

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 42 of 2022**

**IN THE MATTER OF:**

**Hindalco Industries Ltd.  
309, World Trade Centre,  
Barakhamba Lane,  
New Delhi-110001.**

**...Appellant**

**Versus**

**Hirakud Industrial Works Ltd.  
At P.O./P.S.-Hirakud,  
District-Sambalpur,  
Odisha-768016.**

**..Respondent No. 1**

**Mr. Anand Rao Korada,  
Resolution Professional  
Flat No. 3, 2<sup>nd</sup> Floor, 400 B/F,  
NSC Bose Road,  
(B/1, Laxminarayan Colony),  
Kolkata-7000047.**

**..Respondent No. 2**

**Nandakini Contractors Pvt. Ltd.  
9, Ezra Street, Top Floor,  
Kolkata-700001.**

**..Respondent No. 3**

**Present:**

**For Appellant: Mr. Krishnan Venugopal, Sr. Advocate with  
Mr. Ashish Prasad, Mr. Kaustubh Mishra, Mr. J  
Rajesh, Advocates**  
**For Respondents: Mr. Siddhartha Sharma, Mr. Arjun Asthana,  
Advocates for SRA.  
Mr. Krishnraj Raj Thakkar, Advocate and  
Mr. Ashok Kumar Jain, Advocate for RP.**

**With**

**Company Appeal (AT) (Insolvency) No. 43 of 2022**

**IN THE MATTER OF:**

**Hindalco Industries Ltd.**

**...Appellant**

*Cont'd.../*

**309, World Trade Centre,  
Barakhamba Lane,  
New Delhi-110001.  
Versus**

**Hirakud Industrial Works Ltd.  
At P.O./P.S.-Hirakud,  
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**For Appellant: Mr. Krishnan Venugopal, Sr. Advocate with  
Mr. Ashish Prasad, Mr. Kaustubh Mishra, Mr. J  
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**For Respondents: Mr. Siddhartha Sharma, Mr. Arjun Asthana,  
Advocates for SRA.  
Mr. Krishnraj Raj Thakkar, Advocate and  
Mr. Ashok Kumar Jain, Advocate for RP.**

**With**

**Company Appeal (AT) (Insolvency) No. 52 of 2022**

**IN THE MATTER OF:**

**H.I.W. Workers' Union  
Goudpada, Ward No. 9 at Post PS-Hirakud,  
District Sambalpur, Odisha 768016.  
(Workers Union of purported Corporate Debtor-  
Hirakud Industrial Works Limited)**

**...Appellant**

**Versus**

**Nandakini Contractors Pvt. Ltd.  
9, Ezra Street, Top Floor,  
Kolkata-700001.**

**...Respondent No. 1**

**Hirakud Industrial Works Ltd.  
At P.O./P.S.-Hirakud,  
District-Sambalpur,  
Odisha-768016.**

**... Respondent No. 2**

**Mr. Anand Rao Korada,  
Resolution Professional  
Flat No. 3, 2<sup>nd</sup> Floor, 400 B/F,  
NSC Bose Road,  
(B/1, Laxminarayan Colony),  
Kolkata-7000047.**

**.. Respondent No. 3**

**Regus Impex Private Limited,  
11A, Dr. Biresh Guha Street,  
(Formerly 11A, Dilkhusa Street),  
Kolkata-700017. West Bengal**

**.. Respondent No. 4**

**Insolvency and Bankruptcy Board of India,  
7<sup>th</sup> Floor, Mayur Bhawan, Shankar Market,  
Connaught Circus, New Delhi-110001.**

**..Respondent No.5**

**Present:**

**For Appellant: Mr. Arijit Prasad, Sr. Advocate with  
Mr. Debashish Mohapatra, Advocate**  
**For Respondents: Mr. Siddhartha Sharma, Mr. Arjun  
Asthana, Advocates for SRA.  
Mr. Krishnraj Raj Thakkar, Advocate  
and Mr. Ashok Kumar Jain, Advocate for RP.**

**With**

**Company Appeal (AT) (Insolvency) No. 53 of 2022**

**IN THE MATTER OF:  
H.I.W. Workers' Union  
Goudpada, Ward No. 9 at Post PS-Hirakud,**

**.. Appellant**

*Company Appeal (AT) (Insolvency) No. 42 of 2022, 43 of 2022, 52 of 2022 & 53 of 2022*

**District Sambalpur, Odisha 768016.**  
(Workers Union of purported Corporate Debtor-  
Hirakud Industrial Works Limited)

**Versus**

**Nandakini Contractors Pvt. Ltd. ..Respondent No.1**  
**9, Ezra Street, Top Floor,**  
**Kolkata-700001.**

**Hirakud Industrial Works Ltd.**  
**At P.O./P.S.-Hirakud,**  
**District-Sambalpur, ... Respondent No. 2**  
**Odisha-768016.**

**Mr. Anand Rao Korada,**  
**Resolution Professional**  
**Flat No. 3, 2<sup>nd</sup> Floor, 400 B/F,**  
**NSC Bose Road, .. Respondent No. 3**  
**(B/1, Laxminarayan Colony),**  
**Kolkata-7000047.**

**Regus Impex Private Limited,**  
**11A, Dr. Biresh Guha Street,**  
**(Formerly 11a, Dilkhusa Street),**  
**Kolkata-700017, West Bengal .. Respondent No. 4**

**Insolvency and Bankruptcy Board of India,**  
**7<sup>th</sup> Floor, Mayur Bhawan, Shankar Market,**  
**Connaught Circus, New Delhi-110001.**  
**..Respondent No.5**

**Present:**

**For Appellant: Mr. Arijit Prasad, Sr. Advocate with**  
**Mr. Debashish Mohapatra, Advocate**  
**For Respondents: Mr. Siddhartha Sharma, Mr. Arjun**  
**Asthana, Advocates for SRA.**  
**Mr. Krishnraj Raj Thakkar, Advocate**  
**and Mr. Ashok Kumar Jain, Advocate for RP.**

**JUDGMENT**  
**(Date: 09.01.2023)**

**[Per.: Dr. Alok Srivastava, Member (Technical)]**

This judgment disposes of the following appeals, namely:-

- (i) Company Appeal (AT) (Insolvency) No. 42 of 2022 filed by Hindalco Industries Ltd.
- (ii) Company Appeal (AT) (Insolvency) No. 43 of 2022 filed by Hindalco Industries Ltd.
- (iii) Company Appeal (AT) (Insolvency) No. 52 of 2022 filed by H.I.W. Workers' Union
- (iv) Company Appeal (AT) (Insolvency) No. 53 of 2022 filed by H.I.W. Workers' Union

2. The above mentioned four Company Appeals have been filed by respective appellants under section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "IBC") assailing the order dated 22.12.2021 (hereinafter called the 'Impugned Order') passed by the Adjudicating Authority (NCLT, Cuttack Bench) in IA (IBC) no. 42/CTB/2020 in CP (IB) No. 1/CTB/2019.

3. The Appellants in all the above-mentioned appeals have prayed for the main relief of quashing the Impugned Order dated 22.12.2021, among other related reliefs sought in each of the appeals.

4. The facts of the case, common to all the appeals, as stated by the Appellants Hindalco Industries Ltd (in short 'HIL') and H.I.W. Workers' Union are that Nandakini Contractors Pvt. Ltd. (in short 'Nandakini') filed an application under section 7 of Insolvency and Bankruptcy Code, 2016 (in short 'IBC') bearing CP(IB) No. 1 of 2019 before the Adjudicating Authority for alleged non-payment of a loan of Rs.14,51,047 by the corporate debtor/Hirakud Industrial Works Limited (in short 'HIWL') given by the Financial Creditor Nandakini on 14.3.2016. The Appellants have further stated that the company petition under section 7 was admitted by the Adjudicating Authority and Corporate Insolvency Resolution Process (in short 'CIRP') was initiated vide order dated 4.6.2019 just on the basis of admission of debt by the corporate debtor without any supporting documents pertaining to the loan provided by the financial creditor Nandakini.

5. The Appellant, Hindalco Industries Limited (in short 'HIL') has stated that it is the lessee and sole user of the private railway

siding owned by the corporate debtor HIWL, and on an auction conducted on the orders of Hon'ble High Court of Odisha, it was adjudged as the highest bidder for the land underneath the railway siding, but the auction had to be stopped on account of initiation of CIRP of the corporate debtor. The Appellants HIL and HIW Workers' Union have further stated that the said auction was being conducted to discharge the dues of the workmen of the corporate debtor, which was crystallized by the Deputy Labour Commissioner at Rs. 45,66,67,133/-.

6. The Appellants have submitted that while the company petition under section 7 was being heard by the Adjudicating Authority, HIL filed two Interlocutory Applications, namely, (i) IA(IBC) No. 1/CTB/2019 dated 27.12.2019, wherein the Appellant HIL sought, inter-alia, directions to the Resolution Professional (in short 'RP') to provide HIL with the detailed Expression of Interest (in short 'EOI') in terms of regulation 36A(1) of the Insolvency and Bankruptcy Board of India ( Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (in short 'IBBI Regulations'), and (ii) IA (IBC) No. 50/CTB/2020 dated 30.1.2020 whereby HIL sought setting aside of resolutions and approvals given in the meetings of the Committee of Creditors (in short 'CoC') as the same

were vitiated on account of participation and voting by the 'related parties' in the meetings of CoC.

7. The Appellants have further stated that an application for approval of the Resolution Plan bearing IA No.197/CTB/2019 filed by the RP was approved by the Adjudicating Authority by order dated 22.12.2021. This resolution plan was submitted by Regus Impex Private Limited, the successful resolution applicant, (in short 'Regus Impex') and at the time the resolution plan was approved, IA No. 50/CTB/2020 which was filed by the Appellant HIL remained pending for disposal though arguments were heard at length in this IA and the Appellant has pointed out that this application raised issues relating to illegal constitution of the CoC by including 'related parties'. The Appellant HIL has thus claimed that the Impugned Order was passed by the Adjudicating Authority without considering the information regarding the presence of related parties in the CoC and fraudulent initiation of CIRP placed by HIL on record, whereas the order approving the resolution plan should have been passed with complete satisfaction of the Adjudicating Authority as required under section 31, read with section 30(2) of the IBC.



8. The main grounds raised by the Appellants in their respective appeals pertain to the allegation that the section 7 application filed by Nandakini as financial creditor was on account of collusion between the corporate debtor HIWL and financial creditor Nandakini to defraud workers of the corporate debtor whose debts had to be discharged on the orders of the Hon'ble Supreme Court which was taking place under the supervision of Hon'ble Odisha High Court. The Appellants have claimed that the corporate debtor and financial creditor shared common directors and were connected through shareholdings while considering the section 7 application, the Adjudicating Authority initially sought sufficient proof of loan from the financial creditor by order dated 28.2.2020, whereby the RP was directed to file copy of claims received from the financial creditors, proof of debt of each payment and other debts of the corporate debtor and their proofs, but no such proof of debts were produced by the RP before the Adjudicating Authority. The Appellant HIL has further claimed that statutory affidavit under section 30(1) read with section 29-A, which was required to be submitted by the resolution applicant Regus Impex was signed by the RP and not by the authorised representative of Regus Impex. The Appellant HIL has further alleged that the same advocate represented the financial creditor and RP before the Adjudicating Authority, but when the

Adjudicating Authority asked the advocate to explain the nature of loan provided by the financial creditor to the corporate debtor, the advocate did not do so.

9. An important issue raised by the Appellants pertains to the constitution of CoC, which is alleged to be vitiated as it includes 'related parties', and hence it has been stated that the decisions taken in the CoC meetings, wherein the related parties deliberated and voted on various resolutions, were null and void in the eyes of law. He has further claimed that while this matter was brought to the notice of the Adjudicating Authority during the hearing of IA No. 50/CTB/2020, it was inexplicably ignored.

10. Explaining the history of the case, the Appellants have stated that upon disinvestment of its stake in the corporate debtor by Infrastructure Development Company Limited (in short 'IDCOL') of the Government of Odisha, 100% shareholding in the corporate debtor HIWL was offered to three companies viz., Varsha Fabrics (P) Ltd., Mudrika Commercial Limited and India Finance Pvt. Limited (also referred to as 'three companies'). Soon thereafter, on a writ petition bearing WP(C) No. 4442/2006 filed by these three companies before the Hon'ble High Court of Odisha, a direction was given that a tripartite agreement should be entered into

between the H.I.W. Workers' Union, IDCOL and the three companies to ensure disbursement of pending dues to the workmen, and consequently a tripartite agreement came to be signed on 2.6.2006 in compliance of the Hon'ble High Court's order.

11. The Appellants have further submitted that the corporate debtor closed its factory at Hirakud in the year 2007 and in the same year, the three companies owning the corporate debtor transferred their entire shareholding to a company called Indo Wagon Limited (in short 'Indo Wagon'), but the workmen's dues still remained unpaid and so the H.I.W. Workers' Union filed a Writ Petition WP(C) No. 12479/2009 before the Hon'ble High Court of Odisha seeking cancellation of the share purchase agreement and direction for payment of workmen's dues, whereupon the Hon'ble High Court of Odisha vide order dated 22.2.2010 directed the three companies, which had got the corporate debtor's shares after disinvestment by IDCOL, to pay Rs.1,50,00,000 to the workers which again remained unpaid.

12. The appellants have stated that a writ petition bearing WP(C) No. 7939 of 2011 was filed again by the workers before the Hon'ble High Court of Odisha on 28.3.2011, inter-alia, seeking direction for

payment of workmen's dues, whereupon the Deputy Labour Commissioner was directed by the Hon'ble High Court to recover the workmen's dues through public auction of the corporate debtor's assets vide order dated 14.3.2012, and accordingly the Deputy Labour Commissioner invited bids on 3.6.2013, wherein HIL submitted a bid of Rs. 15 crores. This auction sale was challenged through SLP No. 17645/2013 in which the Hon'ble Supreme Court, while disposing of the SLP, directed the workmen to file their claims before the Sambalpur Labour Court for determination of the compensation payable to them with further direction that if the three companies failed to pay the amount so determined to the workers, the Hon'ble High Court of Odisha's order for auction of corporate debtor's assets shall be implemented for recovery of workers' dues. Thereafter, the Labour Court in Sambalpur passed an order on 11.11.2016 quantifying the workmen's dues at Rs. 45,66,67,133 to be paid to the workers within a period of three months from the date of order. Since the three companies failed to pay workers' dues, the Hon'ble High Court of Odisha passed an order for re-auction of the assets of the corporate debtor on 8.4.2019. The Appellant HIL has further stated that in the first auction only one party (Appellant HIL) participated and hence the assets (land of the corporate debtor) were put up for auction again. In the meanwhile, since an area of

157.26 acres has been alienated to the Department of Water Resources for a consideration of Rs. 10,04,12,105, the amount required to be paid by HIL was the balance amount of Rs.35,62,55,028 only.

13. The Appellants have further stated that while the process of re-auction of the assets of the corporate debtor was going on, a company petition under section 7 of IBC bearing C.P. (IB) No. 01/CTB/2019 was filed by the financial creditor Nandakini for initiating CIRP against the corporate debtor, which was taken up for consideration on request for urgent hearing jointly by the corporate debtor and financial creditor. This joint request by the financial creditor and corporate debtor for early hearing of section 7 application was made before the Adjudicating Authority/NCLT on 3.6.2019, and on 4.6.2019 the Adjudicating Authority admitted the section 7 application filed by the financial creditor initiating CIRP against the corporate debtor, simultaneously imposing moratorium under the IBC regarding the assets of the corporate debtor and appointing Mr. Anand Rao Korada as the Interim Resolution Professional.

14. The Appellants have added that as moratorium had been imposed consequent to the admission of section 7 application by

the Adjudicating Authority, the RP preferred an interlocutory application in WP(C) No. 7939/2011 before the Hon'ble High Court of Odisha on 6.8.2019 praying for stay of the auction proceedings, and thereafter, the RP filed Civil appeal No. 23349-23350/2019 in Hon'ble Supreme Court challenging various orders of the Hon'ble High Court of Odisha regarding the auction proceedings wherein HIL was also added as Respondent. The Hon'ble Supreme Court disposed of the civil appeal setting aside the orders of the Hon'ble High Court of Odisha regarding auction of corporate debtor's assets in view of the moratorium imposed after admission of section 7 application and also, inter alia, granted liberty to HIL to pursue appropriate remedies before the NCLT.

15. The appellant HIL has alleged that on being granted liberty by the Hon'ble Supreme Court to seek appropriate remedies before the Adjudicating Authority, a letter was written to the RP on 5.12.2019 requesting for a copy of the detailed EOI as the link provided by the RP in Form-G did not provide complete information, but by reply dated 12.12.2019, which was received by the appellant HIL on 18.12.2019, the RP rejected the request for detailed EOI whereafter HIL filed IA (IBC) No.1/CTB/2020 seeking directions to RP for providing it with the detailed EOI. Appellant HIL has added that while IA No. 1/CTB/2020 was being heard by

the Adjudicating Authority, the RP filed IA No. 197/CTB/2019 under section 31 of the IBC seeking approval of the resolution plan submitted by the successful resolution applicant Regus Impex, and such approval was granted by the Adjudicating Authority.

16. The Appellant HIL has further submitted that when it gathered information that the members of the CoC were 'related parties' of the corporate debtor and, therefore, ineligible to be part of the CoC and participate in its meetings, it filed IA (IBC) No. 50/CTB/2020 for setting aside the resolutions and approvals passed in various CoC meetings. The Appellant HIL has, further, submitted that while its IA (IBC) No.1/CTB/2020 and IA(IBC) No. 50(CTB)/2020, and HIW Workers' Union's IA No. 42/CTB/2020 were pending for consideration of the Adjudicating Authority, the Adjudicating Authority heard the application for approval of the resolution plan submitted by Regus Impex, the successful resolution applicant and approved it by order dated 22.12.2021, which is impugned in the present appeals.

17. The issues that arise in the adjudication of the appeals being considered in this judgment are as follows: -

- (i) Was the financial loan claimed in default of payment in the application under section 7 of IBC filed by the financial creditor Nandakini Contractors Pvt. Ltd., a loan that could qualify as 'financial debt' under IBC and appropriate for initiation of CIRP against the corporate debtor?
- (ii) Was the admission of section 7 application and consequent initiation of CIRP against the corporate debtor in accordance with the legal requirements and provisions of the IBC?
- (iii) Was the constitution of CoC with the inclusion of a number of financial creditors vitiated as they were 'related parties' closely connected with the CD, and were the approvals and resolutions passed in the meetings of CoC vitiated and bad in law?
- (iv) Were the actions taken by the Resolution Professional in accordance with the provisions of IBC, and free from the allegations of prejudice and partisan approach?
- (v) Was the Successful Resolution Applicant Regus Impex Private Limited disqualified to submit a resolution plan for the corporate debtor?



18. We heard the arguments of Learned Senior Counsels/Learned Counsels for the parties in the appeals and perused the record. It is noted that the financial creditor Nandakini, impleaded as Respondent in some appeals under consideration, has chosen not to file any reply or submit oral arguments in support of its case.

19. The Learned Senior Counsel for HIL, which is the Appellant in CA(AT)(Insolvency) No. 42 of 2022 and CA(AT)(Insolvency) No. 43 of 2022, has initiated his arguments by submitting that the legitimate dues of the workers had been crystalized at Rs. 45.66 crores by the Deputy Labour Commissioner and proceedings regarding auction of the corporate debtor's assets for payment of workers' dues were being undertaken under the directions of the Hon'ble High Court of Odisha, when in an inexplicable hurry the application under section 7 of the IBC filed by the financial creditor Nandakini Contractors Pvt. Ltd., which was filed without any documentary proof of the loan agreement or disbursement, was admitted, merely on a bald and baseless admission by the corporate debtor for repayment of the said loan, leading to imposition of moratorium on the assets of the corporate debtor, which put a hurdle in the auction of the corporate debtor's assets which was being undertaken for payment of the workers' dues.

He has argued that the filing of section 7 application with unexplained alacrity and its urgent hearing on the joint request of the corporate debtor and financial creditor leading to almost an immediate passing of the admission order under section 7 smacks of collusion between the corporate debtor and financial creditor to stall legitimate payment of workers' dues. Expanding on his basic argument of collusion in filing of section 7 application and its subsequent admission by the Adjudicating Authority, he has added that the workers' dues were pending for a very long time and HIW Workers' Union had brought to the notice of the Hon'ble High Court of Odisha the issue of payment of pending dues and that a writ petition was being considered by the Hon'ble High Court of Odisha, wherein auction of corporate debtor's assets had been ordered.

20. Elaborating on his arguments regarding proof of debt, the Learned Senior Counsel for Appellant HIL has submitted that there is no financial contract or any transaction was made through a bank account regarding the purported loan advanced by Nandakini pertaining to an amount Rs.14,51,047 and no evidence in accordance with the Bankers Books Evidence Act, 1891, as is required to be included in Form 1 application filed by the financial creditor, has been presented by the financial creditor. He has

further submitted that the Adjudicating Authority had vide order dated 28.2.2020 in IA No. 42/CTB/2020 filed under section 65 of the IBC whereby the Appellant had brought to the notice of the Adjudicating Authority that Respondent Nandakini, in its Annual Financial Statement for the FY 2015-16, has declared that it has not given any loan and the CIRP has been stage-managed on a false and imaginary loan, the Adjudicating Authority agreed that sufficient proof of the loan is not provided in the application, and directed the RP to furnish the proof of debts regarding the claims of all the purported financial creditors. This direction was not complied by the Respondent, and hence the members of CoC who claim to be financial creditors are not backed by adequate and appropriate proof of their debts, and therefore, the constitution of CoC with the inclusion of such members is fraudulent and void *ab initio*. Further, the Learned Senior Counsel for Appellant HIL has argued that the e-mail dated 5.3.2020, which is produced by the RP as showing proof of his submission of the requisite evidence of the financial debts and claiming to be compliance of the order dated 28.2.2020, was sent to the Registry of NCLT and not submitted before the Adjudicating Authority, and hence the proof of debts was not brought on record, and thus, there was non-compliance of the Adjudicating Authority's order dated 28.2.2020.

21. The Learned Senior Counsel for HIL has added that despite the HIW Workers' Union repeatedly pointing out to the Adjudicating Authority that its order dated 28.2.2020 has not been complied with, and requesting for adjudication of IA No. 341/CTB/2020, the Adjudicating Authority did not pay attention to the submitted facts and did not decide IA 341/CTB/2020, due to which the issue of the status of the debts of the various members of the CoC has remained undecided which leaves their veracity under serious doubt.

22. The Learned Senior Counsel for Appellant HIL has further claimed that the Tripartite Agreement dated 2.6.2006 required the corporate debtor (which was taken over by the three companies) to pay the workers' dues, which was also a requirement under the Share Purchase Agreement dated 10.07.2006. He has added that the consortium of three companies, instead of complying with the orders of Hon'ble High Court of Odisha dated 24.6.2013, whereby direction was issued to deposit Rs.20,72,15,956/-, challenged the order of Hon'ble High Court before the Hon'ble Supreme Court in SLP No 17645/2013, wherein the Hon'ble Supreme Court directed the Labour Court to quantify the workers' dues and further directed that the three companies (as above) should pay the dues,

failing which the order of the Hon'ble High Court of Odisha dated 20.11.2012 shall be implemented for recovery of workers' dues.

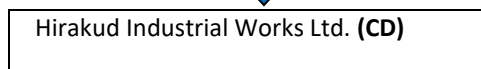
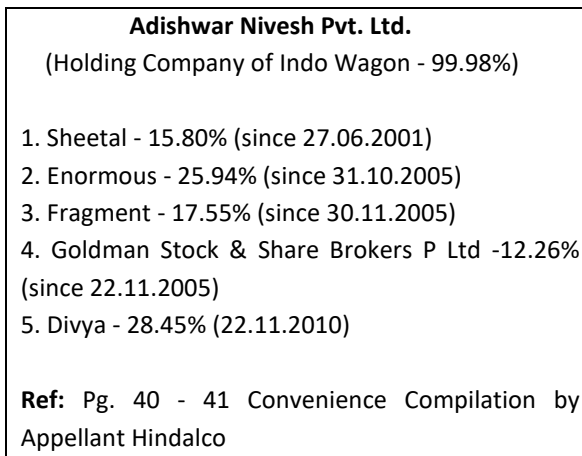
23. The Learned Senior Counsel for Appellant HIL has further argued that when the three companies did not pay the workers' dues, the Hon'ble High Court of Odisha directed auction of the properties of the corporate debtor vide order dated 8.4.2019, when the matter of initiation of CIRP against the corporate debtor and appointment of Interim Resolution Professional was brought to the notice of the Hon'ble High Court. The Learned Senior Counsel for HIL has further argued that workers' union, on getting to know of the insolvency proceedings, sought a copy of the section 7 application and minutes of the meeting of the CoC from the RP but he refused to provide such information. He has claimed that thereafter, the workers, after acquiring information regarding the Annual Returns of the corporate debtor from the Ministry of Corporate Affairs' website, filed an application bearing IA No. 42 (CTB)/2020 under section 65 of the IBC challenging the initiation of CIRP as being fraudulent. He has claimed that in view of his contention that the CIRP against the corporate debtor was initiated fraudulently, the approval of the resolution plan by the COC and the Adjudicating Authority vide order dated 19.12.2019 is bad in the eyes of law and, therefore, null and void.

24. The Learned Senior Counsel for Appellant HIL has further argued that it is clear from the financial information of the companies who are members of CoC, which is available on the Ministry of Corporate Affairs website that they belong to the same group of companies. He has submitted charts showing the shareholding status of the members of the CoC and their interconnectedness through shareholdings to show how these entities are closely connected with each other and with the holding companies of the corporate debtor and also the SRA Regus Impex. He has emphasised that it is necessary to examine the fraud that is claimed in the present case, and that to examine the element of fraud in the initiation of CIRP, the ambit of enquiry is quite wide and the tribunal should not limit itself to examining only whether there is *de jure* prohibition on some companies to become members of CoC but it should be seen whether the various companies, namely the purported financial creditor Nandakini, the corporate debtor HIWL, the member companies of the CoC and the SRA Regus Impex were being guided and led by a 'controlling mind' and were acting 'in concert', so that the *de facto* situation becomes clear. He has referred to the provision in section 2 of the Companies Act regarding Holding, Subsidiary and Associated Companies, and particularly section 2(27) regarding companies

acting 'in concert' and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (in short "Takeover Regulations") to strongly emphasise that in examining the allegation of fraudulent initiation of CIRP by the corporate debtor and Nandakini, one should move beyond the *de jure* definition of 'related party' and see whether the actors who were acting in concert were actually colluding to perpetrate a fraud in cahoots with one another by piercing the corporate veil.

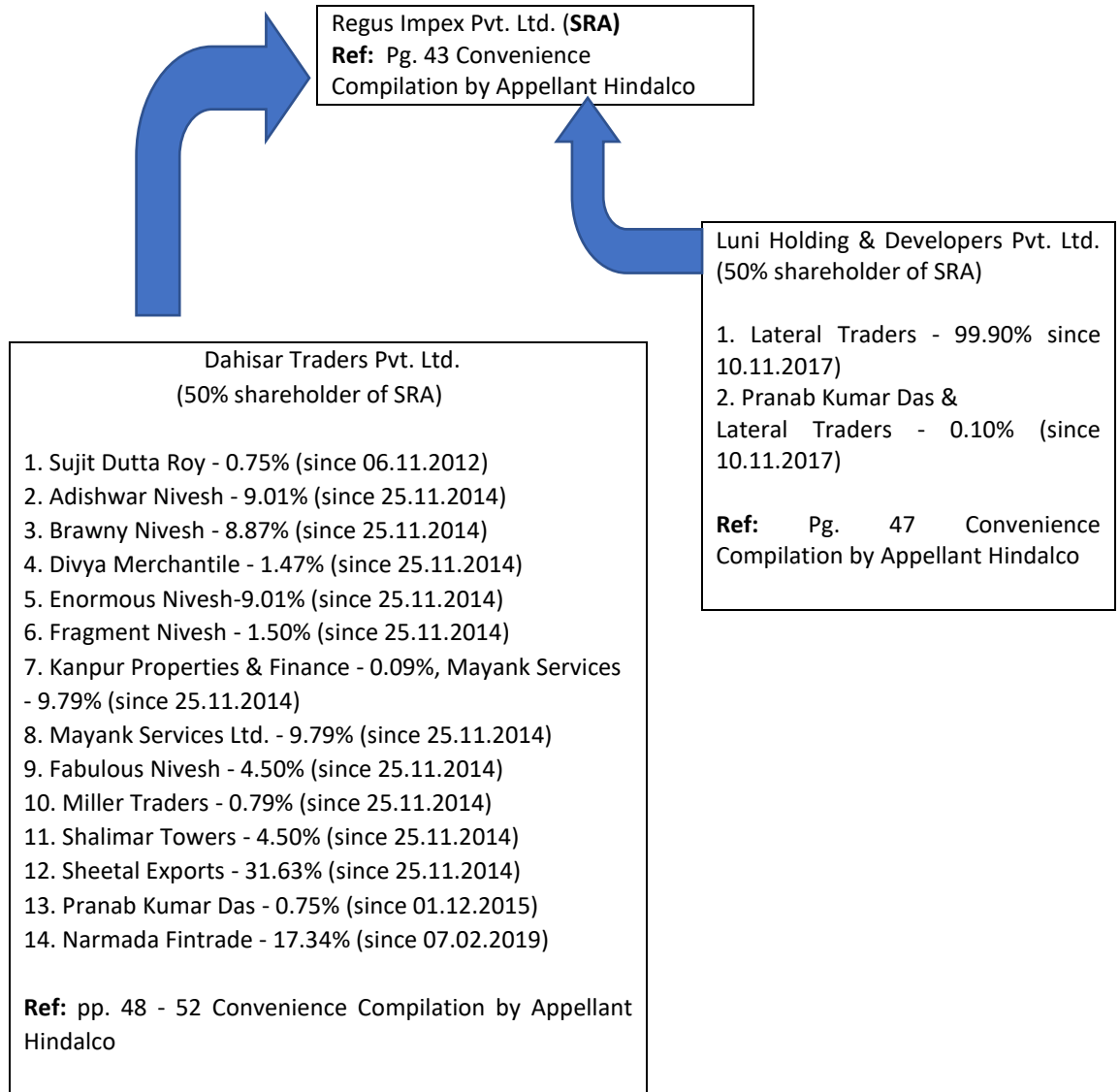
25. In this context and background, the Learned Senior Counsel for Hindalco has submitted the following charts to eke out such inter-connections and cross-connections between various companies to show how companies that are part of same group and effectively functioning in unison and for a 'common purpose' have led to the fraudulent initiation of the CIRP and consequent illegal constitution of the CoC, to subserve the illegal interest of the companies and the group to which they belong. These charts, which show the information already included in the appeal memos, and which are not disputed by the RP or the SRA, are as follows:

**SHAREHOLDING STATUS OF (COMMON) CD GROUP ENTITIES AND SRA GROUP ENTITIES  
(AS ON 25 OCTOBER 2019)**





**SHAREHOLDING STATUS OF (COMMON) CD GROUP ENTITIES AND SRA GROUP ENTITIES  
(AS ON 25 OCTOBER 2019)**



26. Further elaborating on the aspect of inter-connectedness of the various companies in the CoC with the corporate debtor and also with the SRA, the Learned Senior Counsel for Appellant HIL has explained in detail one illustrative example of Mr. Sujit Dutta Roy, who is a director in the holding company of the corporate debtor, and additionally director in five out of seven companies, which are members of CoC and also a director on the Board of Successful Resolution Applicant Regus Impex and pointed out that there are some other similar examples of common directorships of individuals which would be clear from the charts and information submitted by him. He has also pointed to the shareholding and cross shareholding between Adishwar Nivesh, the holding company of corporate debtor and member companies of the CoC as well as the Successful Resolution Applicant to emphasise that they are all members of the same group of companies and were, therefore, working towards the common objective of putting the corporate debtor in insolvency resolution and moratorium on its assets, in order to deny the just, fair and legitimate claims of the workers and other creditors, such as the Bank of India, and also ensure that despite insolvency resolution, the corporate debtor remains within the ambit of the same group of companies. He has, therefore, made a case for piercing of the corporate veil to look at such inter-connectedness and to also unravel the ulterior design of

the corporate debtor, purported financial creditor Nandakini and the parent company.

27. The Learned Senior Counsel for HIL has also submitted detailed information to show how majority of these companies have common directors, cross shareholdings, common registered addresses and common email addresses. He has clarified that this information is already present in the pleadings and an attempt has been made by him to present the relevant information in a more structured and intelligible manner.

28. The Learned Senior Counsel for HIL has thus contended that while on one hand the corporate debtor is controlled by Adishwar Nivesh and its shareholding companies, Mr. Sujit Dutta Roy's presence in the board of at least five of the companies which are financial creditors and thus part of the CoC, and also in the board of Successful Resolution Applicant Regus Impex as director shows that the concerned companies are acting in concert with the corporate debtor through the same board of directors. Thus, the financial creditors who are part of the CoC are very clearly parties closely connected with the corporate debtor and moreover, the Successful Resolution Applicant is also acting in concert with the corporate debtor through Adishwar Nivesh (which holds 100%

shares of the corporate debtor) through its shareholding companies Divya Mercantile, Fragment Nivesh, Sheetal Exports, Enormous Nivesh and Goldman Stocks & Share Brokers. The Learned Senior Counsel for Appellant HIL has claimed that in such a situation the initiation of insolvency of the corporate debtor has been done collusively and with the ulterior motive of defrauding its creditors, particularly the workers, and moreover the decisions taken by the CoC with the participation of such related parties are vitiated and, therefore, null and void.

29. The Learned Senior Counsel for Appellant HIL has summarized his contentions by stating that the dues of the workers, which was crystalized at Rs. 45,66,67,133 by the Deputy Labour Commissioner, was to be paid by the three companies (Varsha Fabrics (P) Ltd./Purbanchal Power, Mudrika Commercials Ltd. and India Finance Pvt. Ltd.) and once the Hon'ble High Court of Odisha ordered auction of Corporate Debtor's assets to be carried out and auction proceedings started, a non-existent financial loan was created without proper proof of disbursement or any loan agreement and hurriedly admitted through complicity of the financial creditor Nandakini and the corporate debtor to thwart and subvert the attempt for auctioning corporate debtor's assets to pay the dues of workers by claiming moratorium to deal

with the assets of corporate debtor under section 14 of the IBC. He has argued that, thus, the proceedings that have been initiated under section 7 of the IBC for insolvency of the corporate debtor are fraudulent and clearly infringe section 65 of the IBC, and therefore, all actions taken thereafter in the CIRP including constitution of the CoC and its decisions, approval of the resolution plan of Regus Impex are illegal and *non est* in the eyes of law, and liable to be set aside.

30. The Learned Senior Counsel for Appellant HIW Workers' Union has submitted in his arguments that the section 7 application was not based on any financial contract or any entry in the Bankers' Book in accordance with the Bankers Book Evidence Act, 1891 and the prescribed Form 1 of section 7 application did not contain any particulars regarding disbursement through a bank account or any entry in the ledger account or account book, and merely on the admission of some imprecise loan amount by the corporate debtor, the section 7 application was admitted without proper enquiry and satisfaction of the Adjudicating Authority. He has added that the "Note 3" referred to in para no. 3.6 of the Impugned Order suggests that the amount of Rs.14,51,047/- was included under the head "Trade Payable" in the financial statement which is an incorrect understanding

because the term "Trade Payable" implies that the amount is liable to be paid by the financial creditor in whose balance sheet it appears, whereas in case of a loan the financial creditor is to receive the said amount. He has further submitted that the audited Annual Returns for the financial year 2015-16, which is the relevant financial return since the loan/advance is alleged to have been given on 14.3.2016, the balance sheet includes an amount of "0" (zero) in the row of entry for 'long term and short-term loans' and moreover, the appended Directors' Report declares that the company has not given any loan nor there is any provision for interest in the balance sheet. In such a background, he has contended, the purported loan was neither disbursed nor there is any document to establish the existence of such a financial loan and moreover, there is no consideration for time value of money shown by any document. Furthermore, he has argued, the default date has been taken as the date when the financial creditor Nandakini demanded the loan amount from the corporate debtor, even though there is no documentary or any other proof to establish the date of default of the purported debts.

31. The Learned Senior Counsel for Appellant HIW Workers' Union has claimed that on the basis of the facts and in the light of such major deficiencies in section 7 application and financial

statements pointing to the contrary, the loan claimed to have been given by the financial creditor Nandakini is not only doubtful, but fraudulent and the section 7 application has been admitted purely on the ground of such a averment, out of of malice against the workers, whose dues amounting to Rs.45,66,67,133 were to be paid, but the corporate debtor in collusion with the financial creditor Nandakini contrived to initiate a fraudulent CIRP, which resulted in the imposition of moratorium, which was aimed at thwarting the effort of the workers to receive their legitimate dues through auction of corporate debtor's assets.

32. The Learned Senior Counsel for Appellant HIW Workers' Union has also argued that the CoC constituted by the RP comprised of 'related parties' of the corporate debtor and therefore, all the decisions and resolutions passed in the CoC meetings stand vitiated in the light of such defective constitution of the CoC. He has added that the workers' union filed IA No. 42/CTB/2020 under section 65 of the IBC, bringing to the notice of the Adjudicating Authority that the financial creditor Nandakini had declared and admitted in its Annual Returns for the financial year 2015-16 that it had not given any loan, and the CIRP is being orchestrated by the same group of companies which controls the corporate debtor, and on this basis the Adjudicating Authority in

its order dated 28.2.2020 observed that there was no proof of disbursement of loan from the financial creditor to the corporate debtor and directed the RP to furnish proof of debts in respect of all the claims of purported debts against financial creditors, who were included in the CoC. He has added that this direction was not complied by either the financial creditor Nandakini or the RP, who was representing the corporate debtor. He has rebutted the contention of the erstwhile RP that compliance of the Adjudicating Authority's order dated 28.2.2020 was done by submitting requisite documents by an e-mail dated 5.3.2020 to the Registry of NCLT by contending that the direction of the Adjudicating Authority should have been complied by submitting documents before the Adjudicating Authority and merely sending an e-mail to the Registry does not bring the proof of debts on record in the case. He has further explained that the orders of the Adjudicating Authority dated 12.11.2020 and 26.11.2020, wherein it is recorded that the order dated 28.2.2020 has not been complied with, also establishes that the RP did not produce any proof of purported debts of financial creditor before the Adjudicating Authority.

33. The Learned Senior Counsel for HIW Workers' Union has also added that IA No. 341/CTB/2020 which related to the matter of fraudulent debt was not decided despite repeated requests,



since a decision in this Interlocutory Application would have the addressed the fundamental issue about the 'related parties' nature of the members of CoC and, therefore, in the absence of proof of financial debts, the inclusion of purported financial creditors in the CoC was illegal, and consequently the decisions and resolutions of the CoC stood vitiated and *non est* in law.

34. The Learned Senior Counsel for Appellant HIW Workers' Union has further argued about the pending dues of the workers by stating that the Tripartite Agreement dated 2.6.2006 entered into between the IDCOL Workers Union and the three companies (Varsha Fabrics (P) Ltd./Purbanchal Power, Mudrika Commercials Ltd. and India Finance Pvt. Ltd.) who purchased 100% shares of the CD and the Shares Purchase Agreement dated 10.7.2006 provided for payment of workers' dues and further a direction was given by the Hon'ble High Court of Odisha vide order dated 24.6.2013 to the above stated three companies to deposit Rs.20,72,15,956 by way of workers' dues. The order of the Hon'ble High Court of Odisha in WP(C) 7939/2011 dated 20.11.2012 was challenged before the Hon'ble Supreme Court in SLP(C) No. 17645/2013 whereby the Hon'ble Supreme Court vide order dated 3.8.2015 directed the Labour Court to quantify the workers' dues and further directed that if the three above stated companies do

not pay the same, the order of Hon'ble High Court of Odisha dated 20.12.2012 shall be implemented for recovery of workers' dues. He has added that consequently, the workers' dues were quantified at Rs. 45,66,67,133 vide order dated 11.11.2016 and since the dues of the workers stood unpaid, the Hon'ble High Court of Odisha vide order dated 8.4.2019 directed fresh auction of the properties of the corporate debtor HIWL, but in the meanwhile, the purported financial creditor Nandakini filed section 7 application under IBC regarding its alleged dues, which was admitted vide order dated 4.6.2019. He has pointed out that when the auction of the corporate debtor's assets became imminent and a distinct event, the section 7 application was filed fraudulently in March, 2019 with a clear objective of blocking the payment of workers' dues through e-auction of the corporate debtor's assets.

35. The Learned Senior Counsel for HIW Workers' Union has brought to our attention paragraphs 4 and 5 of the section 7 admission order to show the financial debt claimed by the financial creditor Nandakini of an amount of Rs.24,11,975 was accepted as an actual and real debt just on the basis of admission of the corporate debtor in its reply, which is mentioned in paragraph 5 of the said order. Further, he has mentioned that the learned counsels of both the financial creditors and the corporate debtor

jointly requested the Adjudicating Authority to urgently hear the case and pass necessary orders, when the case was listed for final order on 11.6.2019 and thus, the section 7 admission order came to be passed quite hurriedly without adequate appreciation of facts by the Adjudicating Authority. He has claimed that it is clearly a case of collusion between the financial creditor and the corporate debtor and directed at placing a hurdle in the auction of corporate debtor's assets being undertaken for payment of workers' dues.

36. The Learned Senior Counsel for HIW Workers' Union has further submitted that the workers were not aware of the filing of section 7 application and it was only when the Interim Resolution Professional appeared before the Hon'ble High Court of Odisha on 5.9.2019, did the workers become aware about the section 7 admission order and imposition of moratorium. Thereafter, the RP went ahead to constitute CoC comprising of parties related to the corporate debtor, which then functioned and eventually approved the resolution plan proposed by Regus Impex, which is also a corporate entity working on concert with some members of the CoC, namely Millers Traders Pvt. Ltd., Nandakini Contractors Pvt. Ltd., Gain E Commerce Pvt. Ltd., Subhlaxmi Compusis Pvt. Ltd. and Adishwar Nivesh Pvt. Ltd. through a common director Mr. Sujit Dutta Roy. He has added that Mr. Tanima Mondal is also a

common director in the financial creditor Nandakini and Successful Resolution Applicant Regus Impex. He has also alleged that Mr. Sujit Dutta Roy is a director of the corporate debtor Hirakud Industrial Works Ltd., and that Regus Impex was ineligible to submit a resolution plan. He has further added that the resolution plan submitted by the Regus Impex was considered and approved by the CoC and later approved by the Adjudicating Authority vide order dated 22.12.2021 in IA No. (IBC) 19/CTB/2019.

37. The Learned Senior Counsel for Appellant HIW Workers' Union has further claimed that the Respondents in CA(AT)(Insolvency) No. 52/2022 and 53/2022 namely Nandakini (Respondent No. 1) and Regus Impex (Respondent No. 4) belong to the same group of companies and the actions taken by them beginning with the filing of section 7 application, constitution of CoC, submission of proposed resolution plan and finally approval of resolution plan are vitiated since they are the actions taken by CoC comprising of related parties. He has pointed out that the master data uploaded on the website of Ministry of Corporate Affairs relevant to the data of filing of section 7 application also shows that Mr. Sujit Dutta Roy is a director in Nandakini and the Successful Resolution Applicant Regus Impex in addition to being

*Company Appeal (AT) (Insolvency) No. 42 of 2022, 43 of 2022, 52 of 2022 & 53 of 2022*

director on the board of many member-companies of the CoC and also the holding company Adishwar Nivesh of the corporate debtor.

38. Elaborating on his earlier argument, the Learned Senior Counsel for HIW Workers' Union has added that the Nandakini and the 100% shareholders of Indo Wagon i.e. Adishwar Nivesh share common registered address i.e. 9, Ezra Street, Kolkata and claimed that Nandakini and the corporate debtor HIWL are controlled through common directors, namely, Mr. Sujit Dutta Roy and Mr. Tanima Mondal. He has added that Mr. Sujit Dutta Roy is also a director in three of the five shareholding companies of Adishwar Nivesh (which holds 100% shareholding control over the corporate debtor) namely, Divya Mercantile, Sheetal Exports and Goldman Stocks and further in addition to the fact that Adishwar Nivesh has shareholding interest in Gain E Commerce (22.48%), Divya (25.4%), Fragment (19.9%) influences the decision making in these members of the CoC through Mr. Sujit Dutta Roy. He has thus claimed that the web of companies, wherein some companies have common directors, common registered addresses and common e-mail address are definite pointers to the fact that these companies are part of one group of companies which are enmeshed with each other through shareholding stake, common directors, common registered address and common e-mail address

were behind the filing section 7 application by Nandakini and in all the subsequent actions in CIRP culminating in the approval of resolution plan submitted by Regus Impex. He has contended that in such a situation, fraudulent initiation of CIRP with malicious intention is established and the very foundation of the admission order under section leading to initiation of CIRP crumbles.

39. The Learned Counsel for Appellant HIW Workers' Union has further submitted that even on merit, the approved resolution plan does not comply with section 38 of the IBC since it does not spell out the source of funds necessary for implementation of the plan and the dues of workers including their PF dues have not been considered in the resolution plan and therefore, such a resolution plan is not in accordance with provisions of IBC and should be struck down.

40. In his oral arguments, the Learned Counsel for erstwhile RP has submitted that HIL did not file any application under section 65 of IBC and cannot, therefore, be aggrieved by an order of the Adjudicating Authority relating to section 65. He has further argued that HIL has vested interest in the railway track, siding, and three locomotives which are the assets of the corporate debtor, but merely having an interest in these assets does not give them

the right to assail the Impugned Order, and claim that the initiation of CIRP was fraudulent. He has referred to the counter affidavit filed by HIL in the appeal preferred by the erstwhile RP before the Hon'ble Supreme Court to claim that the interest of HIL is very clear in that it had made an auction-bid of Rs. 15 crores for the assets of the corporate debtor and it is now seeking to somehow push forward and secure its interest.

41. The Learned Counsel for erstwhile RP has added that this bid of Rs. 15 crores was not accepted and only a preventive relief of stay against the auction process was given by the Hon'ble High Court of Odisha, whereafter, after the dues of the workers were crystalized at Rs.45,66,67,133/- by the Learned Labour Court, Sambalpur, re-auction of the corporate debtor's assets was ordered by the Hon'ble High Court of Odisha on 8.4.2019, but soon thereafter, on 4.6.2019, section 7 application filed by Nandakini was admitted leading to appointment of Mr. Anand Rao Korada as IRP and imposition of moratorium. He submitted that HIL submitted a bid of Rs. 38 crores for the assets of the corporate debtor on 17.5.2019 and when the RP sent a letter to HIL to deposit the balance amount, there was no response. He has contended that thus HIL did not complete the auction sale by depositing the balance amount, but it is now seeking to get hold of

the corporate debtor's assets, particularly the railway track, siding and locomotives, by assailing approval of the resolution plan.

42. The Learned Counsel for erstwhile RP has also brought to our attention the fact that an amount of Rs. 4.10 crores is overdue for payment by HIL by way of land rent and licence fees in respect of the railways siding and track. He has also submitted that Hon'ble Supreme Court, on an appeal by the RP titled CP No. 8800-8801/2019 passed judgment on 8.11.2020, whereby the auction proceedings were stayed in view of moratorium having been declared on 4.6.2019 by the NCLT. He has accepted that HIL did write to RP for a copy of detailed invitation for EOI through mail dated 5.12.2019, but in view of the fact that the last date of submission of EOI by any prospective Resolution Applicant was 23.8.2019, the RP was unable to accede to HIL's request, but agreed to place the request of HIL made vide e-mail dated 5.12.2019 before the CoC meeting scheduled to take place on 16.12.2019 and the CoC rejected the request of HIL and also approved the proposed resolution plan of Regus Impex in the same meeting, after passing a resolution with 87.4% vote for approval of the resolution plan. He has claimed that thus both requests of HIL for supply of EOI documents and later approval of the resolution plan by the Successful Resolution Applicant Regus Impex were



done in a lawful manner through majority vote in a proper e-voting in the CoC meeting on 16.12.2019.

43. The Learned Counsel for erstwhile RP has also argued that in an Interlocutory Application filed by HIL Industries in CP No. 01/CTB/2019 in IA No. (IBC) 50(CTB)/2020, was filed under section 60(5) of the IBC whereas application regarding allegation of fraudulent initiation of CIRP should have been filed under section 65 of IBC.

44. The Learned Counsel for erstwhile RP has also presented his arguments in Appeals no. CA 52 of 2022 and CA 53 of 2022. He has claimed that the said workers' claims were not submitted during CIRP by the workers as was required in law, and hence such claims were not considered in the resolution plan, and this action was in accordance with the provisions of law. He has further claimed that the order of Hon'ble Supreme Court in Civil Appeal No. 8800-8801 of 2019 dated 18.11.2019 is very clear wherein HIL and other parties were granted liberty to pursue whatever remedies were available in accordance with law. He has added that thereafter, despite such liberty being granted, the workers chose not to file any claim in the ongoing CIRP proceedings as is clear from letter dated 14.12.2019 sent by Mr.

*Company Appeal (AT) (Insolvency) No. 42 of 2022, 43 of 2022, 52 of 2022 & 53 of 2022*

Gopakrishna Dash, General Secretary, HIW Workers Union (attached at pp.149-151 in appeal paperbook, vol. I of CA No. 52/2022) whereby the workers' union only sought a copy of the application under section 7 filed by Nandakini and reply filed by Varsha Fabrics and proceedings of the CoC. He has thus claimed that the workers did not show any interest in filing any claim before the erstwhile RP and, therefore, cannot now raise issue about their claims once the Resolution Plan has been finally approved by the Adjudicating Authority.

45. The Learned Counsel for erstwhile RP has clarified that the proof of debts of the financial creditor Nandakini and other members of CoC was provided by e-mail dated 5.3.2020 sent to the Registrar of NCLT in compliance of the Adjudicating Authority's order dated 28.2.2020. He has further submitted that the debt is included in the balance sheet of the corporate debtor as 'unsecured loan' in 'current liabilities' and further stated by the corporate debtor's Chartered Accountant A.K. Ray and Company in their letter dated 12.6.2019 (attached at pp. 626-627 of the Additional Documents Vol. IV, Dy. No. 40342 dated 14.10.2022).

46. The Learned Counsel for the erstwhile RP has clarified that signature of the RP appearing in the affidavit dated 19.12.2019

submitted by Mr. Sujit Dutta Roy under section 30(1) was done inadvertently and it was only done to complete the documentation for record, though the resolution plan had already been approved by the CoC on 16.12.2019. He has referred to the affidavit of Shri Ranjay Singh in this connection, who has given the correct affidavit on 24.10.2019 which was considered by the CoC along with the resolution plan (affidavit attached at pp.34-35 of documents submitted vide Dy. No. 39291 dated 8.9.2022).

47. The Learned Counsel for Successful Resolution Applicant Regus Impex has submitted that the corporate debtor is not in operation since 2007 and only dues of about 306 workers remain to be paid and added that the workers had the right to submit their claim in the CIRP, but they chose not to do so and therefore, their claim was neither admitted by the RP nor considered in the resolution plan, but the Successful Resolution Applicant is even now agreeable to pay their rightful dues in case there is a direction to do so.

48. The Learned Counsel for Successful Resolution Professional Regus Impex has further added that the constitution of the CoC was not at all in the hands of the Successful Resolution Applicant and the erstwhile RP constituted the CoC on the basis of claims

filed after due verification. He has pointed out that no pleading regarding CoC members being related parties of the corporate debtor was made in the appeal memo, but it was done much later in the rejoinder to CA No. 42/2022, and hence such an objection is not sustainable and should be disregarded. He has further claimed that the threshold of a party being related party as is laid down in sections 5(24) and 29-A of the IBC are not met and furthermore there are no specific pleadings made by the Appellants as to how the corporate debtor and Successful Resolution Application Regus Impex are related parties.

49. The Learned Counsel for Successful Resolution Applicant Regus Impex has submitted that mere connection through shareholdings between some corporate entities does not make Regus Impex ineligible to submit a resolution plan, and that there is no need to pierce the 'corporate veil' of the companies to look at any interconnections between them. He has referred to the judgment of Hon'ble Supreme Court in the matter of **Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta & Ors. [2019 2 Supreme Court Cases 1]**, wherein in para 32, it is clarified that piercing of the corporate veil should be done only where the individuals are acting jointly or in concert and who have set up a corporate vehicle for the purpose of pursuing an unlawful objective

and submission of a resolution plan isn't an unlawful objective. He has further pointed out that the principles that should be considered for piercing the 'corporate veil' are given in para 35 of the **Arcelor Mittal (supra)** judgment and therefore, corporate veil should be pierced only if there is impropriety or it is necessary in the interest of the justice, but mere ownership and control of some companies are not sufficient reasons to justify the piercing of corporate veil. He has also clarified that there was no advantage that the corporate debtor or the Successful Resolution Applicant derived through the submission of resolution plan in this case and hence, there is no necessity for piercing the corporate veil. He has, further referred to 'Takeover Regulations' referred to in the **Arcelor Mittal (supra)** judgment, wherein to show ultimate control of a company requirement of positive evidence has to be established regarding some company said to be controlled by another company.

50. The Learned Counsel for Successful Resolution Applicant has also cited the judgment of Hon'ble Supreme Court in the matter of **Pratap Technocrats Private Limited & Ors. vs. Monitoring Committee of Reliance Infratel Ltd. & Anr. [2021 10 Supreme Court Cases 623]**, wherein it is held that a challenge to the approval of the resolution plan by the creditors whose

claims are pending for adjudication would not stand in the way of the approval of the resolution plan, more so when it is approved by the CoC by a clear and overwhelming majority. Referring to the principle that is laid down in this judgment, the Learned Counsel for Successful Resolution Applicant has claimed that even in the present case, in the final count the total claims (which decides voting share) of all the members of the CoC would be much more than the claims of the workers (which is around Rs.45.66 crores) and therefore, even if the workers' union was to get a seat in the CoC, there would be no material change in the voting pattern and consequently in the approval of the resolution plan.

51. The Learned Senior Counsel for the HIW Workers' Union pointed at this juncture that it is not proper for the Successful Resolution Applicant to argue on behalf of the financial creditor Nandakini since Nandakini has chosen not to defend itself before this Tribunal and such arguments that explain the conduct of Nandakini should not be considered by this Tribunal.

52. The Learned Senior Counsel for HIL has in rejoinder referred to the judgment of Hon'ble Supreme Court in the matter of **A.V. Papayya Sastry & Ors. vs. Government of A.P. & Ors. [(2007) 4 SCC 221]**, wherein it is held that judgment obtained by fraud can

*Company Appeal (AT) (Insolvency) No. 42 of 2022, 43 of 2022, 52 of 2022 & 53 of 2022*

be challenged at any time, and therefore, the Appellant HIL is within its rights to raise the issue of fraud at the stage of appeal and even in oral arguments, which if found correct would render entire proceedings in the CIRP starting with admission of section 7 application null and void.

53. The Learned Senior Counsel for HIL has referred to the judgment of Hon'ble Supreme Court in the matter of **Sandur Manganese & Iron Ores Ltd. vs. State of Karnataka [2010 (13) SCC 1]** to emphasise that if a party, which is alleged to have acted in collusion with the corporate debtor, has chosen not to defend its position in the appeal, it is a clear pointer to its complicity and collusion with the corporate debtor for fraudulent initiation of CIRP. He has pointed out that the loan given by the financial creditor Nandakini strangely appeared in the balance sheet of the corporate debtor, but not in the balance sheet of the financial creditor Nandakini, which itself raises a serious doubt which the Adjudicating Authority should have investigated before admitting the section 7 application, and later RP should have verified the claim before admitting it during CIRP. In support, he has referred to the judgment of Hon'ble Supreme Court in **Phoenix Arc Private Ltd. vs. Spade Financial Services Ltd. [2021 3 SCC 475]** to point out that the debt must be disbursed and hence the matter of

the disbursement of debt and the 18% rate of interest shown as time value of money are merely bald and unsubstantiated statements, with no corroboration from any document such as the loan agreement to establish them. He has also pointed out that original loan of Gain E-Commerce (a member of CoC) of Rs. 361.10 lakhs has become Rs. 6903 lakhs and that of Subhlaxmi Compusis of Rs. 1849.58 lakhs has become Rs. 12072 lakhs by claiming an exorbitant rate of interest of 18% compounded quarterly, which is unrealistic and much higher than the market norm, which also shows how the RP has acted to help the colluding parties to get a high vote share in the CoC and also that the payments after the resolution plan is approved are mostly to the companies of the same group, to the detriment of the workers.

54. The Learned Senior Counsel for HIL has also submitted that the common address and e-mail IDs used by various member-companies in the CoC and the Successful Resolution Applicant show that there is one 'controlling mind' who is directing all the actions and activities in the matter, and the presence of such a 'controlling mind' comes out clearly in connections and cross connections between members of the CoC, corporate debtor and SRA and all this has been brought out through charts presented during the arguments. He has lastly referred to para 37 in the



judgment of Hon'ble Supreme Court in the matter of **Arcelor Mittal (supra)**, wherein it is held that the protection of public interest is of paramount importance and where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. He has further referred to para 41 of the **Arcelor Mittal (supra)** judgment to explain that persons acting 'in concert' or persons belonging to a company, its holding company, subsidiary or associated company and any other company under the same management or control and associated directors make the proceedings vitiated and such is the case in the instant matter too, where various members of the CoC were acting in concert with the holding company of the corporate debtor, its shareholders and the holding company of the Successful Resolution Applicant. Such concerted action in furtherance of an ulterior motive of denying the workers their rightful dues and also ensuring that the corporate debtor even after insolvency resolution remains with the same group of companies makes the entire operation fraudulent and reeking of malice against the workers. He has also clarified that the judgment in **Pratap Technocrats Private Limited (supra)** is not about collusion between related parties, and is, therefore, not applicable to these appeals.

55. The Learned Senior Counsel for Appellant HIL has also referred to judgment of this Tribunal in the matter of **Jayanta Banerjee Vs. Shashi Agarwal & Anr. [CA(AT)(Insolvency) No. 348 & 720 of 2020]** to point out that if the constitution of CoC violates the proviso of section 21(2) of the IBC, the entire constitution of CoC will be tainted and any decision of the CoC cannot be validated on the pretext of exercise of commercial wisdom and all such decisions taken by the CoC are liable to be quashed.

56. We now examine issues (i) and (ii) framed by us, which are whether the loan allegedly claimed by financial creditor Nandakini qualifies as a 'financial debt' under IBC and whether the admission of section 7 application filed by Nandakini in accordance with the provisions of IBC and as per law.

57. It is noted that the corporate debtor was acquired by three companies of the same group, namely, Varsha Fabrics (P) Ltd. Mudrika Commercial Ltd. and India Finance Pvt. Limited in the year 2006. These 'three companies' executed a tripartite agreement dated 2.6.2006 with HIW Workers' Union and HIL and undertook the obligation to make payments towards outstanding dues of the workers of the corporate debtor whereafter a share

purchase agreement dated 10.7.2006 was also executed whereby 100% shareholding of HIL was transferred in the name of three companies named above. The tripartite agreement regarding payment of workers' dues was expressly stipulated to be a part of the share purchase agreement and also a condition precedent to the Share Purchase Agreement (refer to Vol. III of the appeal paperbook). It is also noted that the three companies failed to make payment of workers' dues and in the meanwhile the corporate debtor closed down its business operation in the year 2007. Also in the year 2007, these companies transferred their entire shareholding in the corporate debtor to Indo Wagon, in which Adishwar Nivesh holds 100% shareholding. Thus, it is clear that Adishwar Nivesh is the corporate entity controlling the corporate debtor.

58. It is also noted that pursuant to proceedings initiated by the HIW Workers' Union before the Hon'ble High Court of Odisha, the outstanding dues of workers were quantified by the Deputy Labour Commissioner at Rs. 45,66,67,133/-. It is also noted that the three companies named above, who held control of the corporate debtor, failed to clear the said outstanding dues of the workers, and consequently the Hon'ble High Court of Odisha for the second time directed auction of the assets of the corporate debtor on

8.4.2019 for clearing the outstanding dues of the workmen (pg.550-551 of the appeal paperbook Vol.III). Thus it, is clear that the dues of the workmen had been quantified at Rs.45,66,67,133/- by the Labour Commissioner, but they remained unpaid and the HIW Workers' Union was pursuing the remedy available to it before the Hon'ble High Court of Orissa for payment of workers' dues from the auction sale proceeds of the corporate debtor's assets.

59. We note that an application under section 7 of the IBC was filed by the Nandakini Contractors (P) Ltd. claiming to be financial creditor on 6.3.2019 against a 'financial debt' of Rs. 24,11,975/-, based on a purported loan agreement dated 14.3.2016 with an interest @ 18% p.a. on the overdue principal loan amount. The Appellants HIL and HIW Workers' Union have alleged that no loan agreement nor any proof of disbursement was filed along with the said application under section 7. A perusal of the section 7 application filed by the alleged financial creditor Nandakini (attached at pp.402-422 of the Appeal Paperbook Vol.II in CA No. 52/2022) shows that in Part IV of the application, the total amount of debt granted is shown as principal amount of Rs.14,51,047 by M/s. Nandakini Contractors Pvt. Ltd. to corporate debtor HIRAKUD Industrial Works Limited, claimed to be repayable with three months' cumulative interest @ 18% p.a.

60. It is noteworthy that in Part V of the section 7 application, which contains particulars of financial debt (documents, records and evidence of default), copy of a letter dated 31.12.2018 regarding demand of repayment and a copy of another letter dated 9.2.2018 also regarding demand of payment are shown as annexed as Annexures A-6 and A-7. Also included in Part V of the application 7 section are two letters dated 16.2.2019 (Annexure A-8) and dated 22.2.2019 (Annexure A-9), both written by the corporate debtor addressed to M/s. Nandakini Contractors Pvt. Ltd. as confirmation of the outstanding debt. These letters are attached at pp.419-420 of appeal paperbook Vol.II in CA No. 54/2022. We note that there is no other document evidencing the loan agreement and/or any rate of interest or in proof of disbursement of the loan claimed to have been given by the financial creditor to the corporate debtor.

61. The relevant portion of section 7 of IBC is reproduced below:

*“7. Initiation of CIRP by financial creditor –*

*xx xx xx xx xx*

*(2) The financial creditor shall make an application under subsection (1) in such form and manner and accompanied with such fee as may be prescribed.*

*(3) The financial creditor shall, along with the application furnish—*

- (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
- (b) the name of the resolution professional proposed to act as an interim resolution professional; and*
- (c) any other information as may be specified by the Board.*

*(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).*

*Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.*

*(5) Where the Adjudicating Authority is satisfied that—*

- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; “*

62. We, thus, find that while the financial creditor Nandakini has claimed a financial debt, evidently there is no document included in the Form 1 application in proof of any loan agreement and/or disbursement of the said loan. A purported proof of the

disbursement of the said loan has been filed by the corporate debtor in the form of its balance sheet, but notably there is no balance sheet or ledger account of the financial creditor for the same financial year showing such a loan. We further find that no document or record regarding entries in the banker books in accordance with the Bankers Book Evidence Act, 1891, which are required to be furnished by the financial creditor along with Form 1 application under section 7 was filed by the Nandakini.

63. A perusal of the requirements of sub-sections (2), (3), (4) and (5)(a) of section 7 shows that an application under section 7 has to be submitted in a given format, which is Form 1, where the financial creditor has to furnish record of default recorded with either the Information Utility or such other record or evidence of default as may be prescribed. A perusal of Part V of the Form 1 application provided in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 gives a list of eight documents, which can be submitted as proof of financial debt and evidence of default. Quiet evidently, none of these documents were attached with the section 7 application by the purported financial creditor Nandakini. Thus, we find that the financial creditor did not either submit any document or record regarding the financial loan and/or its disbursement, but only relied on

letters ostensibly sent by the financial creditor demanding repayment of the alleged loan and two letters dated 9.2.2019 and 22.2.2019 which was found convincing and worthy of satisfaction by the Adjudicating Authority.

64. We also note that the section 7 applicant Nandakini has chosen not to be represented in any of the appeals under consideration in this judgment. In the absence of any pleadings of Nandakini regarding the contents of the section 7 application, we have relied on the application form along with attachments as submitted in Company Appeal (AT) (Ins.) No. 52/2022 (attached at pp, 402-420 of the appeal paperbook, Vol. II). On perusal, we note the section 7 application does not mention any loan agreement signed between the corporate debtor and financial creditor, but mentions a letter dated 15.4.2018 sent by financial creditor Nandakini Contractors to the director of corporate debtor Hirakud Industrial Works Ltd. wherein mention of a loan agreement dated 14.3.2016. This loan agreement is neither attached with the section 7 application nor it has been brought before us by any of the parties. The section 7 application form available in CA (AT) (Ins) No. 52/2022 is supposed to include two letters dated 15.4.2018 and 31.12.2018, but again letter dated 31.12.2018 is not found annexed with the section 7 application



form. The letter dated 15.4.2018, which is attached is merely a bald letter demanding repayment of outstanding dues sent by the financial creditor Nandakini to the corporate debtor without any amount of principal or interest that is due being specified. This letter states as follows: -

*“This is to inform you that as per the loan agreement dated 14.3.2016 executed between Nandakini Contractors Pvt. Ltd. and Hirakud Industrial Works Ltd., you are required to pay the interest amount out of the loan amount on each year and from the date of the drawdown of the loan. However, we have not received any payment of interest out of the said loan facility. Therefore, you are hereby requested to pay interest along with principal amount as disbursed to you at the earliest. “*

65. Further, another letter dated 9.2.2019 sent by Nandakini to the corporate debtor refers to the repeated demand notices sent to the corporate debtor requesting for payment of outstanding loan amount as promised, inter alia, making a bald and unsubstantiated admission of the loan amount and interest without any specifics about the loan amount and amount due for payment which is in default. Another letter dated 22.2.2019 is attached with the section 7 application, which refers to the letter dated 9.2.2019 of the financial creditor. This letter dated 22.2.2019 states as follows:-

*“Dear Sir,*

*Sub: Letter dated 9.2.2019.*

*I regret to inform you that due to huge loss incurred by our Company, the payment of outstanding amount cannot be made at this juncture. Hence, we sought time to pay the interest amount as we are presently making every effort to repay the amount facilitated by your good office. Your understanding and patience in this matter is much appreciated and I look forward to hearing from you.”*

66. The above letter dated 22.2.2019 has been considered as admission of loan and default of repayment by the Adjudicating Authority. In the absence of any document evidencing the loan agreement placed on record by the financial creditor, the only indirect proof of purported loan is contained in the letters dated 15.4.2018 and 9.2.2019 sent by the financial creditor to the corporate debtor, wherein no specific amount of dues either in principal or interest payable to the financial creditor is mentioned. When we look at the content of these letters in conjunction with the absence of any loan agreement and no related proof from any other document including balance sheet from the side of the financial creditor, we wonder as to how the Adjudicating Authority could be satisfied with the requirements of section 7 of IBC regarding disbursement and default of the said loan amount.

Therefore, the admission order under section 7 of IBC passed by the Adjudicating Authority stands on shaky foundation.

67. We consider the argument of the Learned Counsel for erstwhile RP that the Adjudicating Authority has to merely see whether there is a default in repayment of debt and that is the trigger for initiation of CIRP. He has cited the following from Hon'ble Supreme Court's judgment in the matter of **Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd. (2021 SCC Online SC 513)** in support:-

*“31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. “Default” means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of ‘debt’ is also expansive and the same includes inter alia financial debt. The definition of ‘Financial Debt’ in Section 5(8) of IBC does not expressly exclude an interest free loan. ‘Financial Debt’ would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.”*

68. The above judgment lays down what a financial debt is, but does not answer the question as to the status of financial debt when the basis of the financial debt is missing or is fraudulent.

This judgment, therefore, does not offer any support to the Resolution Professional's case.

69. We now consider the argument of the Appellants that the admission of section 7 application was done collusively by the financial creditor Nandakini Contractors and corporate debtor Hirakud Industrial Workers Limited as the corporate debtor wanted to deny the workers their legitimate dues and to perpetrate a fraud on the legitimate creditors of the corporate debtor.

70. While looking at the possibility of collusion between the corporate debtor and the alleged financial creditor Nandakini, we find that the Adjudicating Authority passed an order on 28.2.2020 that RP should produce sufficient proof of debts but this order was not complied by the RP till 12.11.2020 when the Adjudicating Authority noted that "the order passed by this Adjudicating Authority on 28.2.2020 has not been complied by the IRP" and gave a "last chance" to the IRP to comply with the said order. Curiously, the IRP filed IA (IB) No. 341 of 2020 for modification of the order dated 12.11.2020 rather than comply with the same. It is more curious to find that while the Adjudicating Authority found that the order dated 28.2.2020 had not been complied, Adjudicating Authority did not decide IA (IB) No. 341 of 2020 but

proceeded to dismiss the section 65 application of the workers' union. While the inaction of the Adjudicating Authority may be overlooked since reason for such omission is not clear from record, we feel that the IRP/RP did commit a blunder by not placing the proof of debts before the Adjudicating Authority. His alibi that he has submitted the details before the Registry of NCLT is not correct as the compliance of Adjudicating Authority's orders are to be done before the tribunal and not before any other office.

71. We note that the financial creditor Nandakini Contractors and the corporate debtor belong to the same group of companies which has been shown through two charts presented by the Learned Senior Counsel for HIL and which are reproduced in this judgment earlier. We also note that a request for urgent hearing was made by the counsels for the corporate debtor and the purported financial creditor Nandakini when the auction of the corporate debtor's assets had become imminent upon orders of the Hon'ble High Court of Odisha. After such a joint request was made to the Adjudicating Authority for urgent hearing, we note that the hearing took place immediately thereafter and the admission order was passed with inexplicable speed and alacrity when the Adjudicating Authority does not even appear to

undertake proper scrutiny and necessary examination of section 7 application and the documents included therein.

72. On the basis of aforementioned discussion, regarding issues (i) and (ii), we are convinced that the section 7 application was submitted by Nandakini Contractors fraudulently in collusion with the corporate debtor to seek an admission order for CIRP of the corporate debtor, and such an admission order was given by the Adjudicating Authority without proper and adequate scrutiny of the contents of the section 7 application and without examination of material therein.

73. The next point is to examine issue no. (iii), which is regarding constitution of CoC with the collusion of financial creditors, who are 'related parties' and also acting in concert and decisions taken thereafter in the CoC meetings with the participation of such 'related parties' are vitiated and bad in law.

74. An important issue that has been raised by the Appellants is about piercing the corporate veil to be able to understand the actions and role of various companies that have shown stake in the CIRP - as corporate debtor, applicant - financial creditor, members of CoC and the successful resolution applicant. Their

connections with each other and consequently their role in filing of the section 7 application and in the CIRP would then become apparent.

75. Section 2(27) of The Companies Act, 2013 states that control *“shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner”*.

76. In the same vein, in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (in short the “Takeover Regulations”) which provides the regulatory framework for the direct and/or indirect acquisition of shares or rights in, or control over, an Indian company listed on a stock exchange, the term “control” has been defined under Regulation 2(1)(e) of the Takeover Regulations and the relevant extract is reproduced hereunder:

*“Control” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management*

*rights or shareholders' agreements or voting agreements or in any other manner.*

*Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position.*

77. Regarding 'persons acting in concert', we note the following observations in Hon'ble Supreme Court's judgment in the matter of **Arcelor Mittal Pvt. Ltd. (supra)**, which is as follows :-

*"41. By Regulation 2(1)(g) of the 2011 Takeover Regulations, "persons acting in concert" is defined as follows:*

*" 2. (1)(g) "**persons acting in concert**" means.*

*(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly cooperate for acquisition of shares or voting rights in, or exercise of control over the target company.*

*(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established-*

*(i) a company, its holding company, subsidiary company and any company under the same management or control;*

*(it) a company, its Directors, and any person entrusted with the management of the company;*

*(ii) Directors of companies referred to in Items (i) and (ii) of this sub-clause and associates of such Directors;*



xx xx xx xx xx

42. *It will be seen from the wide language used, that any understanding even if it is informal, and even if it is to indirectly cooperate to exercise control over a target company, is included. Under sub-clause (2) of clause (q), a deeming fiction is enacted, by which a presumption is raised in the categories mentioned, that a person falling within one category is deemed to be acting in concert with another person mentioned in the same category, unless the contrary is established. The corporate veil is not merely torn but is left in tatters by sub-clauses (i) to (iv) of Regulation 2(1)(q)(2)...”*

78. Upon consideration of the present case and the allegation made therein by the Appellants HIL and HIW Workers’ Union that there was a “controlling mind” and that the companies belonging to the same group of companies were acting “in concert” to initiate and perpetrate the fraudulent CIRP, we find it necessary to pierce the corporate veil to consider the conduct of the companies involved in the fraudulent initiation of CIRP, entering the CoC and taking part in its decision-making to the detriment of the corporate debtor and its legitimate creditors.

79. The Learned Senior Counsels for the Appellants HIL and HIW Workers’ Union have, on the basis of documents that are in public domain regarding shareholding pattern of the stakeholder companies, their registered addresses and email ids, explained the

intricate web of inter-connections between Adishwar Nivesh Pvt. Ltd., the holding company of the corporate debtor, the members of the CoC and the Successful Resolution Applicant Regus Impex through charts that form part of this judgment. These interconnections and cross-investments have not been disputed by either the corporate debtor or the SRA. It is quite clear that these companies are being guided by a 'controlling mind' and were acting in concert to defeat the objective and intent of the IBC.

80. On the issue of piercing the corporate veil, Hon'ble Supreme Court made the following observations in the **Arcelor Mittal (supra)** judgment after examining in detail the principles regarding piercing the corporate veil as laid down in *Ben Hashem vs. Ali Shayef*, [2008 EWHC 2380 (Fam): (2009) 1 FLR 115] further reiterated by the UK Supreme Court in *Prest vs. s Ltd. Petrodel Resources Ltd.* [(2013) 2 AC 415: (2013) 3 WLR 1: 2013 UKSC 34] and further enumerated by the Hon'ble Supreme Court in **LIC vs. Escorts Ltd. [(1986) 1 SCC 264]**:-

*“37. It is thus clear that, where 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.”*

81. We rely on the above observations insofar as piercing the corporate veil is concerned, in order to examine the role and conduct of companies involved in the present case. We are of the view that piercing the corporate veil is absolutely necessary to be able to see the role of various companies which are part of the same group, to examine the issue of *de facto* control of companies. We are also of the view that in examination of possible fraud, piercing of the corporate veil is not only necessary but also apt at even this stage of appeal in the case.

82. We are, therefore, of the view that this is a fit case of piercing the corporate veil to examine the interconnections and relatedness of the various parties such as the corporate debtor, the financial creditor Nandakini and member of the COC, in order to serve the interests of justice and also to provide a clear picture in respect of the provisions of the IBC insofar as the objective of insolvency resolution is concerned.

83. Once we pierce the corporate veil of companies involved in this matter, the element of fraud played by the creditors of the corporate debtor starting with the collusion between the financial  
*Company Appeal (AT) (Insolvency) No. 42 of 2022, 43 of 2022, 52 of 2022 & 53 of 2022*

creditor and corporate debtor, becomes apparent. The spirit of IBC, as is enshrined in its Preamble and the Statement of Objects and Reasons are for balancing the acts of all the stakeholders in the insolvency resolution of the corporate persons. Any action which militates against such a spirit of IBC is bound to raise serious doubt about the CIRP and should be looked into deeply to examine element of fraud or 'gaming'. Therefore, in our view any abuse of the provisions of IBC to fulfil the ulterior motive and business interests of certain parties to the detriment of certain other parties (such as the workmen of the corporate debtor represented by the HIW Workers' Union and HIL) should not be allowed to happen. Piercing the corporate veil to infer the conduct of companies involved should, therefore, be seen in this context.

84. We now turn our attention to examine the issue of presence of 'related parties' in the CoC. For this, we closely look at the two charts submitted by the Learned Senior Counsel for HIL which bring out the inter-connections between Adishwar Nivesh, which is the holding company of Indo Wagon, which in turn is the holding company of the corporate debtor and their relationship with the members of the CoC.

85. We find that Mr. Sujit Dutta Roy is a director in Nandakini (since 30.11.2015). In addition, he is a director of Varsha Fabrics, Subhlaxmi (since 31.3.2019), Gain e-Commerce (since 11.7.2017) and all the four companies (viz. Nandakini, Varsha Fabrics, Subhlaxmi and Gain e-Commerce) are members of the CoC. Additionally, Mr Sujit Dutta Roy is a director of Adishwar Nivesh, which is the holding company (with 99.98% shareholding) of Indo Wagon which in turn holds 99.98% shares of the corporate debtor HIWL. Thus, Mr. Sujit Dutta Roy, being a director of Adishwar Nivesh, is in a position to control the corporate debtor and he, being on the board of directors of Nandakini, Varsha Fabrics, Subhlaxmi and Gain E-Commerce (which are members of CoC) is in a position to advise, direct and instruct these four companies. Thus, by definition of clause (f) of section 5(24-A), the above mentioned four companies are 'related parties' of the corporate debtor and hence their position as members of CoC and to be represented, participate and vote in meetings of the CoC is completely untenable and infringes the first proviso of section 5(24) of IBC. This glaring instance of 'related parties' of the corporate debtor becoming members of the CoC is sufficient to make the constitution of CoC illegal and render all the decisions and resolutions adopted in CoC meetings with participation and

voting of the four companies referred above null and void in the eyes of law.

86. It is necessary to look at the nature and conduct of companies involved in the initiation of CIRP and further proceedings in the CIRP to examine whether, after the fraudulent initiation of CIRP of the corporate debtor had taken place, the CoC constituted by the erstwhile RP was actually in accordance with the provisions of IBC. In doing so, it is useful to look at the shareholding pattern of various members of the CoC:-

- (i) Gain E-Commerce (Adishwar Nivesh has 22.48% shareholding in it)
- (ii) Miller Traders (Adishwar Nivesh has 22.45% shareholding in it)
- (iii) Dahisar Traders (Adishwar Nivesh has 9% shareholding in it)

Thus, two members of CoC, viz. Gain E-Commerce and Miller Traders are related parties of Adishwar Nivesh which is the holding company of Indo Wagon, which in turn is the holding company of the corporate debtor, and hence they are 'related parties' of the corporate debtor.

87. We also find that Nandakini, Varsha Fabrics, Subhlaxmi Compusis and Gain e-Commerce are associate or subsidiary companies of the corporate debtor and hence their participation as members of CoC is untenable. Moreover, Adishwar Nivesh, the holding company of Indo Wagon, which in turn is the holding company of the corporate debtor HIWL acts 'in concert' with following members of the CoC: -

- Divya Mercantile Pvt. Ltd. (Adishwar Nivesh has 28.44% shareholding)
- Fragment Nivesh Pvt. Ltd. (Adishwar Nivesh has 25.94% shareholding)

88. Adishwar Nivesh also some influence on the functioning of the following members of the CoC (though the level of 20% shareholding is not present):

- Sheetal Exports Pvt. Ltd. (Adishwar Nivesh has 15.79% shareholding)
- Goldman Stocks & Share Brokers Pvt. Ltd. (Adishwar Nivesh has 12.26% shareholding)
- Enormous Nivesh Pvt Ltd. (Adishwar Nivesh has 18.19% shareholding)

89. Thus, it is clear that the corporate debtor, through its holding company Indo Wagon's holding company Adishwar Nivesh is positioned to influence many members of the CoC, and hence their inclusion in the CoC is dubious, questionable and legally untenable.

90. Additionally, the following emerges from the examination of the charts submitted by the Appellant HIL regarding shareholding of various corporate entities: -

(i) Enormous Nivesh and Divya Mercantile both have more than 20% shareholding in Adishwar Nivesh and they are 'related parties' of Adishwar Nivesh which is the holding company of the corporate debtor through Indo Wagon.

(ii) Adishwar Nivesh, along with its shareholders (which are Sheetal Exports, Enormous Nivesh, Fragment Nivesh, Goldman Stocks and Divya Mercantile) control major shareholdings in at least four CoC members. Thus, Gain E-commerce, Subhlaxmi Compusis, Dahisar Traders, Miller Traders, Luni Housing and Developers and Mekong Rubber all are closely inter-connected through shareholdings with Adishwar Nivesh, which is the holding company of Indo



Wagon which is the holding company of the corporate debtor.

(iii) Miller Traders, Gain E-commerce, Subhlaxmi Compusis, Mekong Rubber, Luni Housing & Developers and Dahisar Traders, which constitute six of the seven members of the CoC are intricately connected with Adishwar Nivesh, which controls the corporate debtor. Therefore, these six corporate entities as members of the CoC are closely connected parties of the corporate debtor.

91. We also note that, in addition, the same directors are present in the boards of many companies in the CoC. As pointed out earlier, taking just one illustrative example of Mr. Sujit Dutta Roy, who is a director of the corporate debtor, is also a director in Subhlaxmi since 31.3.2019. He is also a director in Varsha Fabrics/Purbanchal Power (which is connected with the corporate debtor as one of the original three companies that bought the corporate debtor after disinvestment) and five of the CoC members, namely, Miller Traders, Nandakini, Gain E-Commerce, Subhlaxmi Compusis and Dahisar Traders along with being present in Divya Mercantile, Sheetal Exports, Enormous Nivesh and Goldman Stocks & Share Brokers. Interestingly Mr. Sujit Dutta Roy is also

a director of Successful Resolution Applicant Regus Impex. While this is clearly an infringement of clause (f) of section 5(24), whereby Mr. Sujit Dutta Roy has a say in the corporate debtor, CoC as well as Successful Resolution Applicant Regus Impex by virtue of being director of these companies.

92. The inter-connections between the corporate debtor, financial creditor Nandakini, members of the CoC and the holding companies of the Successful Resolution Applicant through common directors sitting on the board of more than one company, different levels of shareholdings and common registered addresses and working-email IDs thus adds strength to the argument that they belong to the same group of companies working towards common objective insofar as the CIRP in the instant case goes.

93. Therefore, looking at the events in this case from the lens of the nature, involvement and conduct of the companies, we find the inference inescapable that these companies were acting 'in concert' and being guided and led by a 'controlling mind as part of a fraudulent project to defraud the creditors of the corporate debtor by misusing the instrumentality of the IBC, completely against its objectives and spirit and such actions, which are infringing the provisions of the IBC cannot be condoned or overlooked.

94. In reaching the above conclusion, we follow the judgment of Hon'ble Supreme Court in **S.P Chengalvaraya Naidu vs Jagannath (1994 AIR 853, 1994 SCC)** to emphasise that fraud vitiates all actions. The relevant observations in this judgment is as follows:

**(1) 1]** *"Fraud-avoids all judicial acts, ecclesiastical or temporal" ... It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non-existent in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."*

*"The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting, justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."*

*"A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage."*

*"A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."*

95. On the issue of fraud and its effect, the following is held by Hon'ble Supreme Court in **State of A.P. and Anr. Vs. T. Suryachandra Rao [2005 (6) SCC 149]**: -

*"Fraud" as is well known, vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous...."*

96. In the light of the events in the instant case, starting with the admission of section 7 application, when we look at the hasty admission of section 7 application by the Adjudicating Authority, we are struck by the alacrity and haste in the consideration of this *Company Appeal (AT) (Insolvency) No. 42 of 2022, 43 of 2022, 52 of 2022 & 53 of 2022*

application. At the expense of repetition, we note that Nandakini's application was taken up for hearing by the Adjudicating Authority on 9.4.2019, just one day after the Hon'ble High Court of Odisha passed order on 8.4.2019, directing auction of the assets of the corporate debtor for discharging workers' dues. The financial creditor and corporate debtor made a joint request for urgent hearing of section 7 application on 3.6.2019, and it was heard on 4.6.2019 leading to passing of the order admitting section 7 application and declaration of initiation of CIRP by financial creditor soon thereafter. Clearly, this is a case where section 65 of the IBC is attracted.

97. Section 65 of the IBC prescribes a stringent punishment, which may be a penalty extending up to Rs. one crore for fraudulent and malicious initiation of the CIRP. In such a background, we are of the clear view that the initiation of CIRP was done fraudulently by the corporate debtor working in collusion with financial creditor Nandakini and therefore such fraudulent initiation of CIRP started with the admission order under section 7 is liable to be set aside. Therefore, taking recourse to section 65 of the IBC, we set aside the admission order of the section 7 application as its basis, the section 7 application, and loan therein

which is claimed to be due and in default are found to be fraudulent.

98. While the existence of fraud in initiation of CIRP is quite apparent now, the issue about constitution of CoC with related parties or with parties who are part of the same group of companies acting 'in concert' becomes inconsequential. This is so because once the foundation of CIRP crumbles, all the later happenings in the CIRP would not have any base to stand on. Yet, if the constitution of CoC is also found to be defective, it would only add further strength to the argument that companies belonging to the same group conspired to first get a CIRP initiated through fraudulent means and thereafter works towards carrying the project further by constituting the CoC with connected parties who took decisions to subvert the objectives of the IBC. It is with this idea that we look the matter of constitution of CoC.

99. Insofar as alleged 'defective' constitution of CoC is concerned, we note that in the matter of **Jayanta Banerjee (supra)** this tribunal has held as follows:-

*"81. In the instant case, we find that the IRP/RP had formed the Committee of Creditors based on the Financial Creditors' submission of claims even without verification, despite that one of the financial creditors had explicitly requested to defer the e-voting on the resolution of the 5th CoC dated 5<sup>th</sup>*

*December 2019, till the verification of voting percentage and compliance of CIRP process. The IRP/RP has formed the Committee of Creditors without admitting the claims of the Financial Creditors, which violate Regulation 12 (3) of the CIRP Regulations.*

*82. We also find that during CIRP, five meetings of the Committee of Creditors took place. Still, till the end of CIRP, IP did not verify the claims submitted by the Financial Creditors but allotted the voting share to the Financial Creditors, based on the submission of claims. The procedure adopted by the IRP/RP was against the statutory provision of the Code despite the fact that compliance with the statutory requirements of the Code was mandatory.*

*xx xx xx xx*

*85. Based on the above discussion, we are the considered opinion that the Constitution of the Committee of Creditors violates the proviso to Section 21(2) of the I & B code 2016 read with 12(3) of CIRP Regulations. Therefore, the Constitution of the creditors' committee is a nullity in the eye of law that vitiates the entire CIRP. Liquidation is like a death knell for the corporate entity/corporate person. Liquidation based on the resolution of the CoC, which consists of related party Financial Creditors having 77.20 % vote share, is a matter of grave concern. Hon'ble Supreme Court in the case of Phoenix ARC (supra) has described the entering of such related party Financial Creditors in the Committee of Creditors as an act of commercial contrivances through which these entities sought to enter the COC, which could affect the other independent Financial Creditors. An order for liquidation of corporate debtor based on the sole decision of related parties Financial Creditors could be fatal for the existence of the corporate debtor, cannot be sustained. It is also pertinent to mention that when the Constitution of the Committee of Creditors itself is found to be tainted, then the decision of that COC cannot be validated on the pretext of exercise of commercial wisdom.”*

100. In the instant case, we find that the IRP/RP had formed the Committee of Creditors based on the Financial Creditors'

submission of claims even without verification, despite that one of the financial creditors had explicitly requested to defer the e-voting on the resolution of the 5th CoC dated 5<sup>th</sup> December 2019, till the verification of voting percentage and compliance of CIRP process. The IRP/RP has formed the Committee of Creditors without admitting the claims of the Financial Creditors, which violate Regulation 12 (3) of the CIRP Regulations.

101. Thus, it is amply clear that the constitution of CoC with related parties of the corporate debtor participating in the CoC as a majority, is also vitiated. Consequently, we find force in the submission of the Appellants HIL and HIW Workers Union that the corporate debtor is influencing decisions in the CoC and through members of the CoC, who have shareholding and through the CoC. The decisions, therefore, that are taken in the CoC meetings are coloured and are infringement of second proviso of section 21(2).

102. We now come to actions taken by RP during the progress of CIRP. The first and foremost striking instance of the act of omission by the RP is displayed when the Adjudicating Authority vide order dated 28.2.2020 directed the RP to produce before the Adjudicating Authority the financial debts and proof of such debts. We earlier noted that the RP failed to do so despite being reminded



by the Adjudicating Authority. When we find that the purported debts and the proof of debts of the financial creditor included in the CoC are not established appropriately, the responsibility of the RP becomes very clear. The IBBI (Insolvency Resolution for Corporate Persons) Rules, 2016 places responsibility for verification of claims of the RP through Regulations 13. But in the present case the RP has neither verified the claims himself to a degree of authenticity, but when asked upon by the Adjudicating Authority to present the proof of claims before it, has repeatedly failed to do so. Such an act of omission of the RP cannot be overlooked, particularly when the proof of the financial debts claimed by the financial creditor Nandakini itself was engraved out and the RP was required to look into the proof of the debts rather than accepting it as the financial creditor Nandakini had claimed.

103. We peruse the letter dated 14.12.2019 sent by Mr. Gopakrishna Dash, General Secretary, HIW Workers' Union to Mr. Anand Rao Korada, RP requesting to be provided complete copy of the application under section 7 alongwith annexures and copy of the reply filed by the Varsha Fabrics along with annexures. This letter does not contain any reference to the filing of claims before the RP even though the first two paragraphs of the letter described in detail the dues of the workers and how the workers have been

making efforts to get their legitimate dues. In normal circumstances, we feel that the RP, who is supposed to play the role of a non-partisan functionary, could have advised the workers' union to submit the claim of workers so it could be considered in the resolution plan of the corporate debtor. Such an action was reasonably expected from the RP since he was well aware that the workers had been making concerted efforts for payment of their long-pending dues. That the RP did not do so, does raise question about his non-partisan and neutral functioning taking care of the legitimate interests of all the stakeholders including the workers.

104. We also note that the erstwhile RP did not make any meaningful attempt to even enquire into allegations of fraud, collusion, involvement of related parties, and interrelationships between all entities involved in the CIRP, specifically raised by the Appellant in the Additional Affidavit filed in Appellant's IA (IBC) No.1/CTB/2020 as well as IA (IBC) No. 50/CTB/2020 and in HIW Workers Union's IA No. 42/CTB/2020 filed under Section 65 of the IBC. As a person responsible for undertaking the CIRP in a responsible and impartial manner, it was incumbent upon him to do so.

105. We note that the duties of the IRP enshrined in section 18 and duties of the RP enshrined in section 25 of the IBC respectively place a responsibility on the IRP/RP to collect all information relating to assets, finance and operations of the corporate debtor for determining the financial position of the corporate debtor. More specifically, Regulation 9-A and 12 of the CIRP Regulations seek to provide opportunity to a creditor to submit his claim in specified format along with proof of claims. Further, the RP is responsible for maintaining an updated list of claims in Regulation 12-A and make them available for inspection in accordance with Regulation 13. In light of these provisions, when we look at the duties of IRP/RP and the detailed description regarding the workers' dues and their efforts to get payment of such dues in letter dated 14.12.2019, we feel that it was incumbent on the IRP to advise the workers' union to submit their dues in the requisite form so that they could be considered in the resolution plan of the proposed resolution applicant Regus Impex. Noticeably this letter was sent on 14.12.2019, which is a couple of days before the meeting of the CoC wherein, the resolution plan of the Successful Regulation Applicant Regus Impex was considered and approved by the CoC and any delay in such submission of claims by the workers could have been seen on merits in the proper context. Such advice could be given to the workers from

the RP does not seem appropriate and therefore, we find that the conduct of the RP in this regard was found wanting and not in keeping with his designated duties under IBC.

106. We also note that the RP Mr. Anand Rao Korada put his signature on an affidavit made in the name of Mr. Sujit Dutta Roy regarding the Successful Resolution Applicant not being 'related party' and therefore, not ineligible under section 29-A of the IBC to submit a resolution plan also, displayed his lackadaisical and casual attitude in the conduct of CIRP. Such an attitude or conduct should not be allowed to pass muster and we deprecate such action of the erstwhile RP.

107. We, thus, find that while on one hand, the RP has shown casual and indifferent attitude towards the claim of workers, on the other hand, he has been quite alert and considerate about the claims of the members of the CoC, and as has been pointed out earlier, they are closely connected parties acting 'in concert' with the corporate debtor and financial creditor Nandakini. Thus, in respect of submission of proof of the claims of the financial creditors, who are members of the CoC, as well as the section 7 applicant Nandakini, the RP has quite conveniently overlooked

placing them before the Adjudicating Authority, as was required of him vide order dated 28.2.2022 of the Adjudicating Authority.

108. We now look at issue (v) framed by us as to whether the Successful Resolution Applicant Regus Impex was disqualified to submit a resolution plan. On this issue, we note that the Dahisar Traders and Luni Housing and Developers both are 50-50 % shareholders of the Successful Resolution Applicant. Sheetal Exports as 31.63% shareholding in Dahisar Traders and Sheetal Exports also has a 15.8 % shareholding in Adishwar Nivesh, which holds 99.98 % shares in Indo Wagon, which is the holding company of the corporate debtor. Additionally, Divya Mercantile and Fragment Nivesh are holding 1.74% and 1.05% shares in the Dahisar Traders are also shareholders to the extent of 28.45% and 17.55% respectively in Adishwar Nivesh, thereby exhorting an influence which is an infringement of clauses (k) and (m) of section 5(24) of the IBC. The linkage between the corporate debtor Hirakud and Regus Impex is quite apparent, which has been brought out in the chart submitted by the Appellant HIL which is included in this judgment.

109. We also consider the argument of the Learned Counsel of SRA that even if the parties who are included in the COC and are

alleged to be related parties are excluded, the CoC would then comprise of just one financial creditor which is the bank and since the bank has acceded to the approval of the resolution plan of Regus Impex there would be no effect of such exclusion on the approval of the plan by the CoC. Regarding this issue, he has cited the judgment of Hon'ble Supreme Court in **Pratap Technocrats Private Limited & Ors. vs. Monitoring Committee of Reliance Infratel Ltd. & Anr. [2021] 10 Supreme Court Cases 623**, which is as follows: -

*“ 16.9. NCLT failed to properly appreciate and consider the implication of the exclusion of certain creditors from the CoC, on the ground that the pendency of the applications by Doha Bank would not come in the way of the approval of the resolution plan. In the event that the twenty-one indirect creditors are excluded, this would have implications on the constitution of the CoC as well as on the rate of recovery for the financial creditors which may stand increased from 10.32% to 91.98%. On the other hand, the operational creditors would have a mere recovery of 19.62%.*

*Xxx xxx xxx*

### **(iii) The Impact of Exclusion**

**23.** *The third aspect relates to the order of NCLT in Doha Bank proceedings. The order of NCLT in the application which was moved by Doha Bank for the removal of certain financial creditors from the CoC, has no bearing on the status of the approval of the resolution plan for the reason that it had received a unanimous approval with the 100% voting share in the CoC. The exclusion of certain financial debts and hence, the exclusion of certain financial creditors from the CoC,*

*pursuant to the order of NCLT in the Doha Bank proceedings, has no practical implication since the resolution plan continues to be approved with a 100% majority even after their exclusion.*

**24.** *The order of NCLT in the Doha Bank proceedings did not provide for the inclusion of any new financial creditors. The consequence of the Doha Bank order would be that the inter se distribution between the financial creditors would be affected, which has no consequence for the operational creditors. In the affidavit which has been filed by the Monitoring Committee in pursuance to the order of 10-3-2021 of this Court, it has also been stated that:*

*“... in terms of the Doha Bank order, upon the exclusion of certain erstwhile financial creditors from the CoC of the corporate debtor (and correspondingly the financial debt of such creditors), the revised financial debt in respect of the corporate debtor shall be IN 31184,51,89,041 (Thirty-one thousand one hundred eighty-four crores fifty-one lakhs eighty-nine thousand and forty-one). Being an amount which is more than 7 times the liquidation value of the corporate debtor, such exclusion will have no implication in respect of the distribution to operational creditors under the resolution plan.”*

*The above statement has not been controverted during the course of the submissions.”*

110. Regarding the observations in the **Pratap Technocrats judgment (supra)** judgment, we are of the view that the present case is a case of fraudulent and malicious initiation of CIRP, and hence, when the basic edifice on which the resolution plan of the

corporate debtor is based is *non est* in law, the superstructure of the resolution plan cannot sustain itself maintain its existence.

111. We also consider the argument of the Learned Counsel of the Resolution Professional that the Adjudicating Authority has to merely see whether there is a debt and default in payment and no other issue is to be considered in the admission of an application under section 7. He has submitted the following judgment of Hon'ble Supreme Court in the matter of **Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd. (2021 SCC Online SC 513)** in this regard:-

*“At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.”*

112. Based on the above discussion, we are of the considered opinion that the Constitution of the Committee of Creditors  
*Company Appeal (AT) (Insolvency) No. 42 of 2022, 43 of 2022, 52 of 2022 & 53 of 2022*



violates the proviso to Section 21(2) of the I & B Code 2016 read with 12(3) of CIRP Regulations. Therefore, the Constitution of the creditors' committee is a nullity in the eye of law that vitiates the entire CIRP. Liquidation is like a death knell for the corporate entity/corporate person. Liquidation based on the resolution of the CoC, which consists of related party Financial Creditors having 77.20% vote share, is a matter of grave concern. Hon'ble Supreme Court in the case of **Phoenix ARC (supra)** has taken note of the entering of such related party Financial Creditors in the Committee of Creditors as *'an act of commercial contrivances through which these entities sought to enter the COC, which could affect the other independent Financial Creditors'*. It is also pertinent to mention that when the Constitution of the Committee of Creditors itself is found to be tainted, then the decisions of that COC cannot be validated on any pretext even it is about exercise of commercial wisdom.

113. The Learned Senior Counsel for HIL has pointed to certain material irregularities such as incorrect publication of Form G, defective affidavit under section 29-A submitted by the SRA and admission of exorbitant claims of members of CoC based on unusually high interest rates. He has also raised issues about the material irregularities present in the successful resolution plan.

While such issues may have merited consideration, in the instant case we do not consider it necessary to go into these issues once the very foundation of CIRP has been found to be fraudulent and has therefore crumbled due to faulty admission of the section 7 application.

114. In the present case, as the initiation of CIRP itself has been found to be tainted and faulty, and in addition, the subsequently constituted CoC is also found to include parties that are connected with each other and acting in concert with the corporate debtor and other parties, we are of the opinion that the interest of justice would be served if the admission order under section 7 passed by the Adjudicating Authority is quashed. We, therefore, set aside the said admission order which would lead to all the other actions including CIRP as *non est* and null and void.

115. Thus, beginning with the initiation of CIRP to the constitution of CoC, its various decisions and resolutions and the denial of opportunities to the workers to submit their claims (although such a request was not made explicitly and also there was a delay when the HIW Workers' Union contacted the RP for copies of Section 7 application and pleadings therein), we are of

the view that all these proceedings are fraudulent and also reek of malice and are, therefore found to be bad in law.

116. On the basis of aforementioned detailed discussion, we give the following directions:-

(i) Since the initiation of CIRP as a result of admission of an application under section 7 filed by Nandakini Contractors is held to be fraudulent and a serious infringement of section 65 of the IBC, we set aside the admission order under Section 7 of IBC. As a result of the setting aside of the section 7 admission order, the CIRP against the corporate debtor shall stand abated, and the corporate debtor shall be freed from the rigours of CIRP including the effect of moratorium. The approval of resolution plan of Regus Impex is also quashed.

(ii) We are of the view that it would be appropriate to meet the requirement of justice to impose a penalty of Rs. Fifty Lakhs each on the financial creditor Nandakini and the corporate debtor Hirakud Industrial Works Limited under section 65 of the IBC. We, therefore, order imposition of penalty of Rs. Fifty Lakhs each on Nandakini Contractors Pvt. Ltd. and the corporate debtor Hirakud Industrial Works Ltd. The amounts of penalty imposed under section 65 is directed to be deposited within a period of one *Company Appeal (AT) (Insolvency) No. 42 of 2022, 43 of 2022, 52 of 2022 & 53 of 2022*

month from the date of this order with the Pay & Accounts Officer, Ministry of Corporate Affairs, Government of India.

(iii) A payment of Rs. Forty crores (Rs. 40 crores) made by the Successful Resolution Applicant to the financial creditor in implementation of the successful resolution plan, as was noted by this tribunal in its order dated 17.1.2022, should be deposited back with the Successful Resolution Applicant Regus Impex within one month of the date of this order.

(iv) Any other payment/s that may have been made to any financial creditor or any other party as a result of the approved resolution plan out of the corporate debtor's accounts or any alienation of corporate debtor's assets and creation of third-party rights in the assets of the corporate debtor shall also be reverted back, all within a period of one month from the date of this order.

(v) We also find that there are serious acts of omission and commission by the erstwhile RP Mr. Anand Rao Korada, who has not acted in accordance with the letter and spirit regarding his duties as enshrined in IBC and the CIRP Regulations. This case is, therefore, a fit case to be investigated further by the Insolvency and Bankruptcy Board of India (IBBI) regarding any possible collusion between the RP on one hand and the corporate debtor,

financial creditor Nandakini and the Successful Resolution Applicant on the other, and also dereliction of duty as laid down in the IBC. We, therefore, direct that IBBI shall investigate the conduct of RP Mr. Anand Rao Korada in this matter to look at possible acts of commission and omission and take appropriate decision and action in this regard. This enquiry may be completed within a period of three months from the date of this order.

(vi) The HIW Workers' Union and the workers shall be at liberty to pursue its interest regarding payment of workers' dues by the corporate debtor.

117. With the above-mentioned directions, we dispose of the four appeals under consideration in this judgment.

**[Justice Ashok Bhushan]  
Chairperson**

**[Dr. Alok Srivastava]  
Member (Technical)**

**New Delhi.**

**9<sup>th</sup> January, 2023**

**/aks/**