

IN THE NATIONAL COMPANY LAW TRIBUNAL NEW DELHI

SPECIAL SINGLE BENCH (COURT – II)

Company Petition (IB) No. 149/ND/2025

Application under Section 7 of the IBC, 2016

IN THE MATTER OF:

Glorify Advisors Private Limited

... Financial Creditor/ Petitioner.

Versus

Microgreen Electronics Private Limited

... Corporate Debtor/ Respondent.

Date of Pronouncement: 24.04.2026.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

Appearance:

For the Applicant:

Adv. Aishwarya Nabh

For the Corporate Debtor:

Adv. Akash Srivastava

ORDER

PER: BIDISHA BANERJEE, Member (Judicial)

1. This order arises out of a reference made by the Hon'ble President, NCLT in exercise of powers under section 419(5) of the Companies Act, 2013, read with Rule 60(2) & (3) NCLT Rules, 2016, vide order dated 09.02.2026 to the present Member Judicial as the Third Member in regard to the difference of opinion between Hon'ble Judicial Member Shri Ashok Kumar Bhardwaj and Hon'ble Technical Member Ms. Reena Sinha Puri, in the present matter being CP (IB) 149/ND/2025.

2. Brief Background

- 2.1.** Glorify Advisors Private Limited (hereinafter 'Financial Creditor/Petitioner') has filed the present petition under Section 7 of the IBC against Microgreen Electronics Private Limited (hereinafter 'Corporate Debtor/Respondent'). The Financial Creditor seeks the initiation of CIRP following an alleged default in the repayment of a financial debt totalling Rs 4,48,69,120/- inclusive of accrued penal interest until realization.
- 2.2.** The Financial Creditor had subscribed to 41,240 Compulsorily Convertible Debentures (CCDs) issued by the Corporate Debtor on 30.03.2016 for a total consideration of Rs 4.12 Crores. Following a request by the Financial Creditor on 08.04.2024, these instruments were converted into an equivalent amount of Optionally Convertible Debentures (OCDs) on 03.05.2024.
- 2.3.** As per the terms of the agreement, the Optionally Convertible Debentures (OCDs) were redeemable at the option of the holder with a 30 days' notice and also carried a penal interest of 18% per annum in the event of default. The Financial Creditor issued a demand notice to carry out this redemption on 05.06.2024. In

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a response dated 12.07.2024, the Corporate Debtor acknowledged its liability of Rs 4,12,40,000/- and requested a period of three months for repayment. However, the Financial Creditor failed to redeem the OCDs even after the issuance of final demand notice dated 18.10.2024, resulting in a default.

- 2.4.** As on 31.12.2024, the total outstanding debt including interest was Rs 4,48,69,120/-.
- 2.5.** The present petition was filed on 24.02.2025.
- 2.6.** Proof of disbursement and acknowledgment of debt is evidenced by the bank statements, the OCDs agreement, and NESL record, all of which are annexed to this petition.

3. Contentions of the Petitioner before the Bench

- 3.1.** The Financial Creditor submitted that the OCDs were issued pursuant to the OCD Agreement dated 03.05.2024 with stipulated interest rate of 18% per annum payable on default and represent a debt disbursed by the Financial Creditor in consideration of the time value of money.
- 3.2.** The Financial Creditor issued multiple demand notices dated 05.06.2024, 08.07.2024, and a final notice dated 18.10.2024, seeking redemption of the OCDs.
- 3.3.** The Corporate Debtor, in its reply dated 12.07.2024, acknowledged its liability to the extent of Rs 4,12,40,000 /-.
- 3.4.** In accordance with the terms of the OCD Agreement, which stipulate redemption upon a 30-day notice, the date of default is rightly computed as 05.07.2024 i.e. 30 days from the first demand notice dated 05.06.2024.

4. Contentions of the Respondent before the Bench

- 4.1.** The Corporate Debtor in its reply dated 30.04.2025, had questioned the maintainability of the Petition, contending that it

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arises from a commercial transaction structured through CCDs, which were subsequently, at the request of the Financial Creditor, converted into OCDs.

- 4.2.** The OCDs in question are redeemable or convertible at the option of the holder within 10 years, with a 30-day notice requirement.
- 4.3.** The first demand was made on 05.06.2024, and the purported default date is cited as 05.07.2024, as such this is a case of premature invocation of default within a short timeline, despite the CD's clear acknowledgment of liability and willingness to repay.
- 4.4.** The Corporate Debtor has also objected to this petition on the ground that a 'Contractual Investment Dispute' has been portrayed as an insolvency proceeding. It is claimed that OCDs are not "Financial Debt" as per Section 5(8) of the IBC, since they carry zero interest at issuance and lack time value of money placing reliance on the order of Hon'ble NCLAT in *Dr. B. V.s. Lakshmi v. Geoniatix Laser Solutions Pvt. Ltd.*
- 4.5.** To contend that the provisions of the IBC cannot be turned into a debt recovery mechanism, as the main intent of the legislature behind bringing this Act is to revive the Corporate Debtor. The Corporate Debtor has relied on *Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd. and Invest Asset Securitisation & Reconstruction Pvt. Ltd v. Girnar Fibres Ltd and Transmission Corporation of Andhra Pradesh Ltd. v. Equipment Conductors and Cables Ltd.*, to support its contention.

5. Contentions refuted by the Petitioner

- 5.1.** The Financial Creditor has refuted the Corporate Debtors contention that the OCDs do not qualify as 'Financial Debt' under Section 5(8) of the IBC, terming such arguments as baseless and contrary to both facts and law.

- 5.2.** To support its position that OCDs with stipulated interest rate upon default constitute debt disbursed against time value of money, reliance is placed on the decisions in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (Writ Petition (Civil) No. 43 of 2019; *Aqua Electronics & Solutions Pvt Ltd. v. Legend Power Pvt. Ltd.* (CP(IB) No. 138 of 2024); and *Budhpur Buildcon Pvt. Ltd. v. Abhay Narayan Manudhane* (CA(AT)(INS.)No. 589 of 2021), which affirm that instruments such as OCD's bearing interest and involving repayment obligations, constitute 'Financial Debt' within the meaning of Section 5(8) of the IBC.
- 5.3.** The Financial Creditor claimed that the Corporate debtor's contention that the invocation of default is 'Premature' is without merit.
- 5.4.** The Financial Creditor has refuted the Corporate debtor's claim that the petition is merely an attempt at debt recovery that it is entirely misconceived, misplaced, and contrary to the legal framework and judicial precedents. The reliance to that effect has been placed by the Corporate Debtor on the decisions in *Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd.*, and *Invest Asset Securitisation & Reconstruction Pvt. Ltd v. Girnar Fibres Ltd* have been claimed to be wholly misplaced and inapplicable to the facts and context of the present case.

6. View of The Hon'ble Member (Technical)

- 6.1.** The Corporate Debtor initially received investment funding from the FC in the form of CCDs. However, at the request of the FC, these were subsequently converted into OCDs pursuant to the OCD Agreement dated 03.05.2024.
- 6.2.** It is not in dispute that the OCDs issued under this Agreement represent a debt disbursed by the FC against the consideration

of time value of money, as evidenced by the agreed penal interest rate of 18% per annum in the event of default.

6.3. The Corporate Debtor's acknowledgment of debt is clearly evidenced by the letter dated 12.07.2024, the bank statements, the OCD Agreement, and the record available with the NESL record annexed to the petition.

6.4. Reference is made to the *Innoventive Industries Limited vs ICICI Bank Ltd*:

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due”; i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

6.5. There is no merit in the contention of the CD that the present petition is a disguised attempt at debt recovery, we find no merit in such an argument the Financial Creditor has lawfully invoked section 7 of the IBC, supported by clear and cogent evidence of default. The judicial precedents relied upon by the CD to support its contention are found to be misplaced and inapplicable to the facts of the present case.

6.6. The present application under section 7 of the IBC is admitted.

7. Observation of Hon'ble Member (Judicial):

- 7.1.** The registered office of both the Financial Creditor and Corporate Debtor is common.
- 7.2.** The Corporate Debtor had issued CCDs to the Financial Creditor, way back in the year 2016, it is not understood how suddenly after 8 years, the CCDs could be converted into OCDs.
- 7.3.** It is also difficult to appreciate that how without rescinding the CCD agreement, the parties could convert the CCDs into OCDs when clause 2 of the OCD agreement clarifies that the CCDs were to be converted into OCDs subject to fulfilment of certain conditions.
- 7.4.** For conversion of OCD into CCD, a board meeting of the company is required to be held and thereafter as per procedure, the EGM need to be held. The Hon'ble Judicial Member found it difficult to comprehend that when were the statutory requirement satisfied. When the agreement is dated 03.05.2024, the certificate of OCD is also of same date and how without meeting the condition including the statutory requirement of approval by the members by way of special resolution in a general meeting, the CCDs would be converted into OCDs, and the certificate could be issued on the same date.
- 7.5.** The tenure of the OCDs was 10 years, why shortly after the conversion 03.05.2024, the FC sought to redeem the OCDs by giving notice of redemption only on 05.06.2024
- 7.6.** From the totality of the facts and circumstances, it seems quite weird that a company would create liability after ten years to invite debt against it. The mutual conversion of CCD into OCD with request of the SC would only strengthen the semblance of collusion.
- 7.7.** The, the CCD could not have created any liability qua the CD.
- 7.8.** The different addresses of the FC and CD in MCA record would further strengthen the semblance of collusion, for the simple

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reason that when in agreement the address mention is same, how in MCA record the addresses are different.

- 7.9.** The Hon'ble Judicial Member noted in the order authored by the Hon'ble Technical Member; that the CD clearly acknowledged its liability and expressed willingness to pay and found the petition is collusive.

8. The Submissions of the Corporate Debtor in course of the Hearing

- 8.1.** The CCDs were issued in the year 2016 for a total consideration of approximately Rs 4.12 Crores, forming part of a *bona fide* commercial arrangement.
- 8.2.** The CCDs remained outstanding for several years, during which period the Financial Creditor continued as an investor in the Respondent, thereby evidencing a long-standing financial relationship between the parties.
- 8.3.** Upon the request of the Financial Creditor, the CCDs were converted into Optionally Convertible Debentures (OCDs) pursuant to the Board Resolution Dated 12.04.2024 and shareholders resolution dated 03.05.2024, in compliance with the provisions of the Companies Act, 2013.
- 8.4.** Immediately upon conversion of the CCDs into OCDs, the Financial Creditor, without allowing any reasonable time for performance of the contractual terms or exploring conversion/settlement options, hastily proceeded to issue a demand notice and thereafter filed the present petition under Section 7 of the Code.
- 8.5.** The dispute, if any, arises purely out of contractual and commercial terms governing the OCDs, particularly in light of the fact that the instruments were redeemable or convertible at the option of the holder within a long tenure of 10 years.

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- 8.6.** The invocation of Section 7 of the code is an abuse of the Insolvency framework, which is not intended to be used as a substitute for recovery of money.
- 8.7.** The essential ingredients of “Financial Debt” under Section 5(8) of the Code are absent in the present case. As per the terms governing the OCDs, there is no interest component, no fixed repayment obligation, and the redemption or conversion is entirely at the discretion of the holder.
- 8.8.** It is a settled position of law that existence of “Time value of Money” is a *sine qua non* for a “debt” to qualify as a “financial debt” under the Code.
- 8.9.** The OCDs being zero coupon instruments do not provide any consideration for the time value of money and therefore cannot be classified as financial debt within the meaning of Section 5(8) of the Code.
- 8.10.** As per the terms of the OCDs, redemption is contingent upon the exercise of option by the holder and issuance of a prior notice of 30 days. The Financial Creditor issued a demand notice on 05.06.2024 and thereafter alleged default within a short span of time, without granting reasonable opportunity to the Respondent to comply. Thus, the alleged default is premature, artificial and unsustainable in law.
- 8.11.** The additional affidavit is genuinely, duly documented, and entered into in the ordinary course of business.
- 8.12.** The issuance of CCDs and their subsequent conversion into OCDs was carried out strictly in accordance with statutory provisions and after obtaining due corporate approvals.
- 8.13.** The Board resolution dated 12.04.2024 and the shareholders Resolution Dated 03.05.2024 unequivocally demonstrate compliance with legal requirements. It is a settled position that the Insolvency and Bankruptcy Code is a resolution mechanism

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and not a recovery forum, for which reliance is placed on the Hon'ble Supreme Court's decision in *Swiss Ribbons v. Union of India*.

9. The Submissions of the Financial Creditor in course of arguments

9.1. The chronology of events giving rise to the present application has been depicted as follows:

| Serial Number | Date | Events |
|---------------|------------|--|
| 1 | 30.03.2016 | FC subscribed to 41,240 Compulsorily Convertible Debenture (CCDs) issued by the CD for a total consideration of Rs 4,12,40,000/- |
| 2 | 08.04.2024 | FC addressed a formal written request to the CD seeking conversion of the 41,240 CCDs into Optionally Convertible Debentures (OCDs) |
| 3 | 12.04.2024 | Board of Directors of the CD passed a Board Resolution approving and recommending the conversion, subject to shareholder's approval. |

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| 4 | 03.05.2024 | EGM of CD held: Special Resolution passed under Section 71 of Companies Act, 2013 approving conversion, OCD Agreement was executed and OCD Certificate issued by the CD. |
| 5 | 05.06.2024 | FC issued demand notice/letter for redemption of 41,240 OCDs and in terms of OCD Agreement 30 days' time is given to make the payment. |
| 6 | 05.07.2024 | The CD defaulted in making the payment to FC in terms of the OCD agreement. |
| 7 | 08.07.2024 | Second Demand notice/letter was issued by the FC. |
| 8 | 12.07.2024 | CD unconditionally acknowledged its liability of Rs. 4,12,40,000/- and sought three months' time to pay. |

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| | 18.10.2024 | Third Demand notice/letter was issued by the FC. |
| 9 | 07.02.2025 | Form MGT-14 filed with the Registrar of Companies by the CD |
| 10 | 24.02.2025 | Present petition filed under Section 7 of the IBC by the FC. |

9.2. The conversion of 41,240 CCDs into 41,240 OCDs was not a unilateral or clandestine act. It was a fully constituted corporate action undertaken in strict compliance with the mandatory procedural requirements of the Companies Act, 2013 and the rules framed thereunder, with the full knowledge, active participation, and informed consent of the CD at every stage.

9.3. The sequential corporate steps, each independently evidenced by documentary record (annexed to the Additional Affidavit filed on 10.03.2026), are given as follows:

9.3.1. Board Resolution (12.04.2024): The Board of Directors of the Corporate Debtor, at a duly convened meeting, considered and approved the Fc's request for conversion, subject to shareholder approval. This Board Resolution is annexed as Annexure A-2 on page 15 of Additional Affidavit dated 10.03.2026.

9.3.2. Special Resolution at EGM (03.05.2024); An Extraordinary General Meeting of shareholders was held with a duly circulated Explanatory Statement under Section 102 of Companies Act, 2013, disclosing all material facts. The shareholders passed a Special Resolution under Section 71 of the Companies Act, 2013, specifically approving the conversion. This is annexed as

Annexure A-3 @ page 16-17 of the Additional Affidavit dated 10.03.2026.

9.3.3.Filing of Form MGT-14: In compliance with Section 117 of the Companies Act, 2013 read with Rule 24 of the Companies (Management and Administration) Rules, 2014, the CD filed Form MGT-14 with the Registrar of Companies (SRN : AB2649596, filed 07.02.2025). Its acceptance by the RoC conclusively establishes statutory compliance. This is annexed as Annexure A-4 pg. 18-25 of the Additional Affidavit dated 10.03.2026

9.3.4.Execution of OCD Agreement (03.05.2024): The OCD Agreement was executed between the FC and the CD, signed by duly authorised representatives of both parties. The execution of the Agreement by the CD's authorised representative constitutes an unambiguous act of voluntary acceptance, which forecloses any subsequent plea of invalidity or want of authority (Annexure p/8 @ 28-32 of the Petition and Debenture Certificate @ Pg. 33-34 of the Petition).

The above has been placed in context of Hon'ble Judicial member having observed that it was "difficult to understand how without meeting the condition including the statutory requirement of approval by members by way of special resolution in a general meeting, the CCDs would be converted into OCDs and the certificate could be issued on the same date".

9.4. It is admitted that the sequence on 03.05.2024 was legally sequential and not simultaneous. Conferring requisite corporate authority. The OCD agreement was thereupon executed. The OCD certificate was issued as an immediate and legally necessary consequence thereof the certificate being a documentary acknowledgement of rights already created under the Agreement. The contemporaneous execution of a principal agreement and its attendant instruments upon satisfaction of the underlying

condition precedent is a well-established feature of commercial closing practice, adopted precisely to avoid any lacuna between the creation of a contractual right and its documentary evidence. No adverse inference of irregularity or collusion can be drawn from mere simultaneity of documentation.

- 9.5.** It is submitted that the Board Resolution dated 12.04.2024 and the Special Resolution dated 03.05.2024 both duly certified establish that requisite corporate approvals were obtained prior to execution, and the subsequent filing of Form MGT-14 completed the regulatory loop. The FC having invested Rs 4,12,30,000/- in the CD in 2016, was well within its legitimate commercial rights after a substantial holding period exceeding eight years. The request for conversion of CCDs into OCDs was therefore a legitimate commercial step and cannot in any manner be regarded as unusual, irregular, or suggestive of collusion.
- 9.6.** The OCD Agreement unambiguously and unconditionally vested in the FC the right to seek redemption at any time within the 10-year tenure, upon giving not less than 30 days prior written notice, without stipulating any minimum holding period, lock-in, or precondition to the exercise of that right. Therefore, redemption after one month is inconsequential.
- 9.7.** The Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* [(2018) 1 SCC 40], held that once a default has occurred, the Hon'ble Adjudicating Authority has merely to see the records and satisfy itself that a default has occurred, and it is of no matter that the debt is disputed so long as the debt is "due".
- 9.8.** The CD itself, vide its letter dated 12.07.2024, unconditionally acknowledged its liability to pay Rs. 4,12,40,00/- to the FC and sought three months' time for payment. This acknowledgment constitutes a clear admission of the existence of a valid financial debt and the correctness of the redemption of the existence of a

valid financial debt and the correctness of the redemption demand. The CD's prompt acknowledgment of liability cannot be construed as evidence of collusion on the contrary, it demonstrates that the debt is genuine and the default is real.

9.9. The filing of Form MGT-14 before the Register of Companies constitutes a statutory filing forming part of the public regulatory record maintained under the Companies Act, 2013. Further, the underlying financial liability of Rs. 4,12,40,000/- is independently evidenced through multiple contemporaneous records including:

- (i) Bank statements reflecting the disbursement of funds:
- (ii) The original issuance of CCDs in 2016:and
- (iii) The record of default maintained with the National E-Governance Services Limited (NESL).

All these records establish the genuineness of the financial transaction.

9.10. Section 65 of the IBC specifically addresses fraudulent or malicious initiation of insolvency proceedings, and any finding of collusion under the said provision must necessarily be supported by clear and cogent evidence demonstrating mala fide intent.

9.11. The earlier registered address of FC was located at a commercial hub/building where multiple offices are situated. The FC subsequently and duly changed its registered office on 01.12.2024, which change stands properly recorded in the statutory filings Form INC-22 filed before the Registrar of Companies and is reflected in the records maintained on the MCA portal. The mere fact that such an address appears on the OCD Certificate does not, in any manner, justify an interference of collusion or any alleged nexus.

9.12. The OCDs are clearly “financial debt” within the meaning of Section 5(8) of the IBC, as they represent a debt disbursed against the consideration for the time value of money, as evidenced by the stipulated penal interest rate of 18% per annum in the event of default. Reliance is placed on : *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (Writ Petition (Civil) No. 43 of 2019; *Aqua Electronics & Solutions Pvt Ltd. v. Legend Power Pvt. Ltd.* (CP(IB) No. 138 of 2024); and *Budhpur Buildcon Pvt. Ltd. v. Abhay Narayan Manudhane* (CA(AT)(INS.)No. 589 of 2021).

10. Discernible Facts

10.1. The CCDs are essentially equity instruments and do not contemplate repayment of principal amount. The CCD can never be treated as debt.

10.2. The ‘Repayment of Principal’ test laid down by the Hon’ble Supreme Court in *Narendra Kumar Maheswari Vs UOI* [AIR 1989 SUPREME COURT 2138] is noted as follows:

“98. Our attention was drawn to Sec. 2(12) of the Companies Act under which a debenture need not be secured at all. In that light the guidelines should be interpreted. Therefore, it was submitted, Guideline 10, reasonably interpreted, means that such security should be provided as is customarily adopted in corporate practice in the matter of issuing debentures. It has to be borne in mind that the debentures issued in the present case are compulsorily convertible. **Therefore, no repayment of principal is really involved.** The question of security becomes relevant for the purpose of payment of interest on these debentures and the payment of principal only in the unlikely, event of winding up. The debentures need not necessarily be secured. Guidelines do not provide for quantum and nature of the security. A debenture has been defined to mean essentially as an acknowledgement of debt,

*with a commitment to repay the principal with interest (Palmer's Company Law; p. 672; 24th Edition). Reference, in this connection, may be made to The British India Steam Navigation Co. v. The Commissioner of Inland Revenue. [1881] 7 QBD 165; at pages 172 and 173. A debenture may contain charge only on a part of the assets of the company Re. Colonial Trusts Corporation, [1879] (15) Ch. 465 or it may not contain any charge on any of its assets (See Speyer Brothers v. The Commissioner of Inland Revenue, [1907] 1 KB 246 and Lemon v. Austin Friars Investment Trust Ltd., [1926] (1) Ch. 15. A debenture may, therefore, be secured or unsecured (Palmer's Company Law; p. 675; 24th Edition). An ordinary debenture has to be distinguished from a 'mortgage debenture' which necessarily creates a mortgage on the assets of a company (See Palmer's Company Law p, 706). **A compulsorily convertible debenture does not postulate any repayment of the principal. Therefore, it does not constitute a 'debenture' in its classic sense. Even a debenture, which is only convertible at option has been regarded a 'hybrid' debenture by Palmer's Company Law (Para 44.07 at page 676).** In this connection, reference may be made to the guidelines for the "Protection of Debenture Holders" issued on the 14th January, 1987 which have recognised the basic distinction between a convertible and a nonconvertible debenture. It is apparent that these were issued for the purpose of ensuring the serviceability and repayment of debentures on time. It has been asserted before us that the compulsorily convertible debentures in corporate practice was adopted in India sometime after the year 1984. **Wherever the concept of compulsorily convertible debentures is involved, the guidelines treat these as "equity".** This is clear from Guideline IV(i) read with IV (iii) of the Guide- lines for Issue of Cumulative Convertible Preference Shares and Guidelines No. 8*

*and 11 of the Employees Stock Option Guidelines, These two sets of Guidelines clearly indicate that **any instrument which is compulsorily convertible into shares, is regarded as an "equity" and not as a loan or debt.***

10.3. The Master Circular regarding the treatment as advised by RBI in regard to CCD carry a lot of relevance. Para 4 and sub para 4.6 of RBI Master Direction on Foreign Investment in India RBI/FED/2017-18, FED Master Direction No. 11/2017-18/60 (Updated up to January 20, 2025) provides the following:

- 4.6 Debentures: Debentures which are fully, compulsorily and mandatorily convertible are treated as **equity** instruments.
- 4.6.1 Amendment of the tenor of compulsorily and mandatorily convertible debentures shall be in compliance with the Companies Act, 2013.
- 4.6.2 Debentures which **are not fully, compulsorily and mandatorily convertible are debt instruments** in terms of the notification no. S.O.3722(E) dated October 16, 2019, issued under sub-section (7) of Section 6 of FEMA. Therefore, issuance of the same are not governed under the NDI Rules.
- 4.6.3 Optionally convertible/ partially convertible debentures issued up to June 7, 2007 or for which funds were received for such issue prior to June 7, 2007 are deemed to have been issued in accordance with the NDI Rules till their original maturity. Any extension of maturity prior to June 7, 2007, by the company in accordance with the provisions of the Companies Act, 2013, will be considered as original maturity for the purpose of these rules.
- 4.6.4 non-convertible/ optionally convertible/ partially convertible debentures, funds for which have been received after June 07, 2007, shall be treated as debt and shall conform to External Commercial Borrowing (ECB) guidelines framed under

Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2018, as amended from time to time.

10.4. While placing reliance on the decision of Narendra Kumar Maheshwari Vs. UOI and Ors., the Hon'ble Appellate Tribunal in *M/s IFCI Ltd. v. Sutanu Sinha RP of IVRCL Chengapalli Tollways Ltd [2023] ibclaw.in 383 NCLAT* held that:

23. xxxx..... In Narendra Kumar Maheshwari v. Union of India [1990 Supp SCC 440] , the Hon'ble Supreme Court, observed that in the various guidelines applicable to such instruments, compulsorily convertible debentures are regarded as 'equity' and not as a loan or debt. One of the critical considerations adopted by the Hon'ble Supreme Court of India in concluding so, is that 'a compulsorily convertible debenture does not postulate any repayment of the principal'. The thinking of the Hon'ble Supreme Court revealed in this judgment, not only clarifies the issue, but also provides me with a touchstone to determine whether OFCDs issued. by the two Companies are more in the nature of shares or debentures. SIRECL has issued three bonds viz. Abode Bond, Real Estate Bond and Nirman Bond. SHICL has also issued three bonds viz. Multiple Bond, Income Bond and Housing Bond. From a plain reading of the summary of their descriptions at Paras 9.2 and 9.3 above, it is evident that all these six bonds postulate a repayment of the principal. The repayment of the principal will be at the option of the investor. The investor holds the option, which gives her a right to determine whether she would like to get her principal back in cash or as equity shares. Hence, optionally fully convertible debentures unlike their counterpart category of compulsorily convertible debentures do not share the characteristic pointed out by the Hon'ble Supreme Court in arriving at the conclusion that compulsorily convertible debentures are more of equity than of debentures. Thus, all the six financial instruments issued by the

two Companies share the defining feature of debentures in that a payment of interest to the investor and a repayment of the principal, albeit at the option of the investor, is postulated.”

28. This Tribunal is also conscious of the fact that CCDs in the present case have matured before the ‘Admission into CIRP’. The Learned Adjudicating Authority has also rightly placed reliance on the decision of the Hon’ble Supreme Court in ‘Narendra Kumar Maheshwari Vs. UOI and Ors.’ wherein it is held by the Hon’ble Apex Court that any Instrument, which is fully, compulsorily convertible into shares, is regarded as ‘Equity’, and not a ‘Loan’ or ‘Debt’. The Argument of the Learned Senior Counsel that this Judgment is with the relevance to a PIL that challenged the grant of consent by the CCI and those observations cannot be used to interpret the nature of CCDs, cannot be sustained as it is the principal and the ratio laid down by the Hon’ble Apex Court ‘regarding the nature of CCDs’, is what is to be taken into consideration and it is clear from this Judgment that CCDs do not postulate any repayment of Principal and accordingly do not constitute a ‘Debenture in its classic sense’.

33. This Tribunal is of the earnest view that in the facts of the attendant case, the CCDs are in the nature of ‘Equity Instruments’ and do not fall within the definition of ‘Financial Debt’ as defined under Section 5(8) of the Code.

10.5. This decision of the Hon’ble Appellate Tribunal was upheld by the Hon’ble Supreme Court *IFCI Ltd. v. Sutanu Sinha*, (2024) 15 SCC 288 stating :

“27. A reading of the impugned judgment, specifically the rationale from para 19 onwards shows that the issue has been correctly crystallized as to whether CCDs could be treated as a debt instead

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SPECIAL SINGLE BENCH (COURT – II)**

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of an equity instrument. In that sense, it was observed that treating them as a debt would tantamount to breach of the concessional agreement and the common loan agreement. The investment was clearly in the nature of debentures which were compulsorily convertible into equity and nowhere is it stipulated that these CCDs would partake the character of financial debt on the happening of a particular event.”

10.6. In view of the decisions in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (Writ Petition (Civil) No. 43 of 2019; *Aqua Electronics & Solutions Pvt Ltd. v. Legend Power Pvt. Ltd.* (CP(IB) No. 138 of 2024); and *Budhpur Buildcon Pvt. Ltd. v. Abhay Narayan Manudhane* (CA(AT)(INS.) No. 589 of 2021)

10.6.1. Subscription towards debentures carry interest and therefore carries a time value for money and therefore they constitute a “Financial Debt”.

10.6.2. In the case at hand the reason why Financial Creditor got conversion of 41,240 CCDs into OCDs is not clear.

10.6.3. A restructuring from CCD to OCDs may allow issuers to avoid immediate mandatory dilution if company valuations are low or to enable investors to opt for cash redemption instead of equity if the company underperforms.

10.6.4. Generally, the OCDs allow debenture holders to choose between converting into equity or receiving cash redemption at maturity with option for premature redemption as per clause of OCDs. Here the option could be exercised before maturity, and the FC had given due notice.

10.6.5. The Board meeting held on 12.04.2024 for conversion, the EGM on 3.05.2024 opposing conversion, the demand notice as 05.06.2024 for redemption within 30 days followed by second demand notice on 08.07.2024, CDs acknowledgment of Liability on 12.07.2024 is almost back-to-back, sufficient

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to raise suspicions in the mind of a prudent man that the petition is collusive.

10.7. Upon perusal of the Director Master data available on MCA Portal, it is observed a deep-seated and pervasive professional nexus exists between the management of the Financial Creditor and the Corporate Debtor, which strongly suggests a lack of arm's length dealing, the suspicion of a concerted action is further solidified by the execution of the transaction documents. Specifically, it is observed that both the individuals Mr. Ashish Kumar Mishra (DIN: 09065052) and Mr. Shiv Shankar Sharma (DIN: 09032660) have jointly signed **Annexure P8**, which pertains to the execution of the Optionally Convertible Debentures (OCDs) Agreement. Further hinting at a collusion is the conduct regarding these instruments: Mr. Shiv Shankar Sharma signed the request cum consent letter for the conversion of Compulsorily Convertible Debentures (CCDs) to OCDs and issued the notice for demand of redemption of the OCDs. Simultaneously, Mr. Ashish Kumar Mishra signed the documentation requesting a three-month extension of time for the aforementioned redemption. Mr. Ashish Kumar Mishra (DIN: 09065052) and Mr. Shiv Shankar Sharma (DIN: 09032660) are found to be co-directors in no fewer than seven distinct corporate entities. Their shared professional trajectory is most evident in Millgreen Power Limited, Insolation Projects Private Limited, and GMM Barter Private Limited, where both individuals were appointed as directors on the very same day, July 12, 2021. This synchronization of appointments continues across multiple sectors, including their roles in Induco Infradevelopers Limited, Natia Consultancy Private Limited, Ramaa Advisors Private Limited, and Celestyn Energy & Development Private Limited. It is highly improbable that such extensive and overlapping directorships are merely coincidental.

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The records indicate that these individuals have maintained a continuous and collaborative professional relationship for several years across these shared entities:

| Company Name | Ashish Kumar Mishra Tenure | Shiv Shankar Sharma Tenure | Overlapping Period |
|---|-----------------------------------|-----------------------------------|---------------------------|
| Millgreen Power Limited | 12/07/2021 to Present | 01/04/2021 to Present | 12/07/2021 to Present |
| Insolation Projects Private Limited | 12/07/2021 to Present | 01/04/2021 to Present | 12/07/2021 to Present |
| GMM Barter Private Limited | 12/07/2021 to Present | 12/07/2021 to Present | 12/07/2021 to Present |
| Induco Infradevelopers Limited | 12/07/2021 to 15/03/2024 | 01/04/2021 to 01/12/2023 | 12/07/2021 to 01/12/2023 |
| Natia Consultancy Private Limited | 20/08/2022 to Present | 30/04/2025 to Present | 30/04/2025 to Present |
| Ramaa Advisors Private Limited | 31/01/2025 to Present | 30/04/2025 to Present | 30/04/2025 to Present |
| Celestyn Energy & Development Private Limited | 12/07/2021 to Present | 30/06/2025 to Present | 30/06/2025 to Present |

10.8. In the course of the hearing, the Corporate Debtor highlighted the approval of a board resolution dated **12/04/2024** recommending and approving the conversion of CCDs to OCDs, subject to shareholder approval, and further cited an Extra-Ordinary General Meeting (EGM) held on **03/05/2024** wherein a special

resolution was passed under Section 71 of the Companies Act approving the said conversion. However, this Bench notes with concern that no official records, such as minutes or notices of the meetings, have been provided to substantiate the claims regarding the board resolution dated **12/04/2024** or the EGM held on **03/05/2024**. Despite the assertion that the Corporate Debtor executed an OCD agreement and issued an OCD certificate on the very same date as the purported EGM, a significant question arises as to how these documents were drafted, approved, and executed with such extraordinary haste. This skepticism is further compounded by the fact that the OCD agreement, as placed at **Annexure P/8** of the petition, was executed without the signatures of any witnesses, casting serious doubt on the procedural legitimacy and the authenticity of the timeline presented by the parties.

10.9. Upon perusal of the financial statements of the Corporate Debtor obtained from the MCA portal, this Bench finds that the financial status of the entity reveals a state of poor financial health. The audited financial statements for the years ending March 31, 2022, and March 31, 2023, demonstrate that the Corporate Debtor's net worth has been entirely eroded, with negative reserves and surplus standing at Rs. 34,21,20,540 as of March 31, 2023. The Directors' Report and Statement of Profit and Loss explicitly confirm that the company generated zero income during the periods of 2021-22 and 2022-23, while incurring a staggering loss of Rs. 1,41,48,557 in the 2021-22 financial year followed by a loss of Rs. 30,481 in the 2022-23 reporting period.

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| I. Balance Sheet | | Part-B | |
|------------------|--|--|----------------------------|
| | Particulars | Figures as at the end of (Current reporting period) (in Rs.) | |
| | | 31/03/2023 (DD/MM/YYYY) | 31/03/2022 (DD/MM/YYYY) |
| I. | EQUITY AND LIABILITIES | | |
| (1) | Shareholder's Fund | | |
| | (a) Share capital | 100000 | 100000 |
| | (b) Reserves and surplus | -342120540 | -342090060 |
| | (c) Money received against share warrants | 0 | 0 |
| (2) | Share application money pending allotment | 0 | 0 |
| (3) | Non - current liabilities | | |
| | (a) Long term borrowings | 358589940 | 358555730 |
| | (b) Deferred tax liabilities (net) | 0 | 0 |
| | (c) Other long term liabilities | 0 | 0 |
| | (d) Long term provisions | 0 | 0 |
| (4) | Current liabilities | | |
| | (a) Short term borrowings | 30480 | 34210 |
| | (b) Trade payables | 136150 | 136150 |
| | (c) Other current liabilities | 410360 | 410360 |
| | (d) Short term provisions | 0 | 0 |
| | Total | 17146390 | 17146390 |
| II. | ASSETS | | |
| (1) | Non-current assets | | |
| | (a) Fixed assets | | |
| | (i) Tangible assets | 0 | 0 |
| | (ii) Intangible assets | 0 | 0 |
| | (iii) Capital work-in-progress | 0 | 0 |
| | (iv) Intangible assets under development | 0 | 0 |
| | (b) Non-current Investments | 12739000 | 12739000 |
| | (c) Deferred tax assets (net) | 0 | 0 |
| | (d) Long term loans and advances | 0 | 0 |
| | (e) Other non-current assets | 0 | 0 |
| (2) | Current assets | | |
| | (a) Current Investment | 0 | 0 |
| | (b) Inventories | 0 | 0 |
| | (c) Trade receivables | 0 | 0 |
| | (d) Cash and cash equivalents | 897390 | 897390 |
| | (e) Short term loans and advances | 0 | 0 |
| | (f) Other current assets | 3510000 | 3510000 |
| | Total | 17146390 | 17146390 |

Under such dire financial circumstances, where the company's total cash and cash equivalents amount to a mere Rs. 8,97,390, the assertion that the Corporate Debtor could realistically undertake to redeem a debt of Rs. 4,12,40,000 (appearing as Rs. 41,240 thousand in the accounts) along with interest to Glorify Advisors Private Limited within a narrow window of three months is a sheer financial impossibility. There is no discernible source of liquidity, asset base, or operational cash flow presented to this Authority that would enable such a substantial redemption.

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DIRECTORS' REPORT

Dear Members,

Your Directors are pleased to present their 15th Annual Report on business operations along with the audited Annual Accounts for the financial year ended 31.03.2023:-

(Rs. in Thousands)

| FINANCIAL RESULTS | | |
|---------------------------|------------------|------------------|
| Particulars | As on 31.03.2023 | As on 31.03.2022 |
| Total Income | - | - |
| Total Expenditure | 30.48 | 26.06 |
| Profit/(Loss) Before tax | (30.48) | (26.06) |
| Less: Tax Expense | - | - |
| Less: Exceptional Items | - | (14,122.50) |
| Profit / (Loss) After Tax | (30.48) | (14,148.56) |

Financial Performance and the state of Company's affairs:

Your Company has incurred loss of Rs. 30,481/- during the financial year 2022-23 as compared to the loss of Rs. 1,41,48,557/- in the previous financial year 2021-22.

Nature of Business of the Company has not changed since last reporting period.

Furthermore, it is noted with extreme skepticism that the parties have failed to provide any contemporary financial statements within the petition itself to justify their current standing; the last available records of a General Meeting and financial statements filed with the Registry date back to 2023. This further reinforces the orchestrated and collusive nature of the demand and the subsequent insolvency petition.

11. ORDER:

11.1. Hence, I support the view of the Hon'ble Judicial Member that the Petition is collusive and should not be admitted on account of collusion.

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- 11.2.** The matter has to be placed before the Original Division Bench for issuing appropriate orders in terms of the majority view.
- 11.3.** Therefore, this order be placed before the Hon'ble President NCLT for appropriate action.

**Bidisha Banerjee
Member (Judicial)**

The Order is signed on, 24th day of April 2026

RKM(LRA)