding’ (MOU) dated 31/01/2014 followed by the execution of the ‘Business Transfer Agreement’ (BTA) on

05/03/2014 towards transfer of the business of ‘Operation and Maintenance’ of Wind Energy Generators, Wind Power Projects and Power Evacuation Facilities for Customers, Utility Boards for own Projects for an agreed consideration of Rs. 310,00,00,000/-, settled by issue and allotment of equity shares equivalent to the Purchase Price, by RISPL to RPPL. The Consideration for BTA was sourced from the issue of Debentures initially to Piramal Enterprises Ltd., and then by issuing Additional Debentures to L & T Finance Ltd. and L & T Infra Investment Partners by RISPL as executed vide ‘Debenture Trust Deed’, dated 20/08/2015 and ‘Amended and Restated Debenture Trust Deed’(ADTD), dated 26/05/2017. For the BTA to come into effect, NOCs from customers of RPPL were duly sought in order to assign the Contracts of Operation and Maintenance to RISPL which were originally executed by RPPL. Consequently, a Tripartite Assignment Agreement was executed between RPPL, RISPL and their respective customers on the basis of the Operation and Maintenance Contract originally entered by RPPL.

37. It is submitted that RPPL has manufactured and supplied 1557 Wind Energy Generators to various customers and all the infrastructure and Intellectual Property Rights (IPR) to manufacture these Generators are owned by RPPL and in case of any failure or machinery breakdown, the Generators shall have to be refurbished in the factory of RPPL located at Tada, Andhra Pradesh and then returned to the site of the customers in working condition. All the costs of

Refurbishment were borne solely by the RPPL under the BTA dated 05/03/2014 and ADTD dated 18/03/2016 as it was RPPL who manufactured and sold the defective Generators. Matters in relation to manufacturing defects come under the purview of 'Operation and Maintenance Services' and therefore, RISPL would not be able to make payments to the same. It is also submitted that the Insurance Cover against risk of any Machinery break-down due to manufacturing defects has been taken by RPPL from FY 2013-14 to FY 2018-19 and any Claim on account of machinery breakdown was attributable to RPPL and was not the obligation of RISPL.

38. It is submitted that RPPL undertook to perform the obligation of RISPL under the O & M Agreement in the event of any failure of RISPL. Likewise, the ADTD dated 26/05/2017, between RISPL, RPPL, Mr. Madhusudan Khemka and Mr. R. Sundaresh (Promoters) and IDBI Trusteeship Services, which is the Debenture Trustee, contains the Clause on Sponsor Support Undertakings, wherein the RPPL undertook to supply spares, provided ancillary services continued to make available the technological requirements apart from bearing the cost and responsibility of any major breakdown due to manufacturing defects during the O & M Period. It was only on account of the manufacturing defects and default of RPPL, that RISPL received a spree of Notices followed by a series of Litigations initiated by various customers Pre-Covid and during the Covid lockdown, arraying RISPL as the Respondent along with RPPL.

39. The Learned Counsel brought to our notice that the EOI in Form -G issued by RPPL, the 2nd Respondent was called for on 12/03/2020 and the last day of submission was 15/06/2020. During this period there was complete National Lockdown and therefore, minor relaxations were provided and the effective days of EOI was kept open for 13 days only. It is submitted that the EOI did not follow Regulation 36 A of the Code and this act restrained the prospective bidders to participate in the EOI of RPPL and therefore, after quick completion of EOI Process, the Resolution Plan was passed after 10 months on 23/04/2021. RISPL published Form -G EOI through nationwide newspaper publication, on 15/10/2020 and closed the window on 14/11/2020. Four Resolution Applicants namely, a) ReNew Services (P) Ltd., Delhi, b) Sulochana Cotton Spinning Mills (P) Ltd., Tirupur, c) Giriraj Enterprises, Sangamanar and d) KKV Agro Powers Limited, Coimbatore, these Plans were circulated to the CoC Members as recorded in the 7th CoC Minutes dated 26/04/2021 and are now kept in abeyance.

40. It is contended by the Learned Senior Counsel that there is one '*common Resolution Applicant*' for both the Corporate Debtors i.e., RISPL and RPPL namely ReNew Services Private Limited, Delhi which is the Successful bidder for RPPL, the Holding Company and has given the lowest quote for RISPL and many conditions in their Resolution Plan are detrimental to the interest of RISPL and its Customers. It is submitted that the RP of RISPL faced huge difficulties in finding the physical assets of the RISPL. The suspended Directors, RP of RPPL in

connivance together restricted access to the documents. Therefore, the RP of RISPL also filed an Application under Section 19(2) of the Code in IA 1041/2020 in IBA/1424/2019 against the RP of RPPL and the Suspended common Directors and this Application is pending before the NCLT, Chennai for Adjudication. Some of the assets of the RISPL was in control and possession of RPPL and access to these assets are also denied to this Resolution Professional. Further, assets connected to the O & M Agreement, especially the IPR are totally denied and the 1st Respondent was incapable of doing its core business due to many Litigations between both these Companies connected to the assets, NCLT Chennai ordered a joint Meeting of the CoCs, RPs and the customer on 19/02/2022. During the Joint CoC Meeting, the 1st Respondent's request to allow the RISPL Bidders to give bid for the RPPL was totally denied by the CoC of RPPL. Not having got any fruitful outcome from this Joint Meeting, the NCLT, Chennai ordered for Mediation by appointing a retired High Court Judge, Hon'ble Justice Mr. K. Kannan, on 05/04/2021 to submit the report on 23/04/2021. During the Mediation process, the RP of RPPL unilaterally called for the CoC Meeting and passed the separate Resolution Plan causing several damages to RISPL and its customers. A majority of the CoC instructed the RP of RISPL to file for simultaneous CIRP Petition before NCLT, Chennai and therefore, the RP of RISPL preferred an Application IA/548/CHE/2021 in IBA/1424/2019, seeking for simultaneous CIRP Proceedings of both the Corporate Debtors under a

common Resolution Professional specifically pointing out the commonalities, RISPL assets and business alienation by RPPL, Litigations between both Companies and the integration of assets of both the Corporate Debtors.

41. It is contended by the Learned Senior Counsel appearing for the RP of RISPL that pending the simultaneous CIRP Petition in IA/548/CHE/2021 in IBA/1424/2019 and other 25 Applications filed by the Operational Creditors and Customers of both RPPL and RISPL, seeking consolidation of CIRPs of both the Companies, the RP of RPPL filed an Application for the approval of the Resolution Plan before the NCLT, Chennai in IA/460/2021 in IBA/1099/2019. While both IA/548/CHE/2021 in IBA/1424/2019 which is the Application filed by the RP of RISPL praying for simultaneous CIRP and IA/460/2021 in IBA/1099/2021, filed by RP of RPPL for approval of the Resolution Plan were pending before the NCLT, Chennai for Adjudication, RP of RISPL filed Intervention Applications dated 31/07/2021 with Objections dated 01/08/2021 seeking to dismiss the Resolution Plan submitted by M/s ReNew Power Services Private Limited. The RP of RISPL filed Intervention Petition in INV.P/6(CHE)/2021 in IA 460/2021 in IBA/1099/2019 with Objections and Additional Objections dated 24/09/2021, seeking *inter alia* to dismiss the Resolution Plan submitted by RPPL explaining that the assets and businesses of RISPL would be hived off illegally by way of approval of the Plan. The ‘Adjudicating Authority’ without considering the serious impact it would have on

the Customers and Creditors of both RPPL and RISPL has dismissed their Applications. It is submitted that there were several Applications which were Part Heard and pending for Adjudication, before the NCLT, Chennai and the Learned Senior Counsel made a mention of IA/1041/2020, IA/738/2021, IA/549(CHE)/IB/2021, IA/591(CHE/2021), IA(IBC)1143(CHE)/2021, IA/1082(CHE)/2021, IA(1056)/IB/2020, IA/487(CHE)/2021 and IA/592/2021 in IBA/1424/2019 with different prayers, all having an impact on the prayer for consolidation for CIRP.

42. It is also submitted in the common Counter that the Operational Creditor M/s. SB Aditya Power Projects Private Limited had fraudulently connived with the suspended common Directors of RPPL and RISPL and initiated Section 9 Proceedings against RISPL. It was pointed out in the Objections filed in INV.P./6/2021, specifically on the ground that this initiation of CIRP was against the BTA executed on 05/03/2014 between RPPL and RISPL. It is contended that the RP of RPPL in a *mala fide* intention restrained ARCIL and L&T Infra Partners from taking part in the CoC of RPPL by choosing not to reply to their resubmission of Claims submitted by these Financial Creditors on 08/12/2020 and sent the Claim rejection intimation after the approval of the Resolution Plan that is on 05/04/2021. ARCIL and L&T Infra are the Financial Creditors of RISPL and as the RP of RPPL did not include them as Financial Creditors of RPPL, the Applications and Appeals filed by ARCIL and L & T Infra Partners for including

them as Financial Creditors of RPPL. The Land Leasehold Rights mortgaged to these Financial Creditors by RPPL and RISPL is nullified without even including them in the CoC of RPPL. These Secured Financial Creditors were deliberately kept out of the CoC of RPPL and had these Creditors' Claims been admitted and added in the CoC of RPPL, the present situation of the assets of RISPL getting hijacked would not have taken place. The Learned Senior Counsel concluded that separate Resolution for both Companies would push RISPL into 'Corporate Death' and leave the business of its Customers into Insolvency and therefore sought for prayer for Consolidation of CIRPs of both the Companies for value maximisation of both the Corporate Debtors and for the benefit of all its stakeholders.

43. The Successful Resolution Applicant (hereinafter referred to as 'SRA') has filed Intervention Applications in these Appeals stating that the Business Transfer Agreement dated 05/03/2014 entered into between RPPL and RISPL is prior to the commencement of CIRP; and that RPPL was required to ensure that if RISPL fails to perform its obligations, the same is done by another associated Company of RPPL ; RPPL was personally not liable for performing any obligations; that the Operational Creditors, the Directors of both the Companies have not expressed their support for Consolidation or for simultaneous CIRP; that NCLT in the absence of 'Equity Jurisdiction', cannot under the Provisions of the Court Order for Consolidation of CIRP; that the Appeals are all filed with a

mala fide intention to derail the process; that ‘CIRP of RPPL’, commenced on 19/12/2019 and the Applications for simultaneous CIRP was belatedly filed and once the CoC of RPPL and the Directors of the Company were not inclined towards the idea of Simultaneous ‘CIRP’, the ‘Resolution Professional’ was duty bound to place the approved plan before the NCLT and therefore, there is no illegality or infirmity in the Impugned Order of the ‘Adjudicating Authority’. The Learned Counsel Mr. M.S. Ranjan Roy vehemently opposed this Consolidation.

44. India Wind Power Association also sought for intervention, vide IA 521/2022 in Company Appeal (AT) (CH) (Ins) No. 328/2021 on the ground that consolidation is essential as supply of Windmill Turbines for Wind Energy Projects are all turnkey projects requiring procurement, erection, commissioning along with Operations and Maintenance by the original equipment manufacturer / RPPL which had entered into O&M Contracts for Maintenance of the Wind Turbines.

45. The Learned Senior Counsel submitted that the Ministry of New and Renewable Energy, Government of India (MNRE) Notification, dated 01/11/2018 is with respect to inclusion of Wind Turbine Models in the revised list of models and manufacturers. In terms of these guidelines, the manufacturer of Windmills need to provide O&M Services for life of the Windmills and only Consolidation would serve the interest of all the Stakeholders.

Assessment:

46. At the outset, this Tribunal addresses to the finding by the ‘Adjudicating Authority’ that the Appellants in Company Appeal (AT) (CH) (Ins) Nos. 323/2021, 96/2022, 334/2021, 335/2021, 104/2022, 328/2021, and in 88/2022 are not ‘Operational Creditors’. The Hon’ble Apex Court in the matter of **‘Consolidated Construction Consortium Limited Vs. Hitro Energy Solutions Pvt. Ltd.’** in Civil Appeal No. 2839 of 2020 has particularly addressed the issue as to

‘Whether the appellant is an operational creditor under the IBC even though it was a ‘purchaser’.’

47. Section 5 (20) of the IBC defines ‘Operational Creditor’ in the following terms :-

“(20) “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;”

48. Section 5(21) defines ‘Operational Debt’ which is detailed as herein:

(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the re-payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

49. An ‘Operational Debt’ involves a ‘Claim’ in respect of the provision of goods or services. A ‘Claim’ is defined under Section 3(6) of the Code. For ready reference, the said definition is reproduced as hereunder:

“(6) “claim” means-

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.”

50. The Hon’ble Apex Court in the aforementioned Judgment concluded that the Appellant is an ‘Operational Creditor’ under the IBC, since an ‘Operational Debt’ will include a debt arising from a Contract in relation to the supply of goods and services from the Corporate Debtor. In the instant case, it is an admitted fact that RPPL is a holding Company and RISPL is a Subsidiary Company providing Operation and Maintenance Services to the Wind Energy Turbines / Wind Energy Generators monitored and held by the Holding Company RPPL to its customers. The Appellants in Company Appeal (AT) (CH) (Ins) No. 323/2021, Company Appeal (AT) (CH) (Ins) No. 96/2022, Company Appeal (AT) (CH) (Ins) No. 334/2021, Company Appeal (AT) (CH) (Ins) No. 335/2021, Company Appeal (AT) (CH) (Ins) No. 104/2022, Company Appeal (AT) (CH) (Ins) No. 328/2021, Company Appeal (AT) (CH) (Ins) No. 88/2022, *are not only the customers of RPPL in terms of purchase of Wind Energy Turbines and Wind Energy Generators, but are also the customers of RISPL for procuring the services with respect to Operations and Maintenance of the said Turbines / Generators.* Having paid the advance amount to RISPL, it is the main case of the Appellants

that they are purchasers of the Services and therefore should fall within the category of ‘Operational Creditors’ as defined under the Code and as laid down by the Hon’ble Apex Court in the aforementioned Judgment.

51. Further it is seen from the record that in the case of Clean Wind Power (Devgarh) Private Limited in Company Appeal (AT) (Ins) No. 334/2021, the Appellant is a ‘Decree Holder’ of Rs. 12,10,55,648/- vide an Award in his favour dated 02/04/2019 and therefore, falls within the definition of a ‘Creditor which includes the Decree Holder, as defined under Section 3(10) of the Code. It is also seen from the record that the Appellant / M/s Sulochana Cotton Spinning Mills Private Limited in Company Appeal (AT) (CH) (Ins) No. 104/2022 is not only an Operational Creditor, but also a prospective Resolution Applicant who had submitted a Resolution Plan for RISPL and has given an undertaking that its ready and willing to submit a ‘Consolidated Bit’ for both RPPL and RISPL. Therefore, this Tribunal is of the considered view that a blanket observation that the Appellants are not ‘Operational Creditors’ is incorrect. Keeping in view, the facts and circumstances of the case on hand and specifically relying on the ratio of the Hon’ble Apex Court in the matter of **‘Consolidated Construction Consortium Limited Vs. Hitro Energy Solutions Pvt. Ltd.’** (Supra) and also the undisputed fact that the Appellants in Company Appeal (AT) (CH) (Ins) No. 323/2021, Company Appeal (AT) (CH) (Ins) No. 96/2022, Company Appeal (AT) (CH) (Ins) No. 334/2021, Company Appeal (AT) (CH) (Ins) No. 335/2021, Company

Appeal (AT) (CH) (Ins) No. 104/2022, Company Appeal (AT) (CH) (Ins) No. 328/2021, Company Appeal (AT) (CH) (Ins) No. 88/2022 are purchasers of goods and services of both RPPL and RISPL, this Tribunal is of the earnest view that these Appellants fall within the ambit of the definition of ‘Operational Creditors’ as defined under Section 5 (20) of the Code and therefore, these Appeals are maintainable.

52. The next issue which arises for consideration is whether the businesses of RPPL and RISPL are intertwined and integrated and whether the criteria required for ‘Consolidation’ of these two CIRPs is met.

53. In this factual matrix, we need to examine whether the criteria specified regarding ‘Consolidation of CIRPs’, in the matter of **‘State Bank of India vs. Videocon Industries Ltd. & Ors.’** (Supra) and reconfirmed by the Principal Bench of this Tribunal in the matter of **‘Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.’** (Supra) and also in the matter of **‘Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors & Ors.’** (Supra), are satisfied.

54. The Principal Bench, NCLAT in the matter of **‘Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.’** in Company Appeal (AT) (Ins) No. 919/2020 has held as follows:

18. We are of the view that Ld. Adjudicating Authority Mumbai Bench in the case of SBI Vs Videocon Industries Ltd. (Supra) rightly laid down certain parameters while ordering for consolidation of CIRP. The said order was cited

before Ld. Adjudicating Authority Bengaluru Bench, However, while passing the impugned order there is no finding whether these parameters are fulfilled or not in this case. Now, we are considering whether Respondent Nos. 1 and 2 have fulfilled the criteria of consolidation of CIRP.

*(i) **Common Control:** (a) The Respondent Nos. 1 and 2, both the companies are promoted by Mr. M.V Murlidher and his wife Padma Murlidher. Murlidhers family holds approximately 77% of total shareholding and 78% of total shareholding in Respondent Nos. 1 and 2 Company respectively, the shareholder of the Respondent No. 2 company together holds approximately 85% of the shareholding in the Respondent No. 1 Company. Thus, both Companies are promoted by the same family and there is unity of ownership and interest. (Please See Page 423 and 431 of Appeal Paper Book) (b) The Respondent No. 1 is controlling company of Respondent No. 2 (Please See Page 432 and 433 of Appeal Paper Book: Note to Accounts of M/s Bangalore Dehydration and Drying Equipment Company, forming part of and annexed to the accounts for the year ended 31st March 2012. 5. Related party discloser (i) Controlling Company M/s BT and FC Pvt. Ltd.)*

*(ii) **Common Directors:** Mr. M.V. Murlidher and Padma Murlidher both are Directors in Respondent Nos. 1 and 2 Company. Thus, the Directors of the both Companies are Common and there is common control of companies. (Please See Company Master Data of R-1 and R-2 at Page 528 and 529 of Appeal Paper Book)*

*(iii) **Common Assets:** The Respondent No. 2 Company owns a partial of land admeasuring 2 acres 36 gundas situated at No. 15, First Phase, Peenya Bengaluru and has constructed warehouse on the land. The Respondent No. 1 Company runs a bottling plant unit in the warehouse and owns the plant and machinery therein, therefore, there is*

inter-dependency between two Companies and the assets are common to such an extent that the Respondent No. 2 Company has provided its land and warehouse to the Respondent No. 1 Company to carry on its business activity.

*(iv) **Common Liabilities:** (a) The Respondent No. 3 has made a claim of Rs. 13,45,11,636/- against the Respondent No. 1 Company as a borrower and the Respondent No. 2 Company has a guarantor as a collateral for the loan obtained by the Respondent No. 1 Company and the Respondent No. 2 Company has mortgaged Peenya land and warehouse situated therein. Further Respondent No. 2 has provided a corporate guarantee as security for the loan obtained by the Respondent No. 1 Company.*

(b) In so far as the loan obtained by the Respondent No. 1 Company from the Respondent No. 4 is concerned, the Respondent No. 2 as security had created paripasu charge over the Peenya land, placed 67% of its shares and provided a corporate guarantee. Therefore, the liabilities of the Companies are also common and Companies had made themselves jointly and severally liable for the loans. Respondent No. 1 and 2 have common creditors i.e. Respondent Nos. 3 and 4. Directors of both the Companies have given personal guarantees for the loans.

*(v). **Inter-dependence:** The Respondent No. 1 Company was running a Distillery Unit in the Peenya land and warehouse building belonging to the Respondent No. 2 Company as stated by Respondent No. 6 (RP) in its Status Report filed before this Appellate Tribunal. Thus, the Respondent Nos. 1 and 2 are interdependence.*

*(vi) **Pooling of Resources:** Undisputedly the Directors are common using their contacts and relationship to run both the Companies. For the sanction of the loan facility for the Respondent No.*

1 Company. The Respondent No. 2 Company has mortgaged Peenya land and warehouse and also stood as guarantor for the Respondent No. 1 Company.

vii) Intricate links between the Companies:

(a) The Respondent No. 2 is associated Company of the Respondent No. 1, this fact is admitted by the Respondent No. 3 while submitting its claim form before the RP (Please See Page 527 of Appeal Paper Book) and this fact is also mentioned in the Status Report (See First Line of Page 6) filed by Respondent No. 7. Thus, it is clear that the Respondent No. 2 Company is associated company of Respondent No. 1. In the I&B Code, the word associate company has not been defined. Section 3 (37) of the I&B Code, provides that word and expressions used but not defined in this Code but defined in the Companies Act, 2013 shall have the meaning assigned in the Companies Act, 2013. Section 2 (6) of Companies Act, 2013 defines Associate Company as under:

“Associate Company” in relation to another company, means a company in which that other company has a significant influence but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation: for this purpose of this clause –

(a) The expression significant influence means control of at least 20% of total voting power or control of or participation in business decisions under an agreement.....

55. In the aforementioned matters, The NCLAT, Principal Bench has given a finding that Respondents No. 1 & 2 (BT & FC Pvt. Ltd. & BDDEC Pvt. Ltd.) have fulfilled the criteria of Consolidation and that the ‘Adjudicating Authority’ has

not appreciated the facts in the correct perspective and allowed the Consolidation of the two CIRPs.

56. Further, The Principal Bench, NCLAT in the matter of '*Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors & Ors.*' in Company Appeal (AT) (Ins) No. 780/2020 has reconfirmed the following parameters to be met with respect to Consolidation of CIRPs:

- a) *Common Control*
- b) *Common Directors*
- c) *Common Assets*
- d) *Common Liabilities*
- e) *Inter-dependence*
- f) *Inter-lacing of Finance*
- g) *Pooling of Resources*
- h) *Co-existence for survival*
- i) *Intricate Link of Subsidiaries*
- j) *Inter-twined Accounts*
- k) *Inter-looping of Debts*
- l) *Singleness of Economic Units*
- m) *Common Financial Creditors*
- n) *Common Group of Corporate Debtors*

In the aforementioned case, the NCLAT, Principal Bench has observed as follows:

9. Perusal of the Impugned Order shows that keeping the yardsticks laid down in the Judgment in the matter of "State Bank of India Versus Videocon Industry Ltd." the Adjudicating Authority discussed the common control of these

hundred percent subsidiaries of Respondent No. 2; that there were common directors; that there were common assets and liabilities. The interdependence and inter-lacing of finance was also considered as well as the pooling of resources. The Adjudicating Authority considered that DCCL's sole business is to operate the convention center located Lavasa Hill Town Ship built on land leased out by Respondent No. 2-LCL. The business is dependent on the working of LCL. For such and other reasons recorded in details, the Adjudicating Authority thought appropriate to consolidate the CIRPs. The Learned Counsel for the Appellant has tried to search and nit-pick portions where DCCL is not referred to say that the particular yardstick does not apply. For example, common Financial Creditor. We find, only because DCCL does not have Financial Creditors, would not be sufficient reason to say that the yardsticks laid down in the matter of "State Bank of India Versus Videocon Industry Ltd." were not attracted.

(Emphasis Supplied)

The Tribunal concluded that the 'Adjudicating Authority' was right in ordering Consolidation of the three CIRPs and dismissed the Appeal.

57. In the instant case, keeping in view, the ratio in the matter of '*Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors & Ors.*' (Supra) and in the matter of '*Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.*' (Supra), it is imperative to examine whether the criteria for 'Consolidation', which has attained 'finality, (as no Appeals have been preferred against these Orders before the Hon'ble Apex Court), has been fulfilled.

58. The following table explains the relationship between the two Companies with respect to the criteria / requirement to be met for simultaneous CIRP / Consolidation: -

<i>Sl. No.</i>	<i>Particulars</i>	<i>Regen Powertech Pvt Ltd in CIRP</i>	<i>Regen Infrastructure & Services Pvt Ltd in CIRP</i>
1.	<i>Date of Incorporation</i>	27.12.2006	04.01.2008
2.	<i>Common Control</i>	<p>a) Has complete control over RISPL which is a wholly owned subsidiary.</p> <p>b) Had transferred right to use the technology required for Operation and Maintenance of the Windmill Turbines.</p>	<p>a) RISPL is a wholly owned subsidiary of RPPL</p> <p>b) Common registered office with MCA</p> <p>c) Common email ID</p>
3.	<i>Common Directors</i>	<i>Only Common Suspended Directors</i>	
4.	<i>Common Suspended Directors</i>	<p>1. Madhusudan Khemka</p> <p>2. Sundaresh Ramanathan</p>	<p>1. Madhusudan Khemka</p> <p>2. Sundaresh Ramanathan</p>
5.	<i>Relationship</i>	<i>Holding Company</i>	<i>Wholly Owned Subsidiary</i>
6.	<i>Manufacturing Plant</i>	<i>Tada and Nellore with 600 employees</i>	<p>There is no manufacturing facility. It is dependent on the Holding Company for repairs and services. RISPL provides the following services-</p> <ul style="list-style-type: none"> • Erection and installation; • Routine maintenance;

			<ul style="list-style-type: none"> • Maintenance of sub-stations. • Evacuation of power and acts as a support system of RPPL. It is an arm of the business of RPPL.
7.	<i>Specialised technology showing dependency on technology</i>	<i>Has exclusive technology rights for manufacture and repair of Regen make Vensys V77-1500 KW turbine.</i>	<i>Dependent on the Holding company for technology and repair.</i>
8.	<i>Ministry of New and Renewable Energy – Regulation (MNRE) (2009-2010) which is mandatory for RPPL</i>	<i>RPPL got its generators enlisted with Ministry of New and Renewable Energy. The Customers were promised Comprehensive Operations and Maintenance services. MNRE mandates operations and maintenance services by Manufacturer of Windmills. This was a combined Product sale of Turbines with a 10-year contract of O&M services. Without these services, there would not have been any purchases of these windmills as the licence to use the technology for maintenance lay solely with RPPL.</i>	—

9.	<p><i>Assignment Agreement 24.07.2015 and letter by RPPL dated 27.07.2015 confirming its commitment to repair and replace the generators.</i></p>	<p><i>a) RISPL is born out of the existing business of RPPL. RISPL was merely created to enable RPPL to raise fresh funds. Funds raised by sale of business is used by RPPL for its business.</i></p> <p><i>b) RPPL had promised its customers that RPPL will be responsible for service as ‘Principal Obligator’ and that RISPL was created merely for operational maintenance in order to carry out maintenance work. RPPL’s commitment letter towards its role as ‘Principal Obligator’ is dated 27.07.2015.</i></p>	<p><i>a) Only services / maintenance business is delegated to RISPL. RISPL has no plant or technology of its own. RISPL receives yearly Comprehensive Operations and Maintenance charges from all customers.</i></p> <p><i>b) RISPL on receiving any complaint attends to the complaint in co-ordination with RPPL. RPPL and RISPL work together to repair generators.</i></p>
10.	<p><i>Inter-dependence and Intricate link between the businesses of both</i></p>	<p><i>a) As and when generators reported</i></p>	<p><i>Customers under O&M Contract received priority for service,</i></p>

	<i>companies between 2015 – 2019</i>	<p><i>‘Failure’, Customers complain and RISPL takes steps in co-ordination with RPPL.</i></p> <p><i>b) Customers under O&M Contract receive priority for service, repair and replacement from RPPL and RISPL.</i></p>	<i>repair and replacement from RPPL and RISPL. These customers are the backbone of the entire business.</i>
<i>11.</i>	<i>Inter-linked Finances</i>	<i>RPPL used the finances of RISPL</i>	<p><i>a) Copy of the Debenture Trust Deed with respect to Corporate Guarantee provided by RPPL in favour of RISPL and Form CHG-I filed with Ministry of Corporate Affairs is annexed as (A 8)</i></p> <p><i>b) RPPL has given corporate guarantee to RISPL against the loans taken from SBI (Rs.40,00,00,000/- and from ARCIL, L&T (Rs. 2,50,00,00,000/-).</i></p>

			c) RPPL Lands, long leased to RISPL where RISPL's 5 Pooling Sub Stations are constructed, are mortgaged to RISPL's lenders, L&T and ARCIL.
12.	Common Assets	<p>a) RPPL leased out certain lands to RISPL for long lease where RISPL's 5 pooling sub stations are in operation. Copy of the lease deeds are part of the Record (Annexure A8)</p> <p>b) RISPL tools are used for E&C Business which are transferred to Regen O&M Services Ltd</p> <p>c) Many important land assets recorded in the balance sheets of RISPL are registered in the name of RPPL.</p>	
13.	Common Liabilities	<p>a) Generator Repair Liability and Consequential Liquidity Liability.</p> <p>b) RISPL's Assets and Liabilities have been transferred to RPPL's Wholly Owned Subsidiary Company, ROMSL by way of Business Transfer. The Approved RP of RPPL extinguished ROMSL's Liabilities towards RISPL and has divested nearly Rs. 251 Crores.</p> <p>c) It is the case of the Appellants that due to non-filing of Audited Financial Statements of RPPL post 31/03/2017, the Books of RPPL, RISPL and their Wholly Owned Subsidiaries have not been reconciled. There is also no clarity on the amounts due to various vendors / suppliers or regarding receivables.</p>	
14.	Intertwined Accounts	a) Corporate Debtors are interlaced and interlinked and treated as a 'single economic unit'.	

		<p>b) A consolidated financial statement has been prepared until 31.03.2017 only, when RPPL became an NPA.</p> <p>c) It is evident from the investor complaint filed by one of the shareholders of RPPL to the Ministry of Corporate Affairs on 10/10/2019, i.e. just two months before the CIRP of RPPL was initiated, regarding the non- conduct of Annual General Meeting and for not having provided the Audited Financial Statements of RPPL.</p>	
15.	Treated as One economic unit	<p>The group is known by the brand name 'Regen' and the entire group revolves around the services offered by the 'Brand' viz. Manufacturing, Supply, Land Procurement, Erection & Commission, Operation & Maintenance, and power evacuation of Wind Energy Turbines and Generators.</p>	
16.	Common Financial Creditors	<p>a) SBI has 61.43 % Voting Share.</p> <p>b) L&T and ARCIL jointly have a 16.06 % Voting Share, which is currently sub judice as they have filed relevant Applications before the 'Adjudicating Authority', seeking to be included in the CoC of RPPL.</p>	<p>a) SBI has 8.81 % Voting Share.</p> <p>b) L&T and ARCIL jointly have 91.19 % Voting Share</p>

59. From the aforementioned table, it is clear that RPPL is the 'Holding Company' and RISPL is the 'Subsidiary Company' having interconnected business

relationships and that RISPL has been created only for the operational convenience of RPPL, in terms of providing repairs and maintenance services to the customers of RPPL. RISPL is dependent on RPPL for servicing of generators and for funds. The technology which is based on Vensys Model of Generators is only with RPPL. Additionally, the 'Mega Insurance Policy' was entered into between the Insurer, 'The Oriental Insurance Company Ltd.' and the Insured, RPPL and RGPL *jointly* for the period 2017-18 together with the extended warranty.

60. A brief perusal of the Assignment Agreements executed in favour of RISPL by RPPL for the Appellants herein shows that all the provisions contained in the said O&M Agreement executed between the Assignor and the Appellant / Party shall remain in force and effect and that the subject Assignment Agreement, dated 09/10/2015 and the terms thereof shall be read, construed and interpreted as part and parcel of the O&M Agreement and the Provisions contained in Section 8 thereof shall apply *mutatis mutandis* to this Assignment Agreement for the relationship between the Appellant / Party on one side and the Assignor / Assignee on the other side. This Assignment Agreements admittedly entered into with the Appellants further reinforces the fact that RPPL continued to be the Obligator for the O&M of the Appellants. Annexure A8 is the Copy of the extract of the amended and restated Debenture Trust Deed, dated 11/05/2017 between RISPL and RPPL and the *Common Directors, Mr. Madhusudan Khemka and*

Mr. R. Sundaresh and IDBI Trusteeship Services Ltd., the Debenture Trustee. In this Debenture Trust Deed, RPPL has admittedly agreed to the following

17.4 Sponsor Support Undertakings

The RPPL hereby agrees, covenants and undertakes the following:

- (i) The RPPL shall comply with all its covenants and undertakings under the Transaction Documents.*
- (ii) RPPL shall continue to hold atleast 51% (Fifty One percent) of the shareholding of the Issuer and Control the Issuer till the Final Settlement Date.*
- (iii) RPPL shall agree, undertake and covenant to supply spare parts and provide assistance in procurement of spare parts as required in relation to the O&M Business at arm's length basis.*
- (iv) RPPL shall agree, undertake and covenant to provide ancillary services to enable the Issuer to perform the O&M Business in the manner required.*
- (v) RPPL shall agree, undertake and covenant to provide, assist and do all things necessary to ensure the usage, continuation and availability of technological requirements including but not limited to sub licensing of the existing technology licenses and rights in relation to the O&M Business.*
- (vi) RPPL shall agree, undertake and covenant to hold in trust and transfer to the Escrow Account any receivables received by the*

Issuer in relation to the O&M Business until the Final Settlement Date.

- (vii) *RPPL shall no repudiate or terminate any material contract in relation to the O&M Business.*
- (viii) *RPPL shall continue to provide all administrative services (if any) and ancillary Infrastructure support to the Issuer.*
- (ix) *RPPL shall always ensure and procure that all things are done to give effect to the rights of the Debenture Trustee and the Debenture Holders under the Transaction Documents and RPPL shall always vote towards giving effect to these rights of the Debenture Trustee and the Debenture Holders under the Transaction Documents.*
- (x) *RPPL will undertake at its cost and responsibility during the O&M period, (including pre warranty and post warranty period) any MBD Repair for rectification of manufacturing defects.*
- (xi) *RPPL shall bear all costs and expenses incidental and arising out of or in relation to the above stated warranty repairs (as provided in (x) above) including all crane hire and crane mobilization charges associated with any kind of repair and maintenance works.*
- (xii) *All costs and expenses in relation to insurance for MBD Repair for manufacturing defects of all WEC machines shall be borne by RPPL until the Final Settlement Date. RPPL hereby agrees, covenants and undertakes that it shall*

maintain such insurance for MBD Repair in full force and effect until the Final Settlement Date and shall ensure that all proceeds of such insurance shall be utilized for MBD Repair until the Final Settlement Date.

(xiii) *RPPL shall maintain adequate inventory of all major and minor components of wind turbine in order for the issuer to be in full compliance with requirements under the respective O&M Agreements and avoid availability penalties due to non-availability of such inventory.*

(Emphasis Supplied)

61. From the above Agreement, it is clear that RPPL has agreed to supply the spare parts and provide assistance in procurement of spare parts as required in relation to the O&M business and shall continue to provide all insurance for MBD repair for the manufacturing defects of all WEC machines until the final settlement date. This covenant further fortifies the case of the Appellants that the businesses are integrated. It is also seen from the record that SBI is a common Financial Creditor of both the CoCs and that ARCIL has filed an Application, bearing No. MA 61/2021, seeking to be included in the CoC of RPPL on the ground that the Corporate Debtor had issued a Corporate Guarantee in favour of L&T Finance Limited which has assigned its debt to ARCIL which holds charge on the movable and immovable assets of both the Corporate Debtors and that had the Applications filed before the 'Adjudicating Authority' been adjudicated, the Appellant's voting share in CoC of RPPL would be around 15.04 %. It is the case of the ARCIL that the CoC of RPPL has been improperly constituted. Without

going into the merits of that issue raised by ARCIL in this Appeal, we are of considered view that only the issue whether the Appeals are maintainable and if the Consolidation of the two CIRPs is to be ordered or not is to be adjudicated.

62. A perusal of the material on record shows that there is no rebuttal by RPPL regarding the issues of ‘interlinked finances’, ‘common assets’, ‘common liabilities’ and ‘common directors’. This Tribunal is conscious of the fact that the Ministry of Renewable Energy has clearly specified in its Regulations that the manufacturer has to provide the O&M Services as well. The Resolution Professional of RISPL has submitted that all the O&M Equipment in possession of RISPL is actually owned by RPPL; that despite the O&M Agreement, RPPL continues to have obligation; that RISPL has received huge sums of ‘liquidated damages’ every year solely because RPPL has not refurbished the failed Wind Energy Generators on time; that RPPL has created another Subsidiary called ROMSL and there are some liabilities.

63. At this juncture, the relevant portion of the Report of the Mediator, dated 23/04/2021 by Hon’ble Justice K. Kannan, is extracted below:

“XI. Summing up

20. I summed up at the conclusion of the afternoon session, for the benefit of the customers, RPs and the CoCs that the following broad areas of agreements which the parties expressed through their discussions could be incorporated in the resolution plans:

1. There was unanimity that the resolution plan must be a single one for both the Companies and the efforts must be to identify a single entity for purchase of both the Companies. If it was not possible to convince the highest bidder of one Company to match the offer of the highest bid of another Company in order to vest in that entity the benefit of transfers of both the Companies as going concerns, a fresh IM must be published by consolidating both Companies and inviting fresh offers through a single entity for maximum price. The difference of opinion of the parties were on the aspect, whether it was possible legally to extend the conclusion of resolution process and whether it was appropriate to do any act which will erode the sanctity of the bidding process by re-opening of bids.

2. RPPL and RISPL will jointly issue pricing for various products for repairs and replacement and will also publish the date of receipt of purchase orders so that all the repairs are attended to in a chronological fashion with no scope of complaints of nepotism or discrimination.

3. In the absence of institutional funding available to the Companies with possible exposure of the customers to pay upfront, the cost of repairs even in a situation where there were pre-concluded contracts, the matter would require appropriate direction from the Tribunal of how the matter could be dealt with. It could be in the context of insurance policies that are available for RPPL and RISPL when the insurers could be simultaneously brought on board to discuss with the customers and ensure release of funds through the insurance companies to the extent possible.

4. The manufacturing facility in Udaipur owned by RPPL could be transferred for consideration to RISPL by way of sale or lease and the IPR

issues could be resolved with appropriate legal counsel to protect their ownership with RPPL.

5. Technical advice could be solicited if the design and manufacture of the windmills are required to be re-examined to adapt German technology to Indian weather conditions to cope with recurrent problems of disrepairs in a truly short period of 2-3 years, when the life span of each windmill is trumpeted up to have a 25year life span.

21. The report is in the nature of observations that I have made during the individual and joint discussions on the critical aspects where there had been no unanimity amongst the parties earlier. The attempt was to help the parties blunt their differences and help formulate a course of action through appropriate resolution plans that could be submitted to CoCs for their concurrence before they could be presented to the Bench for its final decision.”

(Emphasis Supplied)

64. From the aforementioned Report of the Mediator, it is clear that at the outset, ***‘there was unanimity that the Resolution Plan must be a single one for both the Companies and the efforts must be to identify a single entity for purchase of both the Companies’.*** This unanimity was arrived at by the Mediator after prolonged sessions with the Resolution Professionals and the CoCs of *both the Companies*. It was also observed by the Mediator in the Report that attempts were made to formulate a course of action through appropriate Resolution Plans that could be submitted to the CoCs, but there were same reservations.

65. At this stage, this Tribunal addresses to the contention of the Learned Senior Counsel appearing for the RP of RPPL, CoC of RPPL and the Intervention Applicant / SRA that the ‘Code’ does not provide for Consolidation / Simultaneous CIRP.

66. The Resolution Professional of RISPL filed an Application under Section 25(1), 60(2) and 60(5) of the Code, read with Rule 11 of the NCLAT Rules, 2016 with an Affidavit seeking simultaneous CIRP of RPPL and RISPL on 18/05/2021 in IA/548/(CHE)/2021 in IBA/1424/2019.

67. The Definitions of Sections 25 (1), 60(2), 60(5) of the I & B Code, 2016 and the Rule 11 of the NCLT Rules, are detailed as follows:

a. Section 25(1) :

*25. **Duties of resolution professional**—(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

b. Section 60(2) :

*60. **Adjudicating authority for corporate persons**: (2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or 1 [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.*

c. Section 60(5) :

60. Adjudicating authority for corporate persons: (5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of— (a) any application or proceeding by or against the corporate debtor or corporate person; (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code. (6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

d. Rule 11 of NCLAT Rules, 2016:

11. Inherent powers- Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.

68. Sections 60(2) and 60(3) of the I & B Code, 2016 provide that the ‘Insolvency Proceedings’ of a ‘Debtor Company’ and its ‘Guarantor’ would be dealt with by the same ‘Adjudicating Authority’ which will enable linking of

Proceedings in those cases where the Debtor and Guarantor are part of same group of Companies. Section 18(f) and Section 36 of the Code give control of the shares of the subsidiary to the Resolution Professional and Liquidator of the parent Company, which enable to obtain information from Solvent Group Entities easily. Section 5(24) of the Code defines related party in relation to corporate debtors to inter alia include holding-subsidary companies, companies in which directors or managers have shareholding, companies controlling each other by virtue of contracts, companies with whom there may be de facto association in the form of participation in policy making process, interchange of employees, etc.

69. In the matter of *‘Edelweiss Asset Reconstruction Company Limited Vs. Sachet Infrastructure Pvt. Ltd.’* in Company Appeal (AT) (Ins) Nos. 377 to 385/2019, dated 20/09/2019, the NCLAT, Principal Bench has held that Consolidated Resolution Plan should be invited to keep the Company as a going concern. In the case of *‘Venugopal Dhoot Vs. State Bank of India & Ors.’* in *C.A. 1022(PB)/2018* and *‘SBI Vs. Videocon Industries Limited and Ors.’* in *C.P. 02/2018 and Ors.*, dated 08/08/2019, thirteen Corporate Debtors were looked as one economic unit on account of various interlinkages and consolidated CIRP was undertaken. Thus, one Committee of Creditors for all Corporate Debtors was constituted. In the case of Lanco Group, whereby the Parent Company / M/s. Lanco Infratech Limited, the subsidiary and Operational Companies were not made part of the CIRP initially, which resulted in Liquidation of Lanco

Infratech Limited due to lack of response by the bidders in the CIRP of Lanco Infratech.

70. A Resolution Plan of a parent Company necessarily deals with the assets of the parent Company which would include its shares in the Subsidiary Companies, so much so that a Successful Resolution Applicant would also receive the control of the Securities. Insolvency Jurisprudence is still evolving in India and there are situations where the destiny of one Company is linked with another and if such linked Companies are resolved together there may be maximisation of value of assets and the possibility of revival could be much higher. In this background, the Insolvency and Bankruptcy Board of India (hereinafter referred to as 'IBBI') constituted a Working Group on 17/01/2019 to recommend a complete framework to facilitate Insolvency Resolution in a group. The Working Group (hereinafter referred to as 'WG') gave its recommendations on 23/09/2019 for the framework of procedure of Group Companies as 'Report of the Working Group on Group Insolvency'. The recommendations of the WG include Holding, Subsidiary and Associate Companies; elements of proposed framework which include Applications to be filed against all Corporate Debtors who have defaulted and are part of the Group; a single Insolvency Professional and a single 'Adjudicating Authority'; creation of a Group Creditors' Committee and group co-ordination Proceedings.

71. With this evolving jurisprudence, this Tribunal is of the earnest view that reliance can be placed on the jurisprudence in some of the countries like Canada, Germany and the European Union which have the legal framework for Group Insolvency. The ICSI Institute of Insolvency Professionals has stated regarding Consolidation of Insolvency with respect to these aforementioned Countries as follows:

<i>Sl. No.</i>	<i>Country</i>	<i>Particulars</i>
<i>1.</i>	<i>Canada</i>	<ul style="list-style-type: none"> <i>The legislations that deal with “Insolvency” are Bankruptcy and Insolvency Act (BIA) and The Companies' Creditors Arrangement Act (CCAA)</i>
<i>2.</i>	<i>European Union</i>	<ul style="list-style-type: none"> <i>Regulation (EU) 2015/848 of the European Parliament and of the Council on the subject of “Insolvency Proceedings” is the legislation governing Group Insolvency. Chapter V of the Regulations (Article 56 to Article 77) talks about Insolvency Proceedings of Members of Group Companies.</i> <i>The Regulations provide for a detailed framework of Group</i>

		<p><i>Procedural Co-ordination.</i></p> <ul style="list-style-type: none"> • <i>The European Courts have ruled that the European Insolvency Regulation can be interpreted, under certain conditions, to allow for insolvency proceedings of a member state to cross borders (to a certain extent) and include another company from another member state.</i>
3.	Germany	<ul style="list-style-type: none"> • <i>The German Legislator had on 9th March 2017 introduced the concept of Group Insolvency into the German Insolvency law. German Insolvency law allows insolvency proceedings to be initiated in respect of companies within a Corporate Group at a single German Insolvency Court and/or to be administered by a single Insolvency Administrator.</i> • <i>The Regulations have provided for some key innovations, viz., (i) a Group venue; (ii) the option to appoint the same person as (Group) Insolvency Administrator/receiver;</i>

		and (iii) Group Coordination proceedings.
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72. The Ministry of Corporate Affairs published an Executive Summary on Group Insolvency on 18/01/2023 and has stated in the introduction as follows:

The business of corporations is increasingly conducted by enterprise operating as “groups”. This term covers various forms of economic organisation that are linked together by some form of ownership or control. The entities within a group are legally treated as separate and distinct entities except in certain circumstances envisaged in law (like common procedural filings, liability for criminal wrongs, etc.), and yet they operate as a group, tapping into one another’s efficiencies and strengths. Even decision-making for the group could reside across definitional outlines that legally define each entity within a group. Such distinct legal identity of group entities leads to various advantages of conducting business in the form of groups. This has prompted group structures to become a modern global reality.

Insolvency laws, like general company laws, typically respect the principle of separate legal personality of the entities in a group and deal with each entity’s assets and liabilities separately. Consequently, insolvency statutes in most jurisdictions treat the insolvency proceedings of each group entity separately. However, such statutory frameworks may prove to be ignorant of economic realities and practicalities.

Where group entities are significantly interlinked, it may be value destructive to not recognise such interlinkages in insolvency law. For instance, where the business of different entities in a group

are dependent on each other; or various group entities have many common assets; or where there are multiple common liabilities and related party transactions amongst various group entities, it may not be feasible to conduct insolvency proceedings for each group entity in isolation. Each entity in a group being able to tap synergies with others in the group when solvent, and yet being blind to the inter-linkages when it comes to insolvency, is anomalous. At the same time, a body corporate being a distinct legal entity with perpetual succession must not be lost sight of. Accordingly, the insolvency of entities belonging to a group may raise certain distinct problems that may not arise otherwise.

With the introduction of the Insolvency and Bankruptcy Code, 2016 (“Code/ IBC”), India consolidated the fragmented laws relating to inter alia reorganisation, insolvency resolution and liquidation of corporate persons. Although the Code comprehensively deals with the insolvency of corporate debtors as separate entities, it does not envisage a framework to either coordinate insolvency proceedings of corporate debtors belonging to a group or to have a common resolution for them. Consequently, the insolvency of different corporate debtors belonging to the same group is dealt with through separate insolvency proceedings for each corporate debtor.

However, in recent cases under the Code like “Videocon, Era infrastructure, Lanco, Educomp, Amtek, Adel, Jaypee and Aircel, special issues arose from their interconnections with other group companies.” Due to this, the Insolvency and Bankruptcy Board of India (“IBBI”) constituted a ‘Working Group on Group Insolvency’ (“Working Group”) under the Chairmanship of Mr. U. K. Sinha, through an office order dated 17 January 2019. The Working Group consulted various

stakeholders and undertook a detailed analysis of various issues that may arise in resolving insolvency of group entities in India. Based on this, it released a report on 23 September 2019 providing comprehensive recommendations for establishing an enabling framework for group insolvency that may be implemented in phases.

Dr. K.P. Krishnan to analyse the MLEGI through office order dated 21 Feb 2020 (as an addendum to its previous office order dated 23 January 2020), provided in Annexure I. The mandate of this Committee was to submit a report providing recommendations for group insolvency based on a review of the recommendations of the MLEGI and the Code. Prior to this, the Committee had been working on rules and regulations for cross-border insolvency under the Code and had submitted a report in this regard to the MCA on 15 June, 2020.

The Committee appreciated the recommendations of the Working Group and greatly benefited from the elaborate discussion in its report. To fulfil its mandate, the Committee consulted several stakeholders and experts, and examined relevant legal and regulatory principles as well as global best practices. Based on this, the Committee submits this report (“Report”) recommending a draft framework to facilitate insolvency resolution and liquidation of corporate debtors in a group in India, as well as recommendations of the Committee on adoption of the MLEGI.

73. A brief extract of the summary, published by the Ministry of Corporate Affairs on 18/01/2023, dealing with the issue on hand has recommended the following :-

.....iii. Jurisprudence on substantive consolidation, i.e., pooling of assets and liabilities of an insolvent group, is already developing under

the Code through case law. This is a remedy resorted to in exceptional circumstances and provisions governing substantive consolidation may not be provided in the Code at present. The need for such provisions may be contemplated at a later stage, on the basis of practice and jurisprudence evolved in this regard.

iv. In the group insolvency framework under the Code, a broad and inclusive definition of ‘group’ should be provided so as to include a large number of corporate debtors within the ambit of the framework. The definition of ‘group’ may be based on the criteria of control and significant ownership. This definition should be applicable to all entities that fall within the definition of a ‘corporate debtor’ under the Code, i.e., companies and limited liability partnerships. The group insolvency framework may not apply to financial service providers notified under Section 227 of the Code.

v. The group insolvency framework under the Code should only apply to corporate debtors in respect of whom a corporate insolvency resolution process or liquidation process is ongoing. The law shall not apply to solvent members of the group.....”

74. In this backdrop, it is seen that the RP of RISPL has preferred an Application in IA No. 548/CHE/2021 in IBA/1424/2019, seeking Consolidation of CIRP with the Holding Company, RPPL. The Ministry has suggested that adopting a purely single entity approach in the Insolvency of Group Members may be divergent from the economic realities of the group as viewed by Stakeholders. Although the Code comprehensively deals with the Insolvency of Corporate Debtors as separate entities, in instances where Insolvency Proceedings

had to be Consolidated, the ‘Adjudicating Authority’, under the Code and the Hon’ble Supreme Court have passed Orders enabling co-ordination of Insolvency Proceedings of the Group Members. The Working Group on Group Insolvency constituted by the Ministry of Corporate Affairs took note of this and discussed that NCLT/ NCLAT have been prompt in responding to economic realities of Companies to enable value maximisation for stakeholders.

75. As regarding the Submission of the Learned Senior Counsels for the CoC of RPPL, the RP of RPPL and the Successful Resolution Applicant (“SRA”) about the commercial wisdom of CoC being non-justiciable and therefore, the decision of the CoC of RPPL not to go ahead with the Consolidation, is untenable in the light of the present facts on hand as the commercial wisdom of CoC is with respect to the approval of Resolution Plan and further the Learned Senior Counsel appearing for ARCIL, Mr. E. Om Prakash, has submitted that MA 61/2021 in IA 394/2021 was kept pending by the ‘Adjudicating Authority’ and had MA 61/2021 been decided prior to the approval of the Resolution Plan, ARCIL which is the assignee of the Debt of L&T to a tune of Rs. 300 Crores would have 15% voting rights as part of the CoC in RPPL and ARCIL is seeking Consolidation. It is seen from the record that ARCIL is wearing two hats, one as a ‘borrower’ and one as a ‘guarantor’. We find force in the submissions of the Learned Senior Counsel, Mr. E. Om Prakash that unless there is Consolidation, the ‘debt’ in such a case would not be addressed properly. Needless to add, if the argument of the Learned

Senior Counsel for RPPL is to be taken into consideration, then the Commercial Wisdom of RISPL which is the subsidiary Company of RPPL is also to be taken into account as the RP of RISPL has filed an Affidavit that RISPL positively seeks ‘Consolidation’.

76. This Tribunal is of the considered view that the financial revival of one Company / Corporate Debtor will be closely linked to the Financial Health of the other Company if there is intricate Financial relationship between the two having the same set of Directors. Then it stands to reason that such ‘Units’ should be looked at jointly. It is submitted by the Learned Counsel appearing for Resolution Professional of RISPL that in fact there are no dues to be paid to the Operational Creditor who had initiated the Section 9 Application, but Common Suspended Directors of RISPL and RPPL agreed that there was a default in payment and had not opposed the initiation of CIRP against RISPL. However, since the Order of Admission is not under challenge before this Tribunal, this Appellate Tribunal is not adjudicating on this issue at this point of time.

77. The Learned Senior Counsel Mr. M.S. Krishnan drew our attention to the decision of the Bankruptcy Court of United States of America in the matter of **‘Pepper Vs. Litton’ [308 US 295 (1939)]**, a case decided under the US Bankruptcy Act of 1898 and the first one to apply the doctrine of Equitable Subordination. In this case, the Hon’ble Court had observed as follows:-

“The Court of bankruptcy are constituted by Sections 1 and 2 of the Bankruptcy Act (30 Stat. 544) and by the latter section are invested “with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings.” Consequently this Court has held that for many purposes courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity. [Local Loan Co. v. Hunt, 292 U.S. 234, 240]. By virtue of Section 2 a bankruptcy court is a court of equity at least in the sense that in the exercise of the jurisdiction conferred upon it by the Act, it applies the principles and rules of equity jurisprudence. [Larson v. First State Bank, 21 F. 2d 936,938]. Among the granted powers are the allowance and disallowance of claims; the collection and distribution of the estates of bankrupts and the determination of controversies in relation thereto; the rejection in whole or in part “according to the equities of the case” of claims previously allowed; and the entering of such judgments “as may be necessary for the enforcement of the provisions” of the Act. In such respects the jurisdiction of the bankruptcy court is exclusive of all other courts.”

It is the case of the Learned Senior Counsel Mr. M.S. Krishnan that unlike Section 105(a) of the US Bankruptcy Code which vests the Bankruptcy Court, ‘to issue any Order, Process or Judgment that is necessary or appropriate to carry out the provisions’, the IBC, 2016 does not confer the ‘Adjudicating and Appellate Authorities’ with any ‘Equitable Jurisdiction’. This argument has to be seen from the perspective that USA incorporates a ‘Debtor-in-possession’ regime, whereas the IBC, 2016 strictly adopts the ‘Creditors-in-control’ regime which is well defined and distinguishable. Further in the instant case, the question which arises

is with respect to ‘Consolidation’ where the ‘Adjudicating Authority’ has to examine if there are any ‘Assets’ and ‘Liabilities’ are combined. *In the Indian Law, Section 60 (5) (c) of the Code empowers the Adjudicating Authority to entertain and dispose of “any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor or Corporate Person under this Code”.* Regulation 11 of the NCLT Regulations provides for inherent powers of the Tribunal to pass such orders as may be necessary to meet the ends of Justice. Additionally, the Jurisprudence being followed in other developed countries, viz, Germany, Canada and European Union (detailed in Para 71), also encourages by way of ‘Insolvency Law’ and ‘Rulings’, Consolidation of Insolvency Proceedings which may be a guiding factor in the circumstances of this case and hence, cannot be ignored. We are also conscious of the fact that voting by CoC of RPPL was concluded on the same date as that of the Report of the Mediator. Though we agree with the contention of the Learned Senior Counsel that Commercial Wisdom of the CoC is of paramount importance, the commercial wisdom of the CoC of the Subsidiary Companies should also be given equal importance and cannot be circumvented, in the facts of this Case.

78. Regarding the submissions of the Learned Senior Counsel for the CoC and RP of RPPL about the ‘Equity Jurisdiction’, which the ‘Adjudicating Authority’

in Para 5.16 has referred to, in relation to Consolidation of CIRPs, this Tribunal deems it appropriate to reproduce the relevant para:

“5.16. Thus, the Hon’ble Supreme Court has vociferously stated that the Adjudicating Authority (NCLT) and also the Appellate Authority (NCLAT) have not been empowered with equity jurisdiction under the provisions of IBC, 2016 and that there is no equity-based jurisdiction with the Adjudicating Authority under the provisions of the IBC, 2016. Also, it is made clear that, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature not to confer any independent equity-based jurisdiction on the Adjudicating Authority. Further, an attempt was made by the Learned Senior Counsels arguing in favour of consolidations to state that these decisions were rendered on the issue of approval of Resolution Plan and hence the same cannot be applied to the facts of the present case. However, we are unable to accept the said contention, in view of the fact that the ratio decidendi which has been laid down in the above referred Judgment is that in order to exercise an ‘equity jurisdiction’, the same has to be conferred under the statutory framework i.e. under the provisions of IBC, 2016.

5.17 Further, as emphasized by the Hon’ble Supreme Court in the Judgment referred supra the Indian Bankruptcy Code, has consciously did not confer any independent equity-based jurisdiction on the Adjudicating Authority. As a corollary thereof, if there is not equity-based jurisdiction available under the provisions of the IBC, 2016, then the consolidation of CIRP of group companies, in the absence of specific provisions under IBC, 2016, cannot be ordered by this Adjudicating Authority.”

79. This Tribunal is of the considered view that the ratio laid down by the Hon'ble Apex Court in the matter of '*Pratap Technocrats Pvt. Ltd. and Ors. Vs. Monitoring Committee of Reliance Infratel and Ors.*' reported in [(2021) SCC Online SC 569] regarding 'Equity Jurisdiction', is not relevant to the facts of the attendant case, specifically in the view of the fact that Applications were filed by the Appellants seeking simultaneous CIRP / Consolidation, which Applications require to be adjudicated based on the parameters set out in '*Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.*' (Supra) and '*Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors*' (Supra), wherein the criteria used for Consolidation of Videocon Industries has been reiterated and which findings have attained 'finality' and are precedents set, to be safely relied upon. We hold that Consolidation of CIRP was ordered by the Principal Bench, NCLAT in the aforementioned cases, not in exercise of its 'Equity Jurisdiction', but intending 'maximisation of value of assets' and 'value addition' which is the main scope and objective of the Code. Consolidation is based on the principle that the Holding and the Subsidiary Units would be regarded as a 'Single Unit' owing to the nature of business activity and this cannot be construed as a principle in 'Equity' but a 'Legal principle'. For these ongoing reasons, this Tribunal is of the earnest view that there is no exercise of 'Equity Jurisdiction' in ordering Consolidation in the facts of the attendant case.

80. At the cost of repetition, the factual matrix of the case states that RISPL and RPPL entered into a Memorandum of Understanding dated 31/01/2014 followed by the execution of the Business Transfer Agreement (“BTA”) on 05/03/2014 towards the transfer of the business of ‘Operation and Maintenance of Wind Energy Generators, Wind Power Projects and Power Evacuation Facilities for Customers, Utility Boards for own Projects’ for an agreed Consideration of Rs. 310 Crores, settled by issue and allotment of Equity Shares equivalent to the Purchase Price, by REGPL (now RISPL) to RPPL. RPPL retained the business of development and procurement of technology for manufacture, sourcing and supply of Wind Energy Converters (WECs).

81. The Consideration for BTA was sourced from the issue of Debentures initially to Piramal Enterprises Ltd., and then by issuing Additional Debenture Trust Deed (“DTA”) dated 20/08/2015 and Amended and Restated Debenture Trust Deed (“ADTD”) dated 26/05/2017. For the BTA to come into effect, NOCs from customers of RPPL were duly sought in order to assign the Contracts of Operation & Maintenance to RISPL, which were originally executed by RPPL. Consequently, a Tripartite Assignment Agreement was executed between RPPL, RISPL and their respective customers, on the basis of the Operation & Maintenance Contract originally entered by RPPL.

82. In respective Agreements of Assignment executed in favour of RISPL, RPPL undertook to perform the obligation of RISPL under the O&M Agreement

in the event of RISPL's failure. Likewise, the Amended And Restated Debenture Trust Deed dated 26/05/2017, among RISPL (1st issuer), RPPL (2nd issuer), Mr. Madhusudan Khemka and Mr. R. Sundaresh (Promoters) and IDBI Trusteeship Services (Debenture Trustee), contains the Clause on Sponsor Support Undertakings, wherein the RPPL undertook to supply spares, provide ancillary services continued to make available the technological requirements, bears the cost and responsibility of major break-downs due to manufacturing defects during the "O&M period" and other such clauses.

83. Working Group on Group Insolvency constituted, vide Order No. IBBI/CIRP/GI/2018-19/001 dated 17/01/2019 in its Report to the IBBI dated 23/09/2019 states that if there are significant operational linkages between the different group companies, then Insolvency Proceedings against separate Companies would have to take into account this interdependence between Companies both to keep these Companies running as going concerns during the CIRP and to resolve the Insolvency of these Companies in a value maximizing manner.

84. It is stated that several Applications were filed by the RP of RPPL against RISPL in relation to the assets of RISPL and its Claims and RP of RISPL had filed nine Applications against RPPL and its Wholly Owned Subsidiary Companies and some are still pending before the 'Adjudicating Authority'.

85. The Mediator, Hon'ble Justice K. Kannan, clearly stated in his Report that Joint Sale of both the Companies is possible and this would result in the value maximisation and that if both RPPL and RISPL are not for the Joint Sale, the RPPL may transfer the Generator Repair Infrastructure by Sale / Lease to RISPL to conduct the business. It is seen from the record that during the Mediation Proceedings, the CoC of RPPL conducted its meeting. When twenty-five Applications, seeking Consolidation of CIRP were pending, the RP of RPPL filed an Application before the 'Adjudicating Authority', seeking approval of the Resolution Plan. Several objections were raised in the Intervening Applications, filed by the Operational Creditors as well as the RP of RISPL in IBA/1424/2019.

86. Though we do not wish to set the clock back, this Tribunal is *deeply conscious of the scope and intent of the Code, wherein 'Synergy' and 'Value Addition' of the assets ought to be the driving force*. The Notification, dated 01/11/2018 issued by the Ministry of New and Renewable Energy, Government of India, regarding inclusion of Wind Turbine Model in the revised list of Models and manufacturers whereby and whereunder guidelines were issued to the manufacturer of windmills to provide O&M Services for life of the windmills, is also to be kept in mind.

87. To reiterate, it is held that the Appellants herein (except for the RP of RISPL) are all Operational Creditors in view of the ratio laid down by the Hon'ble Apex Court in '*Consolidated Construction Consortium Limited Vs. Hitro*

Energy Solutions Pvt. Ltd.’ (Supra) that the definition of an ‘Operational Debt’ as defined under Section 5(21) of the Code, is broad enough to include all forms of contract for supply of goods and services between the Operational Creditor and the Corporate Debtor, including ones where the Operational Creditor may have been the *receiver / purchaser* of goods or services from the Corporate Debtor. Hence, this Tribunal holds that the Appellants have the locus in their capacity as ‘Operational Creditors’ and being ‘Aggrieved Parties’ to prefer this Appeal.

88. Keeping in view that the parameters set out in ***‘Radico Khaitan Ltd. vs. BT & FC Pvt. Ltd. & 6 Ors.’*** (Supra), ***‘Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors’*** (Supra) ‘for Consolidation’ with respect to common control, common directors, common liabilities, Interdependence and intricate links between the Companies (Para 58 of this Order) is largely and satisfactorily met; RPPL and RISPL can be treated as a single economic unit; the approval by CoC of RISPL, and having regard to the Report of the Mediator, Hon’ble Justice K. Kannan, appointed by the ‘Adjudicating Authority’, the recommendations dated 23/09/2019 of the WG constituted by IBBI; the extract of the Executive Summary dated 18/01/2023, published by the Ministry of Corporate Affairs, this Tribunal is of the considered view that Consolidation of the CIRPs be allowed and the Impugned Order of the ‘Adjudicating Authority’ dated 01/11/2021 is set aside. Needless to add, it is reiterated that this Tribunal, has not made any observations on the merits of the ‘Claims’ or as to whether some of the

Appellants are ‘Financial Creditors’ or comment on the eligibility of the Appellants, in Company Appeal (AT) (CH) (Ins) No. 104/2022, who had submitted that they are ready to submit a consolidated bid for both RPPL and RISPL.

89. For all the foregoing reasons, Company Appeal (AT) (CH) (Ins) No. 323/2021, Company Appeal (AT) (CH) (Ins) No. 96/2022, Company Appeal (AT) (CH) (Ins) No. 334/2021, Company Appeal (AT) (CH) (Ins) No. 335/2021, Company Appeal (AT) (CH) (Ins) No. 340/2021, Company Appeal (AT) (CH) (Ins) No. 06/2022, Company Appeal (AT) (CH) (Ins) No. 104/2022, Company Appeal (AT) (CH) (Ins) No. 328/2021, Company Appeal (AT) (CH) (Ins) No. 88/2022 are ‘allowed’ and the Order of the ‘Adjudicating Authority’ / ‘Tribunal’ in IA No. 694/CHE/2021 in IBA No. 1099/2019, MA/91/2021 in IBA/1099/2019 and MA/92/2021 in IBA/1424/2019, IA/720/2021 in IBA/1424/2019, IA/721(CHE)/2021 in IBA/1424/2019, IA/548(CHE)/2021 in IBA/1424/2019, IA/548(CHE)/2021 in IBA/1424/2019, IA/518(CHE)/2021 in IBA/1099/2019, IA No. 617(CHE)/2021 in IBA/1099/2019 and IA/664(CHE)/2021 in IBA/1424/2019 is set aside. In view of this decision, the ‘Adjudicating Authority’/ National Company Law Tribunal, Chennai Bench, shall proceed in accordance with Law. Needless to add, this Order has been passed, keeping in view the peculiar facts of the attendant case on hand, and solely having regard to

the scope and objective of the IBC, 2016. No Order as to Costs. The Connected pending 'Interlocutory Applications', if any, are 'closed'.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

31/08/2023
SPR/TM