

June 2, 2025

BSE Limited

Phiroze Jeejeebhoy Towers,
Dalal Street, Fort,
Mumbai 400 001

BSE Scrip Code: 500390

National Stock Exchange of India Limited

Exchange Plaza, 5th Floor,
Plot No. C/1, G Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051

NSE Scrip Symbol: RELINFRA

Dear Sir(s),

Sub: Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations")

No impact or bearing of NCLT Order on Reliance Infrastructure Limited or any of its subsidiaries.

The **Company has made full payment of Rs. 92.68 crore** to Dhursar Solar Power Private Limited, **towards claim of tariff** as per the Energy Purchase Agreement with the Company.

Accordingly, the Company preferred an appeal before the Hon'ble NCLAT and will seek withdrawal of the Order dated May 30, 2025 passed by NCLT Mumbai in case no. C.P. (IB)/624(MB)2022, for Corporate Insolvency Resolution process and appointment of the interim resolution professional.

The NCLT Order has become infructuous as legally advised, upon full payment having already been made.

We request you to take the same on record.

Yours faithfully,
For **Reliance Infrastructure Limited**

Paresh Rathod
Company Secretary



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI
SPECIAL BENCH

Item No. 03.

IA(I.B.C)/3590(MB)2024 IN C.P. (IB)/624(MB)2022

CORAM

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED 30.05.2025

NAME OF THE PARTIES : **IDBI Trusteeship Services Limited**

Vs

Reliance Infrastructure Limited

For OC : Absent.

For CD : Senior Adv. Ashish Kamat a/w. Adv. D.J. Kakalia, Adv. Kartik Hede
i/b Mulla and Mulla

IBC under Sec. 9

ORDER

IA(I.B.C)/3590(MB)2024 IN C.P. (IB)/624(MB)2022

1. Pronounced in the open court *vide* separate Order. The above **IA(I.B.C)/3590(MB)2024** is dismissed and **C.P. (IB)/624(MB)2022** is **admitted Mr. Tehseen Fatima Khatri** appointed as IRP. Order will be uploaded today.



2. Ld. Senior Counsel Mr. Ashish S. Kamat has requested this Bench to stay the order of admission of CIRP of the CD and also that RP who is appointed should be directed not to take charge of the CD.
3. Heard the Senior Counsel Mr. Ashish Kamat. We find that there is no provision in the IBC to stay an order of CIRP initiated in respect of the Corporate Debtor. This Adjudicating Authority also has no power to direct an Interim Insolvency Professional appointed, not to take charge of its CD once CIRP is ordered. Hence, we find no merit in the above.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

//SKS//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 624/MB/2022

[With IA(IBC) No. 3590/MB/2024]

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

IDBI TRUSTEESHIP SERVICES LIMITED

[CIN: U65991MH2001GOI131154]

Registered Office: Asian Building, Ground Floor

17, R Kamani Marg, Ballard Estate

Mumbai-400001, Maharashtra.

...Operational Creditor

V/s

RELIANCE INFRASTRUCTURE LIMITED

[CIN: L75100MH1929PLC001530]

Registered Office: Reliance Centre, Ground Floor

19, Walchand Hirachand Marg, Ballard Estate

Mumbai-400001, Maharashtra

...Corporate Debtor

ALONG WITH

IA (IBC) No. 3590/MB/2024

RELIANCE INFRASTRUCTURE LIMITED

.....Applicant

V/s.

IDBI TRUSTEESHIP SERVICES LIMITED

....Respondent

Pronounced: 30.05.2025



CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Sr. Adv. Gaurav Joshi a/w. Adv. Animesh Bisht,
Adv. Anush Mathkar & Adv. Aastha Kaushal i/b.
Cyril Amarchand Mangaldas.

Corporate Debtor: Sr. Adv. Prateek Seksaria a/w. Adv. Raghavi
Sharma, Adv. Kartik Hede & Adv. Tushad Kakaria
i/b Mulla & Mulla and Craigie Blunt & Caroe.

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

- 1.1 This CP(IB) No. 624/MB/2022 (Main Application) was filed on 29.04.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by IDBI Trusteeship Services Limited, the Operational Creditor (OC), through Ms. Kavita Hindalkar, Manager of the OC, authorised *vide* Board Resolution dated 06.08.2019 and General Power of Attorney dated 26.08.2019, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Reliance Infrastructure Limited (R-Infra), the Corporate Debtor (CD).
- 1.2 The total amount of default alleged is Rs.88,68,19,930/- (Eighty-Eight Crore Sixty-Eight Lakh Nineteen Thousand Nine Hundred and Thirty Rupees) as



on 28.08.2018, as well as interest calculated at the rate of 1.25% per month from the date of 30 (Thirty) days of the receipt of each invoice till the date of payment. It is based on default in the payment of 10 (Ten) invoices issued by Dhursar Solar Power Private Limited (DSPPL) in lieu of supplying solar energy to the CD as per the Energy Purchase Agreement (EPA) dated 01.02.2012. The aforesaid invoices were issued during the period from 2017 to 2018, and the OC, being the security trustee of the DSPPL, sought payments against the invoices from the CD.

1.3 Part-IV of the Application does not mention any specific date of default. However, the OC produced the DSPPL's invoices on record, wherein it is shown that the payment date is after thirty days from the date of receipt of the invoices. Since the CD defaulted in payment of its outstanding dues, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.

1.4 The CD filed the IA (IBC) No. 3590/MB/2024 (IA) on 03.07.2024, under Section 60(5) of the IBC read with Rule 11 of the National Company Law Tribunal Rules, 2016, against the OC, challenging the maintainability of the Main Application on the ground that the alleged debt does not amount to operational debt under the IBC.

2. CONTENTIONS OF OC

2.1 The OC is a trust company which deals in providing trusteeship services by managing and administering trusts for beneficiaries, while the CD is a Mumbai-based company involved in different infrastructure projects across States. The Dhursar Solar Power Private Limited (Formerly known as



Dahanu Solar Power Private Limited), was a Mumbai-based private company and had solar power plants at Dhursar, Rajasthan. The CD and DSPPL executed the EPA dated 28.03.2011, wherein the CD agreed to purchase all the solar energy from the Solar Power Plant of the DSPPL. Later, the OC entered into the Direct Agreement (DA) dated 01.02.2012 with the CD and DSPPL. As per the terms of the DA, all the claims of the DSPPL were assigned to the OC, which served as DSPPL's Security Trustee and the EPA was amended accordingly, on 01.02.2012.

- 2.2 Pursuant to the execution of the EPA and DA, the DSPPL supplied solar energy to the CD and raised 10 invoices for the same during the period of 2017 and 2018. The DSPPL's first and last invoices were raised on 05.12.2017 and 04.09.2018 respectively. The DSPPL's claims based on its 10 invoices amounted to Rs.88,68,19,930/-. To remind the CD regarding the outstanding dues under the invoices, the OC issued letter dated 21.08.2019, seeking payment of Rs.89,20,00,000/- within 2 days from the date of issuance of the letter. The CD, however, by its letter dated 05.09.2019, stated various steps undertaken by it to address and resolve the short-term cash flow mismatches, which would result in settlement of the pending invoices of DSPPL.
- 2.3 However, the CD failed to make any payment towards the outstanding dues, which compelled the OC to issue another letter dated 16.09.2019, seeking payment of Rs.89,20,00,000/- and stated that failure to make the payment would lead to appropriate action against the CD. The DSPPL sent an email dated 06.03.2020 to the OC, regarding the outstanding amount of Rs.88.7 Crore from the CD.



- 2.4 On account of CD's failure in making payments to the OC despite repeated requests, the OC issued demand notice dated 11.04.2022 under Section 8 of the IBC, seeking payment of Rs.88,68,19,930/-. The demand notice was sent to the CD's registered address as well as email dated 11.04.2022 to the representatives of the CD. But the CD refuted its liability by its reply notice dated 20.04.2022, wherein it contended lack of privity of contract between the OC and the CD and pre-existing disputes with DSPPL as grounds of absence of any liability towards the OC.
- 2.5 The OC's claims in Part-IV of the Main Application amounts to operational debt under Section 5(21) of the IBC since DSPPL assigned all its claims involving the CD in favour of the OC *vide* DA dated 01.02.2012 and the CD agreed to the same as per Clause 2.2 and 2.6 of the DA. In view of the foregoing reasons, the OC prays that this IA may be dismissed and CIRP may be initiated in respect of the CD, by admitting the Main Application.

3. CONTENTIONS OF CD

- 3.1 The Main Application is barred by limitation since the last invoice, i.e., DSPPL/PB/FY2018-19/05a dated 04.09.2018, was due and payable on 05.10.2018, while the Main Application was filed on 29.04.2022. Since the alleged default amount is based on the DSPPL's invoices issued during 2017-2018, the claim is already time barred.
- 3.2 The Main Application is not maintainable on account of pre-existing dispute with DSPPL. As per the terms of the EPA, the sale of the solar energy would be governed by the rules, regulations and orders passed by Central Electricity Regulatory Commission (CERC) and Maharashtra Electricity



Regulatory Commission (MERC). Pursuant to the execution of EPA, the MERC approved the lesser weighted average tariff for the period of 2011-2019 against Rs.17.91/unit agreed under the EPA and charged to the DSPPL's invoices. Due to this, the CD was able to recover only Rs.10.31/unit from the consumers over energy purchased from DSPPL. Aggrieved by MERC's orders, it challenged the same before the Appellate Tribunal for Electricity (APTEL) *vide* Appeal Nos. 237/2015; 12/2017; 106/2019; and 276/2022 and also before the Hon'ble Supreme Court in Civil Appeal Nos. 6048-6051/2015, which are currently pending.

- 3.3 The alleged claim in the Main Application is already the subject matter of arbitration invoked by the DSPPL under Article 17 of the EPA. The DSPPL invoked the arbitration proceedings against the CD *vide* its letter dated 20.03.2020, over the alleged delayed payment of Rs.153 Crore including interest. The CD accepted the reference of disputes to an arbitrator by its reply letter dated 20.04.2020. The CD also raised the issue of pending arbitration proceedings in its reply notice dated 20.04.2022, sent to the OC's demand notice dated 11.04.2022. Further, the ten invoices raised by DSPPL were not in accordance with the provisions of the EPA, and, therefore, it cannot be considered as valid invoices for the purpose of operational debt under the IBC.
- 3.4 The Main Application is defective due to non-compliance of Section 9(3)(c) of the IBC, as no certificate or bank statement from the financial institution for establishing the contractual relationship is produced by the OC.
- 3.5 The CD, by filing IA 3950/2024, submitted that the OC does not have the locus to file the Main Application as an operational creditor under IBC, since



it has not provided any service or supplied goods to the CD and the OC cannot be treated as transferee or assignee of alleged operational debt since the DA dated 01.02.2012, merely allowed the OC to serve as security trustee. Creation of a security interest over a debt does not amount to the transfer of the debt itself.

- 3.6 The OC is maintaining the present Application only to seek payment of interest as operational debt, which is nothing but an afterthought. The CD, *vide* its Affidavit dated 01.08.2024, confirms and admits to pay the amount of Rs.88,68,19,930/- to the OC on or before 16.08.2024. The said amount is the principal operational debt as well as default amount in the Main Application, which can be confirmed from the OC's demand notice dated 11.04.2022 as well as its letters dated 21.08.2019 and 16.09.2019. Annexure-9 of the Main Application specifically mentioned that the OC reserves its right to claim interest due and payable by R-Infra which does not form part of the demand notice. Till 2024, the OC never claimed interest on the invoices and nowhere claimed any amount over and above Rs. 88.68 Crore in the Main Application.
- 3.7 It is further submitted that the part-payment of Rs. 87,77,273/- made by the CD was appropriated by the OC against the first invoice dated 05.12.2017 for discharge of principal amount, and not interest, which contradicts the OC's interest claim on the principal amount. Also, the OC, *vide* its reply dated 19.08.2024 to the CD's Affidavit dated 01.08.2024, dishonestly claimed Rs.81,97,85,191/- as interest, which has not been explained by the OC. The CD, not only showed its bonafides but also complied with this Tribunal's order dated 07.10.2024, by tendering the principal amount of



Rs.88,68,19,930/- by two demand drafts to the OC for Rs.88,68,19,000/- and Rs. 930/-, respectively, which were sent to the OC *vide* the CD's letters dated 11.10.2024 and 15.10.2024. The CD's letters containing the demand drafts were duly received by the OC and the letters also clearly mentioned the manner for appropriation of the said amounts. Thus, the OC's claim for interest cannot be accepted and the CD relied upon the decisions of the Hon'ble NCLAT in *Reliance Commercial Finance Limited Vs. Darode Jog Builder Private Limited.*, [(2022) SCC OnLine NCLAT 3659]; *Rohit Motawat Vs. Madhu Sharma, Proprietor Hind Chem Corporation & Anr.*, [(2023) SCC OnLine NCLAT 1058]; Hon'ble Supreme Court's decision in *Valley Iron and Steel Company Limited and Another Vs. Good Luck Traders.*, [(2024) 2 Supreme Court Cases 542]; NCLT New Delhi's ruling in *Rashtriya Polymers & Solvents Vs. Kanodia Technoplast Limited.*, [(2023) SCC OnLine NCLT 335] and NCLT Mumbai's decision in *TCL Cables Private Limited Vs. Shapoorji Pallonji & Company Private Limited.*, [(2023) SCC OnLine NCLT 568], stating that once the principal debt is paid, then an application under Section 9 cannot survive just for non-payment of interest.

- 3.8 Further, the CD, *vide* its rejoinder affidavit dated 05.09.2024, submitted that the OC filed Commercial Dispute No. 75/2024 in the Hon'ble Bombay High Court and moved for pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, before the Main Mediation Centre over the claim amount of Rs.1,70,66,05,121/-, including the principal amount of Rs.88,68,19,930/-. The amount claimed in the Commercial Suit is the same as that of the alleged default amount mentioned in the Part-IV of the Main Application, as well as demand notice dated 11.04.2022. This shows the



existence of pre-existing dispute in the Main Application as evident from the notice dated 27.08.2024, issued by the Main Mediation Centre for appearance and also from the Mediation Application dated 14.08.2024, filed by the OC.

- 3.9 Clause 12.02 of the EPA between the DSPPL and the CD regarding interest on delayed payment has been amended/novated on account of Agreement-cum-Indemnity dated 28.09.2018 (Indemnity Agreement) between the parties, wherein the CD was only liable to pay interest on delayed payments to be made under Clause 2.2 of the EPA, which is not part of the Main Application. This means that the OC also understood the same as an amendment or novation of the EPA as evident from the OC's letters dated 21.08.2019; 16.09.2019 and 20.03.2020.
- 3.10 Since the OC has approached this Tribunal with malafide intention to harass the CD for recovery of money, which is contrary to the objectives of the IBC, the Main Application is only to be dismissed.

4. REJOINDER OF OC

- 4.1 The documents produced in the Main Application and other pleadings reveal the existence of operational debt and default by the CD. The appeals filed by the CD before the APTEL and the Hon'ble Supreme Court, do not have any bearing on the unpaid invoices issued by the DSPPL, which is the basis of the operational debt against the CD. Further, the contention of the CD regarding pre-existing dispute, over difference in tariff rate under the EPA and the MERC's orders, is misplaced since the CD agreed to compensate DSPPL for any shortfall caused to it as evident from the DSPPL's email



dated 29.05.2018, and the Indemnity Agreement dated 28.09.2018, between the CD and the DSPPL. As per the Indemnity Agreement, the CD expressly acknowledged and agreed that all liabilities towards DSPPL under the EPA till 29.08.2018, will be cleared by the CD without any demur.

- 4.2 The invoices were clearly raised in accordance with the provisions of the EPA, and the CD failed to produce any evidence to dispute its veracity. The DSPPL's letter dated 20.03.2020, cannot be treated as notice for invoking arbitration proceeding and it was related to dispute over assignment of liability towards DSPPL to Reliance Power Limited (R-Power) by the CD and not over the aforesaid invoices.
- 4.3 The OC is contractually entitled to seek interest from the CD over delayed payments since Clause 12.02 of the EPA states that the interest amount on the invoices continues to accrue on a daily basis till the actual payment on such invoices. Contrary to CD's contention on interest claim and its reliance on *Rohit Motawat* (supra), *Rashtriya Polymers* (supra) and *TCL Cables* (supra), the clause on interest was present in the EPA and the Indemnity Agreement also refers to it even though the Indemnity Agreement was executed without the consent of the OC. Further, the factual matrix of the aforesaid cases relied by the CD were different from that of the Main Application, and, hence, these decisions would not have any bearing on the Main Application.
- 4.4 The interest amount of Rs. 81,97,85,191/- is clearly a part of the operational debt in the Main Application. The OC relies upon the decisions of Hon'ble NCLAT, New Delhi in *Krishna Enterprises Vs. Gammon India Ltd.*, [(2018) SCC OnLine NCLAT 360] and *Mr. Prashant Agarwal Vs. Vikash*



Parasrampuria & Anr., [Company Appeal (AT)(Ins.) No. 690 of 2022] as well as Hon'ble Supreme Court's judgment in *Industrial Credit & Development Syndicate now called I.C.S.D. Ltd. Vs. Smithaben H. Patel.*, [(1999) 3 Supreme Court Cases 80], wherein it was held that interest forms part of operational debt provided there exists contractual obligation by the parties and that the money paid by the debtor has to be first applied towards the payment of interest and when interest is satisfied, then towards payment of principal amount.

- 4.5 Non-production of certificate or bank statement from the financial institution under Section 9(3)(c) of IBC is not fatal to the Main Application as long as the operational debt can be proved by other documents, which the OC produced in the Main Application.
- 4.6 The Main Application is not barred by limitation on account of application of Hon'ble Supreme Court's order dated 10.01.2022, in *Re: Cognizance for Extension of Limitation*, by which the COVID-19 period from 15.03.2020 to 28.02.2022 was excluded for the purpose of determining limitation period and after such exclusion, the period of limitation regarding the last invoice would expire on 20.09.2023. Since the Main Application was filed on 29.04.2022, it would be considered to be filed within the limitation period. Further, the CD, *vide* its letter dated 05.09.2019, acknowledges the OC's invoices, which extends the limitation period from 05.09.2019 onwards for the purpose of filing the Main Application.
- 4.7 The OC has the locus to file the Main Application as it was assigned the DSPPL's claims under the aforesaid DA and the CD acknowledged the same. As the CD had purchased solar energy from DSPPL and the claims



are based solely on invoices issued by DSPPL, the claims assigned to the OC are valid and the OC retains the capacity as assignee of operational debt and DSPPL's security trustee to maintain the Main Application under Section 9 of the IBC against the CD.

5. ANALYSIS AND FINDINGS

- 5.1 We have perused all the documents and pleadings in the Main Application and the IA and heard both the Ld. Sr. Counsel appeared for the OC and the CD.
- 5.2 The major issues to be determined in the Main Application and the IA, are (i) limitation; (ii) existence of operational debt; (iii) OC's locus to file the Main Application as operational creditor; (iv) pre-existing disputes; (v) absence of certificate under Section 9(3)(c) of IBC; and (vi); pendency of other legal proceedings.
- 5.3 As far as issue of limitation is concerned, it is observed that the OC has not mentioned any specific date of default in Part-IV of the Main Application or its Section 8 demand notice. However, upon perusal of documents, we find that DSPPL issued its last invoice on 04.09.2018, which became due and payable on 05.10.2018. As the CD acknowledged the debt and liability towards DSPPL *vide* its letter dated 05.09.2019, it can be said that the debt was continuing in nature and thus, we consider 05.10.2018, as the default date i.e., the date on which the period of 30 days from the invoice dated 04.09.2018 would have expired for payment purposes. It is pertinent to mention that in the wake of COVID-19 Pandemic, the Hon'ble Supreme Court extended the period of limitation on 10.01.2022 in "*In Re: Cognizance*



for Extension of Limitation", [M.A. No. 21 of 2022 in MA No. 665 of 2021 in *Suo Motu* Writ Petition (C) No. 3 of 2020], wherein it was held that limitation for all types of proceedings stands excluded from 15.03.2020 to 28.02.2022, for all cases irrespective of the type of case. This has been applied by all the Courts and Tribunals in every matter before them. By applying the above, in the present matter, the Main Application ought to have been filed within a period of three years (1095 days) beginning from the date of payment of last invoice i.e., 05.10.2018; out of which a total number of 526 days have expired from 05.10.2018 till 14.03.2020. After the excluded period from 15.03.2020 to 28.02.2022, the balance period of limitation would run from 01.03.2022. In that case, the OC would get remaining balance of 569 days, and the new date of expiration of the limitation would be 21.09.2023, which is calculated as below:

Particulars	Dates
Date of Default	05.10.2018
Extent of limitation expired till 14.03.2020	526 days
Exclusion Period	15.03.2020 to 28.02.2022
Balance limitation as available on 01.03.2022	569 days
569 days w.e.f. 01.03.2022	21.09.2023

The Main Application was filed on 29.04.2022, and hence, we find that the same is filed within the limitation period and thus, the issue (i) is decided in favour of the OC.

- 5.4 As far as the issue of operational debt is concerned, the Ld. Sr. Counsel for the CD, vehemently challenged the maintainability of the Main Application on ground of absence of operational debt, since the principal amount was



paid by the CD during the pendency of the Main Application. According to the Ld. Sr. Counsel, the Main Application cannot be maintained solely for recovery of interest amount. However, upon perusal of available documents, we find that both Part-IV of the Main Application and the demand notice dated 11.04.2022, clearly make mention of the interest part of the operational debt. Further, the OC, *vide* its reply to the CD's affidavit dated 01.08.2024, gave the details regarding the interest calculated as 1.25% per month over delayed payments. It is true that the CD, by its letter dated 11.10.2024, requested the OC to appropriate Rs.88,68,19,930/- only against the principal default. The OC's contention is that it has a right to appropriate the above amount towards the interest component of the operational debt, although there was specific request from the CD to only appropriate the amount paid towards the principal amount. There is nothing on record to suggest that any amount paid by the CD would first be appropriated towards the principal debt and later, appropriated towards the interest. The OC has received the above amount by demand drafts sent along with the CD's letters dated 11.10.2024 and 15.10.2024. Hence, the OC's reliance on *Smithaben H. Patel* (supra) is relevant, as it had the option to suitably apportion any payment received by it from the CD towards the principal or interest, as the case may be. Be that as it may, the documents on record reveal that the OC's claim in the Main Application was not just restricted to the principal amount alone but also the interest on delayed payments, for which the CD had already agreed in Clause 12.02 of the EPA as well as in Clause 2.3 of the Indemnity Agreement. Although the Indemnity Agreement was entered into without the prior knowledge and consent of the



present OC, which is an assignee, Para 4 of its letter dated 21.08.2019 and Para 2 of its letter dated 16.09.2019 clearly provide that any breach of the provisions of the financing documents would constitute an event of default by DSPPL i.e., the original OC. Also, the CD, in its rejoinder affidavit dated 05.09.2024, merely questioned the OC over alleged failure in demanding the interest claim prior to the filing of the Main Application but it did not question the calculation of interest or the very interest amount itself, as mentioned in the OC's reply dated 19.08.2024 to the CD's Affidavit dated 01.08.2024. Thus, we can safely conclude that the interest claimed by the OC cannot be excluded from the operational debt merely because there was no specific amount mentioned for the interest claim in the Part-IV of the Main Application or the Section 8 demand notice dated 11.04.2022. However, in Part-IV of the Main Application, the OC has stated that it is also entitled to interest on outstanding payment under each invoice at the rate of 1.25% per month calculated from the date of 30 days of receipt of each invoice until the date of payment. Since there is contractual agreement as to the interest component, the OC's interest claim cannot be disallowed. The decisions of Hon'ble NCLAT in *Krishna Enterprises* (supra) and *Prashant Agarwal* (supra) are thus inapplicable in the instant case. As there was express provision for payment of interest, we have no reluctance to hold that the operational debt as claimed by the OC in the Main Application also includes the interest claim, and thus, the issue (ii) is decided against the CD.

5.5 Now, coming to the issue as to the locus of the OC to file the Main Application as an operational creditor, we find that the CD has challenged the same in its reply as well as in IA (IBC) No. 3590/MB/2024. However,



upon perusal of the EPA and the DA, we observe that the CD was a party to both the agreements, wherein the DSPPL informed the CD regarding the assignment of its claims in favour of the OC, which includes the invoices raised by DSPPL in lieu of supplying solar energy to the CD and the CD gave its consent to the said DA as per Clause 2.1 and 2.2, respectively, of the DA. In fact, the CD, being a party to the DA dated 01.02.2012, was also required to pay any sum which it is obliged at any time to pay DSPPL under the EPA as per Clause 2.6.1 of the DA. The perusal of available documents shows that the CD had purchased solar energy from DSPPL for which the DSPPL raised invoices and the debt based on DSPPL's invoices was assigned to the OC under Clause 2.1 of the DA. The definition of the expression "operational debt" under Section 5(20) of the IBC includes the debt legally assigned or transferred. Since the CD failed to produce any substantial evidence to challenge the assignment of DSPPL's claims to the OC *vide* DA dated 01.02.2012, it can be concluded that the OC, being the security trustee of DSPPL, has the right to file the Main Application as an operational creditor. Consequently, **IA(IBC) No. 3590/MB/2024**, is found to be devoid of any merit and, is, accordingly, **dismissed**. Thus, we hold that the OC, being the assignee of the operational debt, has the locus to file and maintain the Main Application and hence, the issue (iii) is decided in favour of the OC.

- 5.6 Regarding the issue of pre-existing dispute, the CD alleged non-compliance of the EPA regarding issuance of the invoices by the DSPPL. However, upon perusal of documents, we observe that there was no specific format provided in the EPA over issuance of invoices. Exhibit-F of the EPA provides



for format of monthly energy bill, which was to be given by the seller (DSPPL herein). However, there is no evidence to suggest that the CD had ever provided the format for invoices/bills to the DSPPL or the OC till the filing of the Main Application. Also, the CD failed to produce any evidence to dispute the veracity of the invoices or communication regarding the invoices before the issuance of demand notice dated 11.04.2022. Further, the perusal of the Financial Statements of the CD for the Financial Year 2017-2018, reveals that DSPPL was the Associate Company of the CD. Hence, it is not believable that the CD was not aware of the format to be given to its own Associate Company to issue invoices accordingly. In any case, there was no specific format for the invoices as agreed upon by the parties. It is also observed that the CD has not disputed the DSPPL's invoices or its letter dated 05.09.2019, acknowledging the operational debt based on the said invoices. In view of the above, we hold that there is no pre-existing dispute between the parties, over the invoices and thus, the issue (iv) is also decided in favour of the OC.

- 5.7 As far as the requirement of Certificate from the Financial Institution under Section 9(3)(c) of IBC is concerned, we find that though there is no such certificate or bank statement produced in the Main Application, the OC produced the Bank Statement of DSPPL from 05.07.2012 to 27.02.2023 in its rejoinder. However, we hold that any of these certificates are not essential if existence of default is otherwise proved. Further, the Hon'ble Supreme Court in *Macquarie Bank Limited Vs. Shilpi Cable Technologies Limited.*, [(2018) 2 Supreme Court Cases 674], held that the Certificate under Section 9(3)(c) of IBC is not mandatory, provided there are other



documents to prove the debt and default on the CD's part. Since, the OC has produced its invoices as well as bank statements and other documents to prove the CD's debt and default, the absence of the Certificate from the Financial Institution under Section 9(3)(c) of IBC is not fatal to the Main Application and hence, the issue (v) is decided in favour of the OC.

- 5.8 Lastly, the issue to be decided is whether the other legal proceedings filed by the parties would affect maintainability of the Main Application. On perusal of available records shows that DSPPL issued arbitration notice dated 20.03.2020 and the CD by letter dated 20.04.2020, accepted the same. However, there is nothing in both the letters to suggest that the alleged dispute between the parties has anything to do with the invoices issued by DSPPL and assigned to the OC. Further, the documents produced by both the parties do not indicate any pending arbitration proceedings. It seems that apart from the issuance of letters in March and April, 2020, no further step has been taken towards the arbitration proceedings. The fact that the DSPPL was an Associate Company of the CD further indicates that the alleged pre-existing dispute over pending arbitration proceedings is nothing but moonshine in nature. Regarding the filing of pre-mediation institution by the OC under Section 12A of the Commercial Courts Act, before Main Mediation Centre or challenging the MERC orders before the Ld. APTEL or before the Hon'ble Supreme Court by the CD, cannot be regarded as pre-existing dispute for the purposes of IBC. It is found that the OC filed the pre-mediation institution in Commercial Dispute No. 75/2024 before Main Mediation Centre on 16.08.2024, pursuant to which it issued notice to the CD on 27.08.2024 for appearance. It is also



in evidence that the Commercial Dispute was filed after the filing of the Main Application before this Tribunal. The mere fact that the claim amount sought in the Commercial Dispute is similar to that of the Main Application does not indicate any pre-existing dispute. Further, we find that filing of pre-mediation institution is nothing but a statutory requirement under Section 12A of the Commercial Courts Act, which per se does not amount to any pre-existing dispute between the parties, for the purposes of IBC. Further, this Bench was aware of the attempts of both the parties to amicably settle the matter. We provided sufficient opportunities for the same but the efforts did not yield any result and this Bench was informed by both the Ld. Sr. Counsel for the parties that the pre-mediation process has not become successful. Thus, the parties chose to proceed with the matter and we finally heard them in detail. Hence, we hold that filing of pre-institution mediation before Main Mediation Centre is only a statutory compliance, which would not amount to any pre-existing dispute in regard to the Main Application. Moreover, upon perusal of documents, it seems that the filing of appeals before Ld. APTEL and Hon'ble Supreme Court by the CD challenging various MERC orders was related to the MERC's approval of tariff lower than Rs.17.91/- per unit. As per the EPA, the tariff rate agreed by the parties, including the CD and DSPPL, was Rs.17.91/- per unit while the CD allegedly was able to recover merely Rs. 10.31/- per unit from the consumers due to MERC's orders. The difference between the tariff rates under the EPA and the MERC orders was to be reimbursed by the CD to the DSPPL as per the Indemnity Agreement. This is further corroborated by the CD's letter dated 05.09.2019, wherein it acknowledged its liability towards the DSPPL in respect of the invoices and



gave assurance of settling the same through resolution by CD's short-term cash flow mismatches. Moreover, neither DSPPL nor the assignee OC herein were parties to the CD's appeals pending before Ld. APTEL and the Hon'ble Supreme Court. Hence, it is difficult to make any linkage between the CD's disputes with the MERC and the OC's claims under the invoices. Considering the factual and legal aspects, we hold that pending appeals and other proceedings filed by both the parties do not have any bearing on the Main Application and thus, the issue (vi) is also decided in favour of the OC.

- 5.9 In view of the above discussions, we come to a definite conclusion that the OC has become successful in establishing operational debt due and payable against the CD and that the CD is in default. The Main Application is complete in all respects. Hence, we are of the considered view that the same deserves to be admitted.

ORDER

In the result, **CP (IB) No. 624/MB/2022** filed by IDBI Trusteeship Services Limited, the OC, under Section 9 of the IBC, for initiating CIRP in respect of Reliance Infrastructure Limited, the CD, is **admitted**. Consequently, **IA(IBC) No.3590/MB/2024** is **rejected** and disposed of.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:



- I. We prohibit-
 - a) institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints Ms. **Tehseen Fatima Khatri**, a registered Insolvency Professional having Registration Number- **IBBI/IPA-002/IP-N01140/2021-2022/13793** and e-mail- **tfkhatriassociates@gmail.com** having valid Authorisation for Assignment up to **31.12.2025** as the Interim



Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

- VI. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs. 5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the CD.
- IX. Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of e-mail and WhatsApp.



- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//LRA-Tanmay Jain//