

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Ins.) No. 142 of 2022

&

I.A. Nos. 328,329,517 and 518 of 2022

[Arising out of Order dated 08.04.2022 passed by the Adjudicating Authority/National Company Law Tribunal, Bengaluru Bench in CP. (IB) No. 11/BB/2022 (I.A No. 86 of 2022)]

IN THE MATTER OF:

- 1. Nirej Vadakkedathu Paul**
Aged 47 years, Vadakkedathu House,
Ooramana P.O, Ramamangalam,
Memmury, Ernakulam, Kerala – 686663 **...Appellant No. 1**

- 2. T.J. Leelamma**
Aged 79 years, Vadakkedathu House,
Ooramana P.O, Ramamangalam,
Memmury, Ernakulam, Kerala – 686663 **...Appellant No. 2**

- 3. Litty Thomas**
Aged 42 years, 12/C,
RDS Avenue One, Panampilly Nagar,
Ernakulam, Kerala – 682036 **...Appellant No. 3**

- 4. Sheeja T**
Aged 41 years, 11D, Link Manor,
Old Railway Station Road, Ernakulam North,
Ernakulam – 682018. **...Appellant No. 4**

- 5. Equity Intelligence India Private Limited**
A company having its registered office at
5th Floor, Areekal Mansion,
Manorama Junction Main Avenue,
Panampilly Nagar, Cochin, Kerala – 682036. **...Appellant No. 5**

- 6. M/s. Acacia Partners, L.P.**
Foreign Portfolio Investor,
Having office at: 767, Fifth
Avenue, Suite 4701, New York, 10153, USA **...Appellant No. 6**

- 7. M/s. Acacia II Partners, L.P.**
Foreign Portfolio Investor,
Having office at: 767, Fifth

Avenue, Suite 4701, New York, 10153, USA

...Appellant No. 7

8. M/s. Acacia Institutional Partners, L.P.

Foreign Portfolio Investor,
Having office at: 767, Fifth
Avenue, Suite 4701, New York, 10153, USA

...Appellant No. 8

9. M/s. Acacia Conservation Fund, L.P.

Foreign Portfolio Investor,
Having office at: 767, Fifth
Avenue, Suite 4701, New York, 10153, USA

...Appellant No. 9

Versus

1. Sunstar Hotels and Estates Private Limited

F2, "Sayee", No. 31, Rajamaar Street,
Off. G.N. Chetty Road, T Nagar,
Chennai – 600017
E-mail: sdr@alto.net.in

...Respondent No.1

2. McDowell Holdings Limited

UB Tower, 12 Floor, UB City,
24 Vittal Mallya Road, Bengaluru,
Karnataka
Through Mr. Konduru Prasanth Raju
Interim Resolution Professional
Bearing registration No. IBBI/IPA-002/IP-
N00708/2018-2019

...Respondent No. 2

Present:

**For Appellants : Mr. P.H. Arvinth Pandian, Senior Advocate For
Mr. Athiban Vijay, Advocates.**

**For Respondents : Mr. P.S. Raman, Senior Advocate For Mr.
Parthasarathy and Mr. Rahul Balaji, Advocates
for R-1.**

Mr. Rishi Srinivas, Advocate for R-2

With

Company Appeal (AT) (CH) (Ins.) No. 174 of 2022

[Arising out of Order dated 08.04.2022 passed by the Adjudicating Authority/National Company Law Tribunal, Bengaluru Bench in CP. (IB) No. 11/BB/2022 (I.A No. 87 of 2022)]

IN THE MATTER OF:

Padrone Marketing Private Limited

Represented by its Director, Sri Ajay Gaggar,
Registered Office at:
23, Sarat Bose Road, Kolkata 700020.

...Appellant

Versus

1. Sunstar Hotels & Estates Private Limited,

Registered Office at:
F-2, Sayee No. 31, Rajamaar Street, Off. G.N.
Chetty Road, T. Nagar, Chennai – 600017.

...Respondent No. 1

2. McDowell Holdings Limited,

Registered Office at:
UB Towers, Level 12, UB City, 24 Vittal
Mallya Road, Bangalore – 560001.

...Respondent No. 2

Present:

For Appellant : Mr. Jishnu Chowdhury, Senior Advocate Mr. Hiranyak, Advocate Mr. Ajay Gaggar, Advocate Ms. Urmila Chakraborty, Advocate Ms. Deepika Murali, Advocates.

For Respondents : Mr. Satish Parasaran, Senior Advocate Mr. Parthasarathy and Mr. Rahul Balaji, Advocates for R-1.

Mr. Rishi Srinivas, Advocate for R-2.

J U D G M E N T
(Virtual Mode)
(27.02.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

The Present Appeals are filed against the ‘impugned order’ dated 08.04.2022 passed by the ‘Adjudicating Authority’ [National Company Law Tribunal, Bengaluru Bench] in CP. (IB) No. 11/BB/2022, whereby, the ‘Adjudicating

Authority' dismissed two applications i.e. I.A. No. 86 & 87 of 2022 which were filed under the 'Insolvency & Bankruptcy Code, 2016' (**in short 'I & B Code, 2016**).

Brief Facts:

2. There are two appeals i.e CA (AT) (Ins.) No. 142 of 2022 in CP. (IB) No. 11/ BB/ 2022 and CA (AT) (Ins.) No. 174 of 2022 in CP. (IB) No. 11/ BB/ 2022. The common 'impugned order' was issued by the 'Adjudicating Authority' on 08.04.2022 and therefore, both the Appeals are connected and accordingly dealt with during pleadings. This 'Appellate Tribunal' shall also examine these two Appeals in combined manner in following discussions.

3. In the Appeal No. CA (AT) (Ins.) No. 142 of 2022 in CP. (IB) No. 11/ BB/ 2022, there are nine Appellants and two Respondents. Whereas, appeals i.e CA (AT) (Ins.) No. 174 of 2022 in CP (IB) No. 11/ BB/ 2022, there is one Appellant, namely, Padrone Marketing Pvt. with same two Respondents.

4. The original applications were filed before the 'Adjudicating Authority' under Section 7 of the I & B Code, 2016 by M/s Sunstar Hotels and Estates Pvt. Ltd. (the '**Financial Creditor**') therein/ Respondent No. 1 herein against M/s McDowell Holdings Limited – Respondent No. 1 therein/ Respondent No. 2 herein, who is a '**Corporate Debtor**'.

5. M/s McDowell Holdings Limited – Respondent No. 1 therein/ Respondent No. 2 herein, is a 'Corporate Debtor' incorporated on 01.03.2004

with nominal capital of Rs. 15,00,00,000/- and paid up share capital of Rs. 13,99,99,22,580/-.

6. M/s Sunstar Hotels and Estates Pvt. Ltd. (the 'Financial Creditor') therein/ Respondent No. 1 herein, filed an Application under Section 7 against M/s McDowell Holdings Limited – Respondent No. 1 therein/ Respondent No. 2 herein, in respect of default amount of Rs. 16,80,66,348/- on 30.11.2021. The 'Corporate Debtor' had availed Inter Corporate Deposit ('**ICD**') from Zuari Fertilisers and Chemicals Limited ('**ZFCL**') which was later merged with Zurai Agro Chemical Limited ('**ZACL**') and the 'Corporate Debtor' entered into a settlement agreement on 17.06.2019 with 'ZACL' and Mangalore Chemicals and Fertilizers Limited ('**MCFL**') according to which, a sum of Rs. 10,60,56,810/- along with interest being outstanding 'ICD' was to be repaid in two tranches: (i) By way of sale and transfer to 'ZACL, 11,85,151 shares of 'MHL' in 'MCFL'; and (ii) By procuring release of shares of United Breweries Limited and amounts realized from the sale of shares of United Breweries Limited. Rs. 8,36,59,986/- was interest outstanding on the date of settlement agreement and the repayment of borrowing was to be completed within 18 months i.e. 16.12.2020. This timeline further extended twice and the payment was to be made by 16.09.2021. However, despite extended timeline, the 'Corporate Debtor' was unable to meet repayment obligations towards 'ZACL'.

7. M/s Sunstar Hotels and Estates Pvt. Ltd. (the 'Financial Creditor') therein/ Respondent No. 1 herein, entered into a formal agreement on

19.11.2021 with ZACL and agreed to discharge the entire liability of the 'Corporate Debtor' which entitled 1st Respondent to enter into shoes of ZACL by way of right of subrogation for Recovery of Dues from the Corporate Debtor. M/s Sunstar Hotels and Estates Pvt. Ltd. (the 'Financial Creditor') therein/ Respondent No. 1 herein paid all sums outstanding of the 'Corporate Debtor' to ZACL on 20.11.2021 and acquired rights to impose recovery from the 'Corporate Debtor'. M/s Sunstar Hotels and Estates Pvt. Ltd. (the 'Financial Creditor') therein/ Respondent No. 1 herein, further advanced Rs. 1,50,00,000/- as an 'ICD' on 20.10.2021 @ 18% interest p.a to be paid back within four weeks. The 'Corporate Debtor' however, could not make any repayment. This led M/s Sunstar Hotels and Estates Pvt. Ltd. (the 'Financial Creditor') therein/ Respondent No. 1 herein to issue 'Demand Notice' on 10.12.2021 and in response, the 'Corporate Debtor' vide reply dated 15.12.2021 sought additional time to pay.

8. Mr. Nirej Vadakkedathu Paul, the 1st Appellant herein along with 8 others filed I.A. No. 86 of 2022 seeking permission to intervene in CP. (IB) 11/BB/2022 and similarly one I.A. No. 87 of 2022 also sought intervention filed by the M/s Kushal Sen Gupta and others .

9. After hearing the original CP. (IB) 11/BB/2022 along with I.A. No. 86 of 2022 and I.A. No. 87 of 2022, the 'Adjudicating Authority' admitted Section 7 Application vide 'impugned order' dated 08.04.2022 and dismissed both I.A. No. 86 of 2022 and I.A. No. 87 of 2022, thereby rejecting claims of the 'Appellants' in both petitions.

10. Both the ‘Appellants’ and the ‘Respondents’ have alleged that they have become Shareholder / Financial Creditors respectively for a paltry sum of few crores and trying to grab the ‘Corporate Debtor’ whose investment in form of shares in other companies have been valued more than Rs. 1000 crores. In addition, both the ‘Appellants’ and the ‘Respondents’ have alleged each other that they are acting on behalf of the Ex-Promoter Mr. Vijay Mallya is group companies and trying to take over the company at the behest of Ex-Promoter.

11. Aggrieved by above against the common ‘impugned order’ dated 08.04.2022, two appeals have been preferred before this ‘Appellate Tribunal’ and are being discussed in following paragraphs. Since, both the appeals are aggrieved by the same ‘common impugned order’ and are connected cases herein, these are being examined in combined manner as requested by Learned Counsel for the Appellants and Respondents. The following discussions on issues, legal provisions and findings are dealt accordingly for both the appeals, namely, Company Appeal (AT) (Ins.) No. 142 of 2022 & Company Appeal (AT) (Ins.) No. 174 of 2022.

Appellants Submissions :-

12. Learned Counsel for the Appellants gave the overall background of the case and circumstances which led to the present appeals. Learned Counsel for the Appellants stated that the I.A. No. 86 of 2022 and I.A. No. 87 of 2022 were filed before the ‘Adjudicating Authority’ seeking intervention in Company Petition as well as in seeking declaration that the Company

Petition amounts to fraudulent and malicious initiation of proceedings under Section 7 of the I & B Code, 2016.

13. Learned Counsel for the Appellants in Company Appeal (AT) (Ins.) No. 142 of 2022 further stated that the nine Appellants together holds more than 15% of shares of the 2nd Respondent i.e. the ‘Corporate Debtor’. Learned Counsel for the Appellants gave their details of Shareholding in the ‘Corporate Debtor’, which is as under :-

S. No.	Name of the Applicant(s)	No. of equity shares held
1	<i>Mr. Nirej Vadakkedathu Paul</i>	<i>1,50,000</i>
2	<i>Dr. TJ Leelamma</i>	<i>2,000</i>
3	<i>Ms. Litty Thomas</i>	<i>2,00,000</i>
4	<i>Ms. Sheeja T</i>	<i>22,222</i>
5	<i>M/s Equity Intelligence India Private Limited</i>	<i>4,20,000</i>
6	<i>M/s. Acacia Partners, L.P.</i>	<i>7,76,269</i>
7	<i>M/s. Acacia II Partner, L.P.</i>	<i>64,000</i>
8	<i>M/s. Acacia Institutional Partners, L.P.</i>	<i>4,88,709</i>
9	<i>M/s. Acacia Conservation Fund, L.P.</i>	<i>48,000</i>
TOTAL		21,71,200 (approx. 15% share capital)

14. Learned Counsel for the Appellants assailed the conduct of the 1st Respondent, who is connivance with the 2nd Respondent, initiated illegal and fraudulent ‘Corporate Insolvency Resolution Process’ with mala-fide and ulterior motives. Learned Counsel for the Appellants also stated that the 2nd Respondent was virtually unrepresented as there was only a solitary director

of the Corporate Debtor who was also appointed illegally and did not defend at all.

15. Learned Counsel for the Appellants further assailed the ‘impugned order’ 08.04.2022 as unreasoned order passed without dealing with the arguments raised by the intervenors in both the petitions before the ‘Adjudicating Authority’ and also ignored the maintainability issues raised by the Intervenor therein.

16. Learned Counsel for the Appellants stated that the 2nd Respondent i.e. Corporate Debtor was ‘Non- Banking Financial Company’ (**NBFC**) having assets size of more than Rs. 500 crores and therefore it was not within the jurisdiction of the ‘Adjudicating Authority’ as the proceedings could have been filed only after approval of the ‘Reserve Bank of India’ as required under Rule 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.

17. Learned Counsel for the Appellants pointed out that the entire Company Petition was a collusive act of 1st & 2nd Respondent, who in guise of assignment of debts along with alleged default, got into admission of ‘Corporate Insolvency Resolution Process’ solely with an intention to defraud various stakeholders including the Appellants herein.

18. Learned Counsel for the Appellants emphasised that the Corporate Debtor was a company owned primarily by Mr. Vijay Mallya (United Breweries) who in 2008 along with other Promoters held 36.6% share capital

in the 'Corporate Debtor' which further increased to 45% shareholding in 2012. However, pursuant to invocation of pledge by various lenders, promoter's, shareholding fell to 17.99% during 2017. Learned Counsel for the Appellants further stated that the promoter's shareholding in 2nd Respondent is held at present only by (1) UB Holding Limited, which is in liquidation, having about 2.27% shareholding in 2nd Respondent and (2) Mr. Vijay Mallya having 2 equity shares in 2nd Respondent, which are also attached by the 'Enforcement Directorate' ('ED'). As a result, 2nd Respondent does not have any promoter holding or any promoter who is exercising any voting rights.

19. Learned Counsel for the Appellants submitted that in 2018, the 'ED' attached 15.73% of promoter's holding and later these shares were transferred to the Recovery Officer of Debt Recovery Tribunal -II, Bangalore leaving behind promoter shareholding of only 2.27% of the share capital of 2nd Respondent. In the year 2020-21 the 15.73% shares transferred to the Recovery Officer, DRT-II, Bangalore were fully sold in the stock market.

20. Learned Counsel for the Appellants mentioned that the Corporate Debtor is primarily a 'Non-Banking Financial Company' incorporated in Bangalore on 1st March 2004 by a Composite Scheme of Arrangement - more specifically demerger whereby the investment business of McDowell and Company Ltd. was transferred to the 2nd Respondent.

21. Learned Counsel for the Appellants stated that in October/November 2020, the 2nd Respondent appointed three Directors, namely, Mr. Theerthesh

B.S., Ms. Sarvamangala Hadapada and Mr. G. Sreenivas as its Additional Directors. These appointment were to be confirmed in the Annual General Meeting held on 29.09.2021 for which e-voting was opened from 25.09.2021 to 28.09.2021, however, by 99.24% of voting, proposed appointments of all three Additional Directors were rejected on 28.09.2021 and therefore, the 2nd Respondent illegally sought to adjourn the AGM on pretext of want of quorum. The Additional Directors, who were themselves voted out from the 'Corporate Debtor', appointed wrongly two more Additional Directors namely, Amr. Nanjundaiah Ramanna and Mr. G.V.R. Murthy on 17.11.2021.

22. Learned Counsel for the Appellants stated that a tripartite agreement was entered into by 'ZACL' with 1st & 2nd Respondent for assignment of debts of Rs. 15 crores (approx.) with malicious intentions to defraud the minority shareholders of the 'Corporate Debtor' and working hand in gloves with the 1st Respondent, filed Section 7 Application under I & B Code, 2016 against the 2nd Respondent on 05.01.2022 which was admitted by the 'Adjudicating Authority' vide 'impugned order' dated 08.04.2022 rejecting the Intervention Applications bearing I.A Nos. 86 of 2022 and 87 of 2022.

23. Learned Counsel for the Appellants further submitted that the 2nd Respondent holds 63,45,011 equity shares of United Breweries Ltd. ('**UBL**') and 57,219 shares of Mangalore Chemicals and Fertilizers Ltd. ('**MCFL**'). The present value of 63,45,011 equity shares of UBL itself aggregates to Rs. 950 crores (approx.) at a share price of Rs. 1500/- per share.

24. Learned Counsel for the Appellants pointed out that the single largest asset of the 2nd Respondent is shares in UBL are held by the lenders or by the ED.

25. Learned Counsel for the Appellants further stated that an alleged fraudulent tripartite agreement with 'ZACL' and Respondents was entered into which become the basis of filing Section 7 Application under I & B Code, 2016. Learned Counsel for the Appellants alleged that the illegal Board of Directors have close nexus with the Ex-Promoter Mr. Vijay Mallya and the entire exercise of Section 7 application is an attempt to retain the control over management of the 2nd Respondent violating all laws of land and commercial practices.

26. Learned Counsel for the Appellants stated that the Additional Directors continued to work as Directors of the 'Corporate Debtor' contrary to the Companies Act, 2013 where an Additional Director automatically cease to be a director at the inception of ensuing AGM, even if same was to be adjourned or not held otherwise. Incidentally, the adjourned AGM was held on 25.11.2021 where the Resolution for re-appointment of Additional Director was rejected by majority of 99.24% of shareholding. Learned Counsel for the Appellants further stated that during the interim period, the illegal Board of Directors entered into alleged tripartite agreement on 19.11.2021 with 'ZACL' to defraud minority shareholders. Learned Counsel for the Appellants highlighted that the fraudulent intent of 1st & 2nd Respondent became clear by observing facts that the 2nd Respondent allowed

substitution/ assignment of alleged debt by 'ZACL' by the 1st Respondent and the 2nd Respondent undertook to pay in full by 30.11.2021 i.e. within 11 days of execution of said agreement and in immediate subsequent event, an application was filed under Section 7 of the I & B Code, 2016 on 06.01.2022. According to Learned Counsel for the Appellants the entire sequence from AGM to filing of Section 7 application was orchestrated within two months, which is a classic case of blatant misuse of provision of I & B Code, 2016 only to deprive economic value of 46,000 majority shareholders of the 'Corporate Debtor'.

27. Learned Counsel for the Appellants continued arguments on fraudulence and illegal Section 7 Application alleging that by alleged debt of mere Rs. 15 crores (approx.) the Respondents are trying to take over the assets of more than Rs. 1000 crore of the 'Corporate Debtor'. Learned Counsel for the Appellants again alleged that the CP (IB) 11/ BB/2022 was malicious and had been initiated on behalf of erstwhile promoters of the 2nd Respondent i.e. Mr. Vijay Mallya and his group. To buttress his point, the Learned Counsel for the Appellants stated that the 1st Respondent is an affiliate of one "Balaji Distilleries" Group which was contract manufacturer of Vijay Mallya Group for many years. Learned Counsel for the Appellants further stated that the promoter of Balaji Distilleries is one Mr. Srinivasulu Reddy Magunta a Member of Parliament, who is a close associate of Vijay Mallya/ UB Group and has entered into many personal loan transaction with Mr. Vijay Mallya and pertinently also worked as Director on five companies of Mallya Group, namely, McDowell Holdings Ltd, Balaji Distilleries Limited,

Mangalore Chemicals, UB Engineering Limited & Kingfisher Airlines Limited. This clearly establishes that the 1st Respondent has direct relationship with Mr. Vijay Mallya and UB Group Companies.

28. Learned Counsel for the Appellants continued on the same point in trying to establish the nexus between Respondents on behalf of Erstwhile Management of Mr. Vijay Mallya and U B Group and their intention to play fraud on minority shareholders and further stated that it is surprising to note the conduct of Respondent No. 2 who did not defend the 'Corporate Debtor' in proceeding under Section 7 Application and almost immediately agreed to Debt and Default and consequently 'Corporate Insolvency Resolution Process'. Learned Counsel for the Appellants further submitted that apparently no action was taken by the 'Corporate debtor' to raise any funds from market or by way of right issue to existing shareholders who are still willing to contribute towards outstanding of the 1st Respondent to take out the 'Corporate Debtor' from the clutches of 'Corporate Insolvency Resolution Process'.

29. Learned Counsel for the Appellants stated that the 2nd Respondent - McDowell Holdings Limited is categorised as NBFC-CIC (exempted) (Non-Banking Financial Company – Core Investment Company) and the 2nd Respondent vide letter dated 03.08.2021 sought advice from the Reserve Bank of India for grant of Certification for becoming CIC-NDSI (Systemically Important Core Investment Company). Learned Counsel for the Appellants further stated that the 2nd Respondent has an asset size of over Rs. 1000

cores, which is over threshold limit of Rs. 500 crores and therefore qualifying as a “financial service provider” as per Section 3(17) of the I & B Code, 2016 r/w Notification dated 18.11.2019 by the Ministry of Corporate Affairs. Therefore, Application for initiating insolvency proceedings against the 2nd Respondent could have only been filed by the financial sector regulator i.e., Reserve Bank of India as required under Rule 5 of the Insolvency and Bankruptcy (Insolvency Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.

30. Learned Counsel for the Appellants mentioned that the 2nd Respondent also provided Financial Consultancy Services as can be seen ‘Memorandum of Association’ of the 2nd Respondent as well Annual Report for Financial Year 2020-21 which clearly establishes that one of object of the 2nd Respondent is to provide ‘Financial Advisory and Subsidiary Services’. Learned Counsel for the Appellants also stated that the notes to the Financial Statements mentioned clearly that the company had obtained Registration from RBI as Non-Banking (Non- Deposit Accepting) Financial Company and this fact was also reflected by Independent Auditor’s in their opinion stating that the company should be registered with ‘Reserve Bank of India’ under Section 45-IA of the RBI Act and has applied for such a registration.

31. Learned Counsel for the Appellants cited RBI website which lists the Respondent No. 2 as an NBFC.

32. Learned Counsel for the Appellants pointed out that the Auditors of the 2nd Respondent have taken a stand that the 2nd Respondent should be registered under Section 45-IA of the Reserve Bank of India Act.

Learned Counsel for the Appellants emphasised that in any case whether the 2nd Respondent is an NBFC CIC (Exempt Category) or an NBFC CIC, that should be registered with the Reserve Bank of India, the 'Corporate Debtor' fall under the definition of NBFC as per Section 44-I (f) of the RBI Act, 1934, and are only permitted to operate as NBFC CIC based on the authorisation of the Reserve Bank of India.

33. Learned Counsel for the Appellants assailed that the 'Adjudicating Authority' failed to take these vital factors into consideration and acted beyond its jurisdiction in admitting the 2nd Respondent into 'Corporate Insolvency Resolution Process'.

34. Learned Counsel for the Appellants referred to the para 11 of the 'impugned order' dated 08.04.2022, whereby it has been clearly recorded that on 17.02.2022, after hearing, the notices were issued to the 'Corporate Debtor' who accepted notice and on the same date admitted 'Debt and Default' thereof. Learned Counsel for the Appellants further explained that this was contrary to the 'Corporate Debtor' own notes attached to unaudited financial results for the quarter ending 31.09.2021 which were taken on record by the Board of Directors in their meeting held on 27.01.2022. Learned Counsel for the Appellants stated that in these notes, in Para-16, the 'Corporate Debtor' has clearly acknowledged that companies net worth

taking into account the market value of investments would be more than adequate to meet all its liabilities and will continue to operate in future and therefore, the 'Corporate Debtor' has presented its account on the principals applicable to 'Companies as Going Concern'. Learned Counsel for the Appellants mentioned that the stark admission of 'Debt and Default' on the same date on 17.02.2022 is complete volte face and very clearly demonstrate malicious intentions and acting hands in gloves with the 1st Respondent at the behest of Ex- promotes Mr. Vijay Mallya.

35. Learned Counsel for the Appellants stated that on 06.07.2022 the Appellants wrote to the 'Resolution Professional' making an offer of upfront payment of Rs. 16,30,00,000/- by way of 'Demand Draft' to settle the entire claims of the 'Committee of Creditors' and promised to settle the remaining amount within one month of acceptance of settlement. Learned Counsel for the Appellants further stated that as per settlement proposal, 100% of admitted claims of both the 'Financial Creditors', namely, the 1st Respondent and M/s Pixie amounting to Rs. 18,65,17,601/-, were to be satisfied and the proposal was supported by almost 45% of shareholders of the 'Corporate Debtor'. Learned Counsel for the Appellants stated that the 'Committee of Creditors' however, did not accept the proposal which demonstrated that the 'Committee of Creditors' were acting with ulterior motives without any intention for resolution and recovering of money of their debts.

36. Learned Counsel for the Appellants referred to the judgment of the Hon'ble Supreme Court of India in the matter of Swiss Ribbon where it was

held that the focus of I & B Code, 2016 is to revive the Corporate Debtor and to protect it from the 'Erstwhile Management' and not mere recovery legislation for Creditors. Learned Counsel for the Appellants stated that this landmark judgment was not considered by the Adjudicating Authority in the 'impugned order' and the 'Adjudicating Authority' refused to lift the 'corporate veil' to arrive at true reason behind filing the Insolvency Petition.

37. Learned Counsel for the Appellants also stated that the application under Section 7 was initiated with an intention of getting benefit of Section 32(A) of the I & B Code, 2016 where liability for the offences conducted by the 'Corporate Debtor' prior to commencement of 'Corporate Insolvency Resolution Process' cease, once the 'Resolution Plan' is approved.

38. Learned Counsel for the Appellants emphasised that they are very much concerned parties to the 'impugned order' as their application for intervention were rejected and they are entitled to challenge it as parties directly aggrieved by the 'impugned order' in terms of Section 61(1) of the I & B Code, 2016. Learned Counsel for the Appellants further submitted that the Appellants have not preferred the present appeal on behalf of the 2nd Respondent, but as independent shareholders aggrieved by the order of 'Corporate Insolvency Resolution Process'. Learned Counsel for the Appellants stated that their investment by way of shareholding of the 'Corporate Debtor' is at stake and outcome of the Appeal will have direct impact on the valuation of shares, hence they must be treated as aggrieved persons in terms of Section 61(1) of the I & B Code, 2016.

39. Learned Counsel for the Appellants stated that in the matter of “**P. Naveen Chakravarthy vs. Punjab National Bank**” (W.P No. 27780 of 2019), it was held that, notwithstanding the judgment of the Hon’ble Supreme Court in “**Innoventive Industries Limited Vs. ICICI Bank**” ((2018) 1 SCC 407), the right of a shareholder of a ‘Corporate Debtor’ is not jeopardized in so much as a shareholder can espouse their cause qua the ‘Corporate Debtor’ while seeking to right a perceived wrong. Similarly, in “**Periasamy Palani Gounder Vs. Radhakrishnan Dharmarajan**” (2022 SCC OnLine NCLAT 86) this ‘Appellate Tribunal’ has held that nothing prevents a shareholder from producing evidence to establish the illegality in the ‘Corporate Insolvency Resolution Process’.

40. Learned Counsel for the Appellants stated that they are “person aggrieved” by the fraudulent and collusive attempt of the 1st Respondent to initiate ‘Corporate Insolvency Resolution Process’ in relation to the 2nd Respondent, as ‘Corporate Insolvency Resolution Process’ would reduce the value of their shareholding to a throw away prices. This will not only affects the present Appellants but also 47,000 other shareholders of the 2nd Respondent. The 2nd Respondent colluding with the 1st Respondent on the other hand, would avail the benefit of Section 32-A of the I & B Code, 2016 to remove the attachment on the assets of the 2nd Respondent and gain assets worth over Rs. 1000 crores and retain control of the 2nd Respondent.

41. Learned Counsel for the Appellants also cited judgment of this Appellate Tribunal in the matter of “**Reliance Commercial Finance**

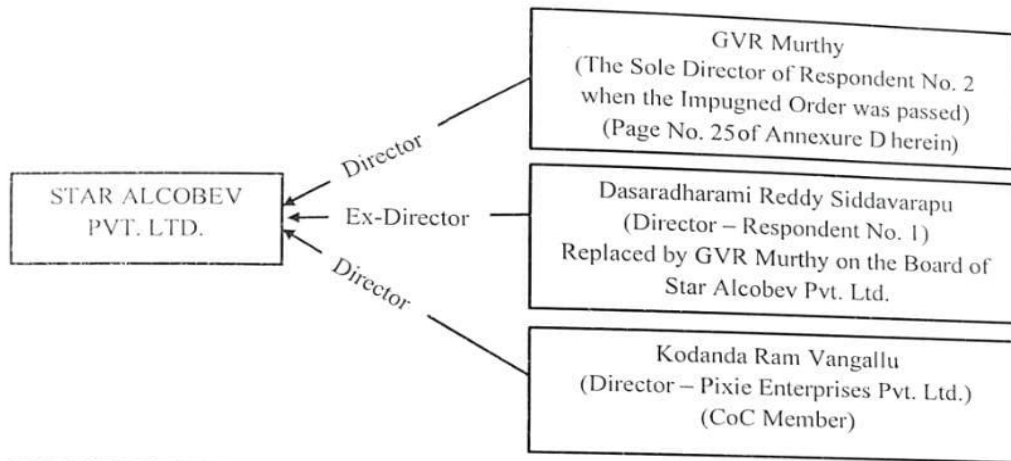
Limited vs. Darode Jog Builder Private Limited” in CA (AT) (Ins.) No. 1005 of 2022 dated 19.09.2022, wherein this ‘Appellate Tribunal’ held that if the ‘Corporate Debtor’ is willing to pay the entire amount, the Financial Creditor cannot refuse to accept the same and this ‘Appellate Tribunal’ while confirming the ‘Adjudicating Authority’ ‘impugned order’ affirmed that no purpose or occasion shall survive to still proceed with the Insolvency Resolution of the Corporate Debtor.

42. Learned Counsel for the Appellants, therefore, urged strongly that in light of this judgement read along with judgment of the Supreme Court of India dated 12.07.2022 in Civil Appeal No. 4633 of 2021 in the matter of **“Vidharbha Industries Power Limited Vs. Axis Bank Limited”**, the ‘Adjudicating Authority’ ought not to have admitted the Insolvency Petition of the 1st Respondent and should have allowed the settlement proposal on behalf of the ‘Corporate Debtor’.

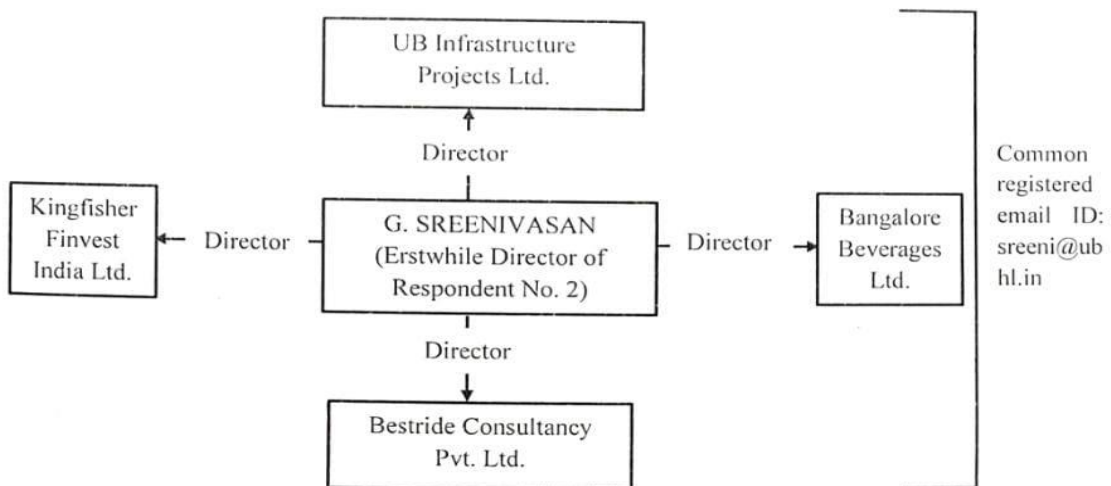
43. Learned Counsel for the Appellants strongly refuted the allegation regarding alleged collusion by the Appellant with erstwhile Promoters of the 2nd Respondent. Learned Counsel for the Appellants stated that they are public shareholders of the 2nd Respondent and have no personal or professional connection to the erstwhile promoters of 2nd Respondent. Learned Counsel for the Appellants have purchased shares of the 2nd Respondent through stock exchange transactions, with no ulterior motive.

44. Learned Counsel for the Appellants submitted a table/ flowchart showcasing the collusion between the 2nd Respondent and the Committee of Creditor is produced herewith :-

I. COLLUSION BETWEEN RESPONDENT NO. 2 AND THE CoC.



II. COLLUSION BETWEEN G. SREENIVASAN AND THE ERSTWHILE PROMOTERS OF RESPONDENT NO. 2



Note 1: United Breweries Holdings Limited (“UBHL”) was an entity controlled by Mr. Mallya, whose stake in the Respondent No. 2 company was attached and sold.

Note 2: G. Sreenivasan was not classified as an “Independent Director” but as a “Non-executive Director” due to his association with the erstwhile promoter group (Page No. 25 of Annexure D herein) .

45. Learned Counsel for the Appellants concluded his arguments and urging this ‘Appellate Tribunal’ to accept these ‘Appeals’ and set aside the ‘impugned order’.

Respondents Submissions:

46. Learned Counsel for the ‘Respondents’ refuted all the averments made by the ‘Appellants’.

47. Learned Counsel for the 1st Respondent stated that an application under Section 7 of the I & B Code, 2016 was filed as a Financial Creditor against the 2nd Respondent (‘Corporate Debtor’) on failure to pay back debt due. Learned Counsel for the 1st Respondent further stated that the assets of the 2nd Respondent are only in form of holding of shares in certain companies and all are under attachment by statutory and enforcement authorities subsequent to action against the Erstwhile Promoter of the 2nd Respondent Mr. Vijay Mallya. Learned Counsel for the 1st Respondent stated that the due to such attachments, there was less probability of getting money back from the 2nd Respondent which compelled the 1st Appellant to initiate Section 7 application.

48. Learned Counsel for the 1st Respondent mentioned that the debt due and non-payment of the same are undisputed facts and the 2nd Respondent has clearly acknowledged the liability for payment at various places in the financial statements of the 2nd Respondent.

49. Learned Counsel for the 1st Respondent gave the background of accumulation of debts. Learned Counsel for the 1st Respondent briefed that

the 2nd Respondent entered into a settlement agreement with 'ZACL' and MCFL on 17.06.2019 w.r.t. one 'ICD' from 'ZFCL'. Learned Counsel for the 1st Respondent further briefed that as per this settlement agreement, the 2nd Respondent was to make all the payment on or before 16.12.2020 which included sum of Rs. 10,60,56,810/- along with interest being outstanding of ICD amount. Learned Counsel for the 1st Respondent elaborated the details of two tranches i.e. the first tranche by way of sale and transfer of shares of the 'Corporate Debtor' in 'MCFL' to 'ZACL' and the second tranche was by procuring release of shares of United Breweries Limited and amounts realized from the sale of shares of United Breweries Limited. Learned Counsel for the 1st Respondent stated that at the request of the 'Corporate Debtor' repayment schedule was extended by ZACL for a period of 6 months and as per modified terms of agreement the 'Corporate Debtor', was required to make payment towards (i) the remaining sum due which consisted of Rs. 5,68,13,785.95, (ii) interest of Rs. 7,38,11,381/19/- and (ii) interest accrued on the sum outstanding from completion of payment of tranche 1.

50. Learned Counsel for the 1st Respondent stated that they were made to believe by the 2nd Respondent that the 2nd Respondent would be shortly in possession of the attached shares and therefore, was persuaded to advance further Rs. 1,50,00,000/- as 'ICD' vide agreement dated 20.10.2021 @18% interest p.a. and the same was required to be paid back within four weeks.

51. Learned Counsel for the 1st Respondent submitted that the after expiry of the four weeks period, there seemed no possibility of getting money back

and as such they were compelled to protect their financial interest and start asking the 2nd Respondent for payment, however, and the 2nd Respondent offered to takeover rights of 'ZACL' on plea that the 2nd Respondent was on verge of receiving funds through dividend income and other sources once attachment is lifted. The arrangement was agreed to by the 1st Respondent and the tripartite agreement was entered on 19.11.2021 and 'ZACL' agreed to discharge the 2nd Respondent of his obligations under the earlier agreement dated 17.06.2019. Learned Counsel for the 1st Respondent further submitted that through this tripartite agreement, they stepped into shoes of 'ZACL' and thereby acquired right of enforcement of recovery.

52. Learned Counsel for the 1st Respondent assailed the conduct of the 2nd Respondent who miserably failed to pay outstanding dues and defaulted on 'ICD'. Learned Counsel for the 1st Respondent submitted that on detailed examination of the ground realities, they came to know that even the dividend was subject matter of attachment and there was no possibility of recovery of money whatsoever. After coming to know these facts, they issued a 'Demand Notice' on 10.12.2021 and got a reply on 15.12.2021 under which the 2nd Respondent sought further time to make payments without any dispute regarding debt due and amount involved. Learned Counsel for the 1st Respondent mentioned that the situation was reviewed comprehensively and thereafter decided to initiate a proceeding under Section 7 of the I & B Code, 2016. Learned Counsel for the 1st Respondent emphasised that all money were paid in good faith and as per normal commercial practice and

took the steps of Section 7 application only after realising 'NIL' chances of recovery.

53. Learned Counsel for the 1st Respondent strongly objected to the present appeal filed by the 'Appellants' being non maintainable at the first place. Learned Counsel for the 1st Respondent stated that the 'Appellants' herein, are only shareholders and by law shareholders cannot maintain derivative actions. Learned Counsel for the 1st Respondent assailed the conduct of the 'Appellants' who purchased shares in recent past knowing fully well that outstanding debts of the 2nd Respondent reflected in the financial statements. Learned Counsel for the 1st Respondent tried to question genuine intention of the 'Appellants' for acquiring shares even with knowledge that the assets of the 2nd Respondent i.e. shares in certain company are under attachment. Learned Counsel for the 1st Respondent also alleged that the 'Appellants' have come with unclean hands and have not disclosed the dates on which the shares were acquired by them.

54. Learned Counsel for the 1st Respondent challenged the locus of the 'Appellants' in the present appeal and reiterated that the 'Appellants' are mere shareholders and by no stretch of imagination, they can be treated as aggrieved party. Learned Counsel for the 1st Respondent stated that it is settled law that with regard to debt and default, the contesting parties can only be the 'Financial Creditor' and the 'Corporate Debtor' and therefore, there is no place for third party to intervene as per the scheme of I & B Code, 2016.

55. Learned Counsel for the 1st Respondent brought out that in the various judgements of the Hon'ble Supreme Court of India, it has been held that there is limited scope for judicial intervention, once debt and default is established. Learned Counsel for the 1st Respondent cited judgement of "**Innoventive Industries Limited vs. ICICI Bank & Ors.**" ((2018) 1 SCC 407), where it has been laid down that the moment the 'Adjudicating Authority' is satisfied regarding default occurred, the application under Section 7 should be admitted.

56. Learned Counsel for the 1st Respondent also referred to this Tribunal judgment in "**Axis Bank Vs. Lotus Three Developments & Ors.**", ((2018) SCC OnLine NCLAT 914) where it was held that the role of 'Adjudicating Authority' is only to satisfy that the default has occurred and also held that the no other person has a right to be heard at the stage of application under Section 7 or Section 9 of the I & B Code, 2016 including 'shareholders' or 'personal guarantor'.

57. Learned Counsel for the 1st Respondent stated that the 'Adjudicating Authority' after due consideration of all facts and detailed examination rightly came to conclusion regarding the fact that the 'Appellants' did not have locus and therefore, the intervention application was not maintainable.

58. Learned Counsel for the 1st Respondent mentioned that allegation regarding infringement of the rights of the minority shareholders, if at all, can be a subject matter of 'Oppression and Mismanagement' under the Companies Act, 2013 and there is no scope under I & B Code, 2016 to deal

such allegations which are in any case false, misleading and mischievous in nature.

59. Learned Counsel for the 1st Respondent referred to I. A. No. 517 of 2022 filed by the 'Appellants' in the present appeal for grant of stay on the ground that the 'Appellants' are ready to deposit the amount payable to the 'Financial Creditor' by the 2nd Respondent. Learned Counsel for the 1st Respondent pointed out that this is also not maintainable in an application filed under Section 7 of the I & B Code, 2016 and such outsiders cannot be allowed to deviate I & B Code provisions.

60. Learned Counsel for the 1st Respondent stated that there is no provision under I & B Code, 2016 or under the Companies Act, 2013 which allows shareholders to directly deposit the money on behalf of the Company/ Corporate Debtor to settle dues with financial creditor. Learned Counsel for the 1st Respondent also mentioned that there are no such precedents or judicial judgements to support wrongful suggestions of the 'Appellants'. Learned Counsel for the 1st Respondent further stated that the once the 'Resolution Plan' is approved, it takes care in interest of all the stakeholder including the 'Appellant' herein and furthermore the 'Appellants' are free to take legal remedies as permissible under concerned law rather than abusing the provisions of I & B Code, 2016.

61. Learned Counsel for the 1st Respondent also strongly refuted allegations of fraud/ collusion between the 1st Respondent and the 2nd Respondent which have been alleged without any basis and in fact the

‘Appellants’ are themselves having nexus with Erstwhile Promoters of the company Mr. Vijay Mallya and is corroborated by the fact that the ‘Appellants’ purchased most of the shares recently knowing very well that assets (in form of shares of the ‘Corporate Debtor’ in other companies) are under attachment. Learned Counsel for the 1st Respondent stated that the ‘Appellants’ have failed to produce any documentary documents to establish nexus between the ‘Respondents’ with Erstwhile Promoter Mr. Vijay Mallya and U B Groups Companies.

62. Learned Counsel for the 1st Respondent also refuted the contentions of the ‘Appellants’ that the 2nd Respondent is ‘NBFC’. Learned Counsel for the 1st Respondent stated that from various records it is very clear that the ‘Corporate Debtor’ ceased to be ‘NBFC’ long back. Learned Counsel for the 1st Respondent emphasised that the 2nd Respondent is neither ‘NBFC’ nor the financial service provider as per I & B Code, 2016.

63. Learned Counsel for the 1st Respondent stated that the ‘Committee Of Creditors’ has already approved the ‘Resolution Plan’ and once an IRP/RP has been appointed, he assumes full authority to represent the ‘Corporate Debtor’ and therefore, no derivative actions can be initiated by the shareholders being non maintainable. Elaborating the legal position, the Learned Counsel for the 1st Respondent stated that the such action can be resorted only in exceptional condition where Company has failed to take action as required by the law. Learned Counsel for the 1st Respondent stated that the present appeal is a clear case of debt and default, acknowledgement

of liability to pay and therefore has nothing to do with so-called derivative action. Learned Counsel for the 1st Respondent referred to the pleadings of the ‘Appellant’ relying on the decision of the Hon’ble Madras High Court in “**Naveen Chakravarthy Vs. Punjab National Bank**”, MANU/ TN/ 0376/ 2021, to support a case of a right to initiate derivative action and submitted that the issue in consideration in the said judgment was in respect of maintainability of a Writ Petition filed against a ‘statutory authority’ under Article 226 of the Constitution of India, against an order passed by the DRAT during the period of moratorium, which is entirely different from the facts in the present appeal.

64. Learned Counsel for the 1st Respondent submitted that all other cases cited by the ‘Appellants’ are not relevant and applicable in the present appeal. Learned Counsel for the 1st Respondent further submitted that the present appeal is filed under Section 61 of the I & B Code, 2016 where the ‘Appellants’ claiming to be an aggrieved person, has to show how the Appellant has been aggrieved in respect of the specific circumstances of the case to maintain a derivative action, which the ‘Appellants’ have miserably failed to do.

65. Learned Counsel for the 1st Respondent alleged that the intention of the ‘Appellants’ is to derail the process of ‘Corporate Insolvency Resolution Process’ which has resulted into approval of the ‘Resolution Plan’ by the ‘Committee of Creditors’. Learned Counsel for the 1st Respondent further stated that in guise of buying some shares in the recent past knowing well

that the property of the 'Corporate Debtor' is under attachment, the 'Appellants' have devised an illegal and fraudulent method of taking over reins of the 'Corporate Debtor' and taking over the assets of more than 1000 crores by mere 'Speculative Investment' in shares of the 'Corporate Debtor'. Learned Counsel for the 1st Respondent stated that the intent becomes quite clear when the 1st Appellant himself have volunteered to be the Board of Directors of the 2nd Respondent. Learned Counsel for the 1st Respondent stated that their all transactions have been entered into on commercial principals and strictly following all the laws of the land and was done with genuine intention of reviving the 'Corporate Debtor'.

66. Learned Counsel for the 1st Respondent also refuted alleged settlement proposal submitted by the 'Appellants' which is only with intent to step into shoes of the 1st Respondent and in effect become the 'Financial Creditors' of the 'Corporate Debtor' rather than as shareholders. Learned Counsel for the 1st Respondent also tried to give details according to which is clear that the 'Appellants' in both the Appeals are working in tandem. Learned Counsel for the 1st Respondent stated that the 'Appellants' in both the appeal are acting collusively on behalf of the Erstwhile Promoter Mr. Vijay Mallya.

67. Learned Counsel for the 1st Respondent pointed out that one Mr. Kushal Sengupta who initially filed intervention application with Padron Marketing Pvt. Ltd. in I.A/87/BB/2022 before the 'Adjudicating Authority', was in fact ex-employee of several companies owned by Mr. Vijay Mallya and Mr. Kushal Sengupta was an employee of 'Herbertsons Limited', a company

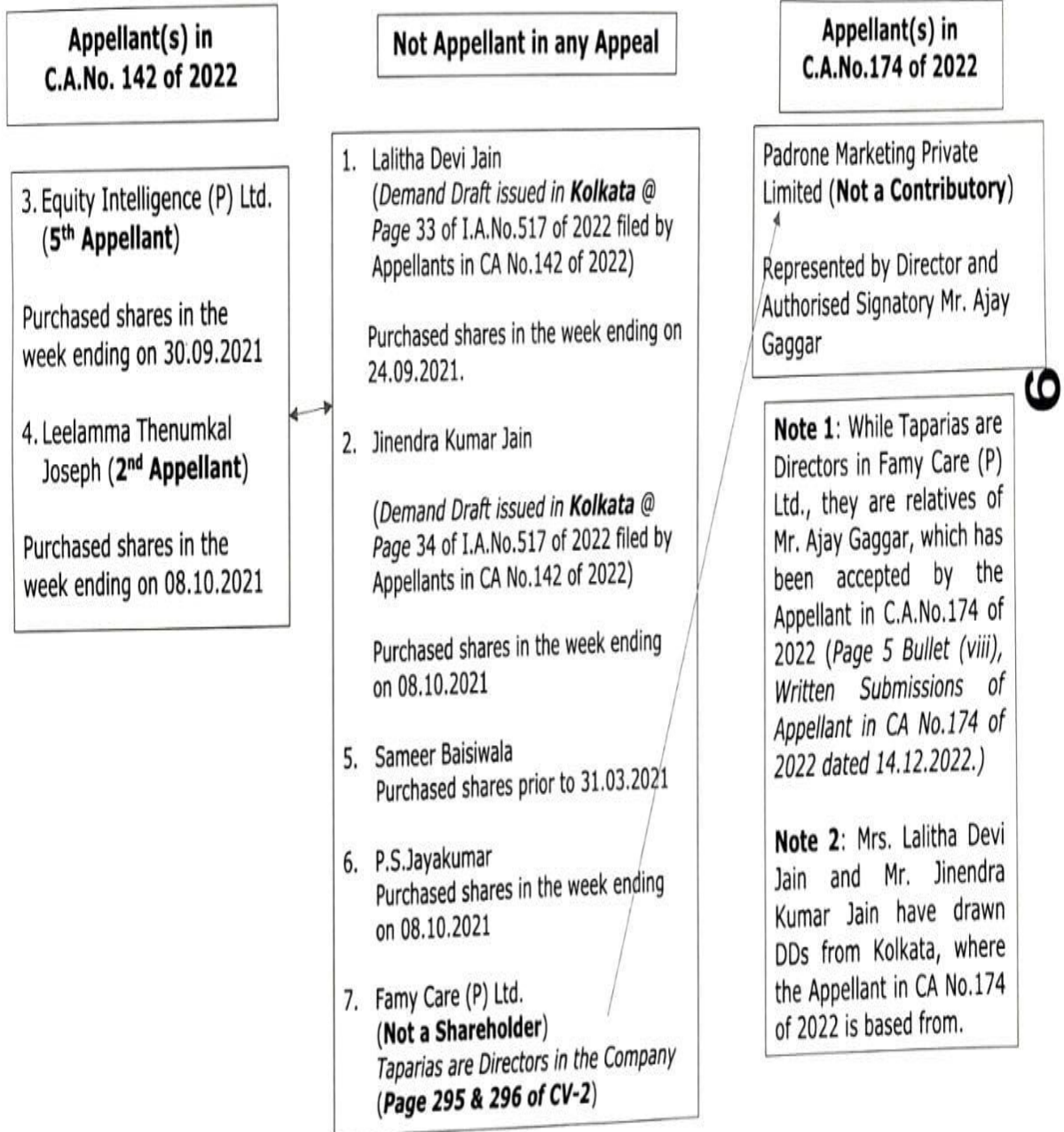
controlled by the Promoters, shifted to 'McDowell & Company' in mid 90s and thereafter was transferred to Brewery Division of the said company during 1998-99. Learned Counsel for the 1st Respondent stated that Mr. Kushal Sengupta all of a sudden became a shareholder of the 'Corporate Debtor' in June, 2021 by acquiring 6350 shares and further increased to 19,350 shares in December, 2021 and off loaded shares except 14 shares in May, 2022. Learned Counsel for the 1st Respondent pointed out that 'Padrone Marketing Private Limited' is owned by Mr. Ajay Gaggar who owns a liquor manufacturing company and has been operating a major manufacturing unit of the Ex- Promoters of the 'Corporate Debtor' which clearly establishes his nexus with Erstwhile Promoters. Learned Counsel for the 1st Respondent further submitted that like Mr. Kushal Sengupta, Mr. Ajay Gaggar acquired 39,550 shares in his own name and 6,95,484 shares through Padrone Marketing Private Limited during Financial Year 2019-20. Learned Counsel for the 1st Respondent termed such acquisitions as a concerted plan by the Erstwhile Promoters to avoid any scrutiny.

68. Learned Counsel for the 1st Respondent further submitted that Mr. Ajay Gaggar also acquired 6,95,000 shares during 2019-20 from close relatives 'the Taparias' who owns 'Famy Care Private Limited' which funded Rs. 5 crores out of Rs. 16.3 cores deposit offered by the 'Appellants'. Learned Counsel for the 1st Respondent further submitted that interestingly the said company does not hold any shares in the 'Corporate Debtors' company.

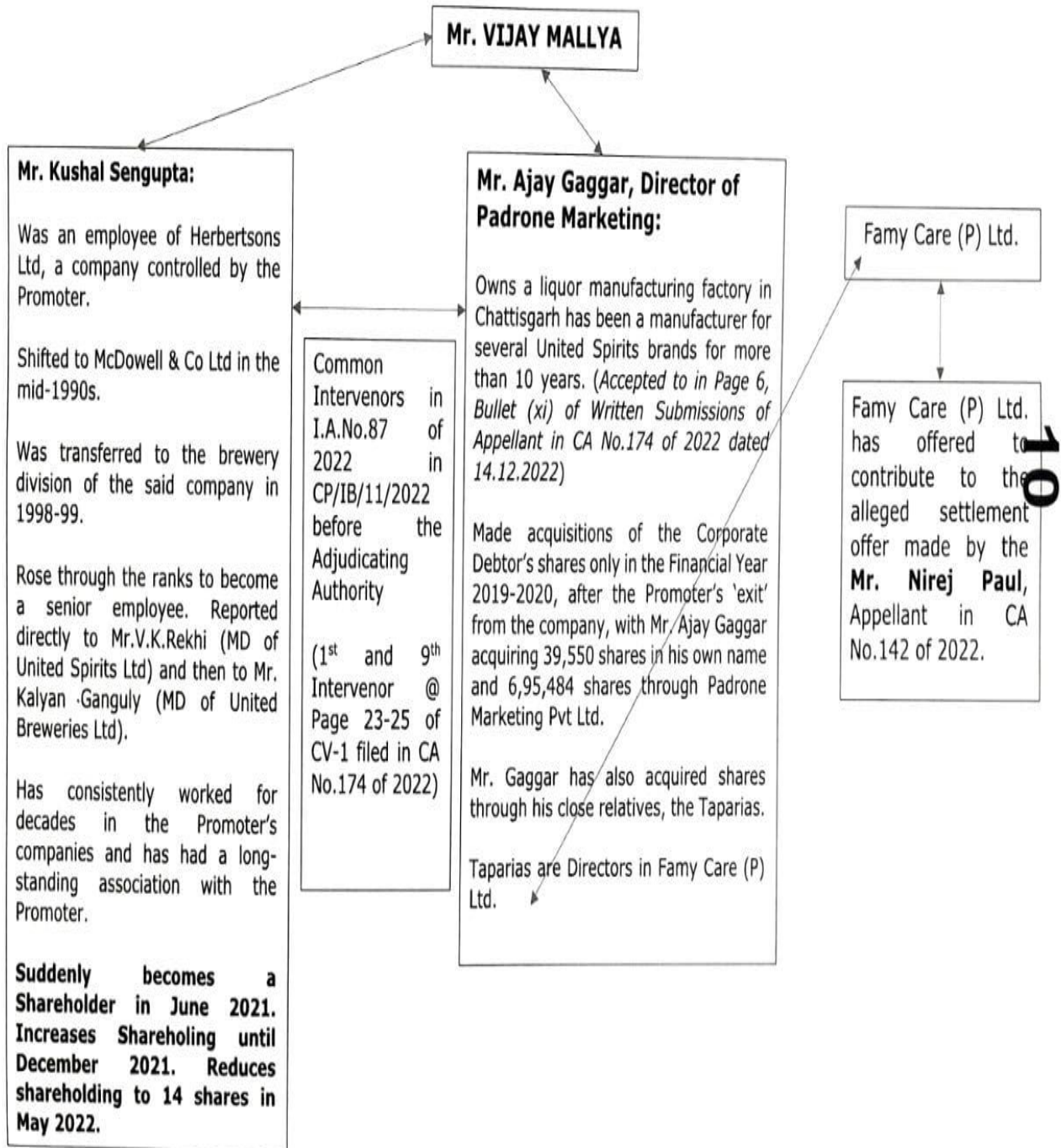
69. Learned Counsel for the 1st Respondent emphasised that similar pattern of unhealthy acquisition of shares has been resorted to by other shareholders also and to prove this point, Learned Counsel for the 1st Respondent submitted the details of acquisition of shares made by the parties 'the settlement proposal' in form of a chart along with Chart showing inter-se relationship between the Appellants and that they are persons acting in concert which is Chart showing links between few Appellants/ Persons proposing to make payments and Mr. Vijay Mallya. These charts furnished by the 'Respondents' which are seen as under :-

ANNEXURE - IIA - CHART SHOWING THE INTER-SE RELATIONSHIP BETWEEN THE APPELLANTS AND THAT THEY ARE PERSONS ACTING IN CONCERT

PERSONS WHO HAVE JOINTLY MADE A PROPOSAL FOR PAYMENT (Names @ Page 64 of CV-2)



ANNEXURE IIB – CHART SHOWING LINKS BETWEEN FEW APPELLANTS / PERSONS PROPOSING TO MAKE PYAMENTS AND Mr. VIJAY MALLYA (Detailed in Page 191 of CV-1)



Learned Counsel for the 1st Respondent pointed out that the arguments of the 'Appellants' of their entitlement to submit settlement

proposal as a 'contributory' under Companies Act, 2013, is legally not permissible as, the I & B Code, 2016 is a complete code and the concept of 'contributory' is envisaged only during process of liquidation under the Companies Act, 2013 and not during 'Corporate Insolvency Resolution Process' under I & B Code, 2016

70. Learned Counsel for the 1st Respondent refuted the allegations about collusion between the 1st and 2nd Respondents merely because the Counsel for the 'Corporate Debtor' who appeared at the first hearing before the 'Adjudicating Authority on 17.02.2022 at the time of admission and did not deny the debt or default. Learned Counsel for the 1st Respondent further submitted that such allegations have no merit whatsoever. Learned Counsel for the 1st Respondent mentioned that Rule 4(3) read with Annexure V of Form-I of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 require that advance notice has to be served on the Corporate Debtor before filing the application with the Adjudicating Authority. Learned Counsel for the 1st Respondent submitted that since the debt and default was undeniable, the 'Corporate Debtor' on receiving advance notice, could not deny the existence of the debt and the default when the matter came up for admission before the Adjudicating Authority.

71. Learned Counsel for the 1st Respondent again refuted the allegations regarding fraud and collusion. Learned Counsel for the 1st Respondent mentioned that this aspect was specifically dealt by the Adjudicating

Authority and to satisfy the 'Adjudicating Authority' through its order dated 17.02.2022 asked the 'Corporate Debtor' to file an Affidavit regarding pending litigations and claims along with detailed financial position. Learned Counsel for the 1st Respondent further stated that the only after detailed examination and hearing averments, the 'Adjudicating Authority' came to clear finding that there is no fraud or collusion by the Respondents herein and accordingly, the 'impugned order' was pronounced.

72. Thus, all allegations and averments of the 'Appellants' including admission of Debt and Default by the 'Corporate Debtor' on the first date of hearing itself, collusive lending of money by the 1st Respondent to the 2nd Respondent, short period of repayment aggrieved by the 2nd Respondent etc. are only afterthought, fabricated, frivolous and without any basis.

73. Learned Counsel for the 1st Respondent strongly refuted the allegations of the 'Appellants' that the 1st Respondent is insisting on 'Corporate Insolvency Resolution Process' in order to take over the management of the 'Corporate Debtor' and the landing to the 2nd Respondent was collusive in nature. Learned Counsel for the 1st Respondent brought out that the 'Committee of Creditor' has already considered five 'Resolution Plans' and has approved 'Resolution Plan' of 'Phoenix Theme Infra Projects LLP' in their meeting held on 19.10.2022 in accordance with Regulation 18 and 19 of IBBI and the same is pending before the 'Adjudicating Authority' for approval in I.A No, 399 of 2022 in CP (IB)/ 11/2022.

Learned Counsel for the 1st Respondent further stated that it is a settled law that the 'Financial Creditor' i.e. the 1st Respondent herein is only entitled to its contractual determination dues and nothing more. Learned Counsel for the 1st Respondent alleged that on the contrary, it is the 'Appellants' who are trying to take over company through an illegal a settlement proposal/ loan and has also offered to be on the 'Board of Directors' of the 'Corporate Debtor' as indicated by the 1st Appellant.

74. Learned Counsel for the 1st Respondent further refuted the allegations of the 'Appellants' that the 'Respondents' are trying to take benefit of Section 32(A) of the I & B Code, 2016 get out of clutches of law for offences. Learned Counsel for the 1st Respondent stated that both as per Section 32(A) of the I & B Code, 2016 as well as in terms of ratio pronounced by Hon'ble Supreme Court of India in the matter of 'Manish Kumar vs. Union of India ' ((2021) 5 SCC 1) laid down the conditions and it is therefore clear that the prosecution would continue against the person who committed any offence and it is only the new management totally unconnected with old management of the 'Corporate Debtor', are given immunity and protection from the prosecution.

75. Learned Counsel for the 1st Respondent also assailed the conduct of the 'Appellants' who filed an I.A. No. 517 of 2022 in C.A. (AT) (Ins.) No. 142 of 2022 seeking stay on proceeding by offering to deposit the entire amount owed to the Creditors of the 'Corporate Debtor'. Learned Counsel for the 1st Respondent stated that there is no such provision under I & B Code, 2016 and the intent of the I & B Code, 2016 is to allow genuine resolution of the

‘Corporate Debtor’ in order to put it back on rails. Learned Counsel for the 1st Respondent further stated that it was never intention of the I & B Code, 2016 to protect only ‘shareholders’.

76. Learned Counsel for the 1st Respondent further pointed out that on the contrary there are several judgement of the Apex Court where it has been indicated that the ‘Resolution Plan’ should take care of various stakeholders including the ‘Appellants’. Learned Counsel for the 1st Respondent brought out that incidentally out of seven persons who have come forward to make payment under alleged settlement proposal, five are not even the ‘Appellants’ in the present appeal, which indicate that it is only the 1st Respondent along with few others who are trying to de-rail the process of ‘Resolution’. Learned Counsel for the 1st Respondent also brought out that one un-known party i.e. ‘Famy Care Private Limited’ is not connected to any of the proceeding and also not shareholder of the ‘Corporate Debtor’ has been roped into so-called ‘settlement proposal’.

77. Learned Counsel for the 1st Respondent further stated that all these lead to conclusion that the ‘Appellants’ are working at the behest of Erstwhile Promoter- Mr. Vijay Mallya who is seeking back door entry to take control of the company. Learned Counsel for the 1st Respondent submitted that for arguments sake, even if the I & B Code, 2016 has provision to allow ‘shareholder’ to offer such settlement proposals, still it could have been seen as tainted proposal and indirectly proposed by Erstwhile Promoter- Mr. Vijay Mallya who is under investigation by several agencies. Learned Counsel for

the 1st Respondent stated that on the contrary the I & B Code, 2016 in transparent and dignified manner facilitate chance to all to participate in 'Resolution Plan' and once it is approved by the 'Adjudicating Authority' the Respondent will get their claims settled as per approved 'Resolution Plan'.

78. Learned Counsel for the 1st Respondent stated that if the 'Appellants' are so interested to take part in the management of the 'Corporate Debtor', could have participated as the 'Resolution Applicant'. Learned Counsel for the 1st Respondent pointed out that the very fact of the 'Appellants' not participating for 'Resolution' of the 'Corporate Debtor' indicate that their dubious intentions to work on behalf of the Erstwhile Promoters – Mr. Vijay Mallya

79. Learned Counsel for the 1st Respondent strongly refuted allegations of the 'Appellants' that the 2nd Respondent/ Corporate Debtor is a 'NBFC' or is a 'Financial Service Provider'. Learned Counsel for the 1st Respondent further stated that this argument was not taken up by the 'Appellants' in their Intervention Applications in I.A. No. 86 of 2022 and I.A. No. 87 of 2022 before the 'Adjudicating Authority' and has been taken up for the first time before this 'Appellate Tribunal' and therefore, cannot be allowed.

Learned Counsel for the 1st Respondent further stated that the 'Corporate Debtor' is neither 'NBFC' nor 'Financial Service Provider' in term of Section 3(16) of the I & B Code, 2016.

Learned Counsel for the 1st Respondent submitted that the I & B Code, 2016 do not provide definition of 'NBFC' and therefore what is

significant to establish whether the 'Corporate Debtor' is a 'Financial Service Provider'. Learned Counsel for the 1st Respondent stated that since the 'Corporate Debtor' is not performing any activity which can be classified as 'Financial Service' and therefore the 'Corporate Debtor' is neither 'Financial Service Provider' nor the 'NBFC'.

80. Learned Counsel for the 1st Respondent also assailed the conduct of the 'Appellants' who tried to give wrong information regarding 'Corporate Debtor' status as 'NBFC' based on old RBI link and the 1st Respondent has filed the latest updated list of 'NBFC' registered with RBI as on 31.07.2022 which clarifies that the name of the 'Corporate Debtor' is not there in the list and for the same reason the 'Appellants' have not furnished this information as by way of filing an Affidavit and has submitted mere as 'Written Submissions'.

81. Learned Counsel for the 1st Respondent refuted the claims of the Appellants who is taking shelter of 'Annual Reports' of the 'Corporate Debtor' to prove that the 'Corporate Debtor' has declared itself to be a 'CIC' (exempted category). Learned Counsel for the 1st Respondent pointed out that the 'Corporate Debtor' was deregistered as 'NBFC' by RBI on 11.12.2017 and subsequently the 'Corporate Debtor' was reclassified as 'CIC' (exempted in category) due to the fact that the 'Corporate Debtor' was holding strategic investments in the UB Group of Companies. Learned Counsel for the 1st Respondent clarified that after the attachment of shares and consequently sale of such shares by DRT Bangalore, there is no strategic holding by the

‘Corporate Debtor’. Learned Counsel for the 1st Respondent stated that in any case, the RBI vide letter dated 25.10.2021 asked the ‘Corporate Debtor’ to examine the applicability of ‘CIC’ directions 2016. Learned Counsel for the 1st Respondent emphasised that the said letter do not give any directions to the ‘Corporate Debtor’ to get itself registered as ‘CIC’. Learned Counsel for the 1st Respondent stated that it made clear the ‘Corporate Debtor’ is not a ‘NBFC’.

82. Learned Counsel for the 1st Respondent further submitted that the primary requirement for a company to be a ‘CIC’ is to hold such strategic investments in group companies. Learned Counsel for the 1st Respondent stated that the ‘Corporate Debtor’ does not fall under the ambit of any of the arrangements mentioned therein with United Breweries Limited, since the shareholding of the ‘Corporate Debtor’ in United Breweries Limited is only 1.72%. Therefore, the CIC Directions, 2016 are not inapplicable to the ‘Corporate Debtor’.

83. Learned Counsel for the 1st Respondent stated that the ‘Appellants’ have relied on various decisions of the ‘Apex Court’ and this ‘Appellate Tribunal’, and emphasised that none of the decisions are applicable, since in the said cases, all the companies had valid and live registration certificates as NBFCs from the Reserve Bank of India at the time of filing of the Petition under Section 7 of the I & B Code, 2016. Learned Counsel for the 1st Respondent further stated that in the present case, the ‘Corporate Debtor's’

registration as a 'NBFC' stood cancelled on 11.12.2017 and the 'Corporate Debtor' ceased to be a 'NBFC'.

84. Learned Counsel for the 1st Respondent emphasised that the 'Corporate Debtor' does not offer any financial service as defined under Section 3(16) of the I & B Code, 2016. Learned Counsel for the 1st Respondent submitted whether the 'Corporate Insolvency Resolution Process' could have been invoked by the 1st Respondent is based on fact whether the 'Corporate Debtor' is a financial service provider under Section 3(17) of the I & B Code, 2016. Learned Counsel for the 1st Respondent emphasised that even its participation in financial activities is limited to only certain restricted instances which do not fall within Section 3(16) of the I & B Code, 2016 and in any event is 'business 'is limited to 'acquisition of shares and securities' whereas a 'Financial service provider under Section 3(17) of the I & B Code, 2016 has to be engaged in the business of providing financial services.

85. Learned Counsel for the 1st Respondent further submitted that the Section 3(17) of the I & B Code, 2016 specifically requires an authorisation issued or 'registration granted' by a financial sector regulator and even 'exempted category' would come under the ambit or authorisation issued. Learned Counsel for the 1st Respondent emphasised that the 'Corporate Debtor' is very much a 'Corporate Debtor' under Section 3(7) of the I & B Code, 2016 and is amenable to be admitted into 'Corporate Insolvency

Resolution Process’ on a petition filed by a ‘Financial Creditor’ under Section 7 of the I & B Code, 2016.

86. Learned Counsel for the 1st Respondent summarised his pleadings and mentioned that the present application is not maintainable and even on merits its liable to be dismissed.

Findings

87. Heard Learned Counsel for the Appellant and the Respondents and also perused record made available to us. Several issues have been raised in the Appeals which are required to be deliberated upon before coming to final conclusion.

(I) (a) Whether the ‘Adjudicating Authority’ committed an error in admitting the ‘CIRP’ of the ‘Corporate Debtor’

And

(b) Whether, the shareholder of the ‘Corporate Debtor’ has any locus in Section 7 application filed by the ‘Financial Creditor’.

(II) Whether, the shareholders can make payment to satisfy financial debt of financial creditor in order to take away the ‘Corporate Debtor’ from the clutches of the ‘Corporate Insolvency Resolution Process’.

(III) Whether the Respondent No. 2 (‘Corporate Debtor’) is a Non- Banking Financial Company (**NBFC**) having assets of more than Rs. 500 crores and therefore exempted from the ‘Corporate Insolvency Resolution Process’ ordered by the ‘Adjudicating Authority’.

(IV) Whether, such cases of Non- Banking Financial Company are required to be registered or can fall in the definition of 'Exemption' even without being registered with the 'Reserve Bank of India'.

(V) Whether the permission of the 'Reserve Bank of India' is mandatorily to be taken prior to initiating the 'Corporate Insolvency Resolution Process' proceedings against the 'Corporate Debtor' ---- being adjudicated by the 'Adjudicating Authority'.

(VI) Whether the Appellants are related parties of the suspended management as claimed by the Respondents and similarly whether the Respondents are related parties of the suspended management of the 'Corporate Debtor' as claimed by the Appellants and what is going to be impact of such relationship, if exists, over the maintainability of Section 7 Application under I & B Code, 2016.

88. Issue (I) (a) Whether the 'Adjudicating Authority' committed an error in admitting the 'CIRP' of the 'Corporate Debtor'

And

(b) Whether, the shareholder of the 'Corporate Debtor' has any locus in Section 7 application filed by the 'Financial Creditor'.

- In order to examine this critical issue of locus and maintainability, this 'Appellate Tribunal' needs to look into various provisions of the I & B Code, 2016 carefully. The relevant provision, connected to this issue are:-

“3 (23) “person” includes—

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a trust;

(e) a partnership;

(f) a limited liability partnership; and

(g) any other entity established under a statute,

and includes a person resident outside India;”

(emphasis supplied)

“5(7) “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having

the commercial effect of a borrowing. 1[Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

(emphasis supplied)

“5(26) “resolution plan” means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;”

(emphasis supplied)

“CHAPTER II

CORPORATE INSOLVENCY RESOLUTION PROCESS

6. Persons who may initiate corporate insolvency resolution process. – *Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.”*

(emphasis supplied)

“7. Initiation of corporate insolvency resolution process by financial creditor.—(1) A financial creditor either by itself or jointly with 1[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—*For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

(2) *The financial creditor shall make an application under sub-section (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).

(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; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor; (b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”

(emphasis supplied)

“61. Appeals and Appellate Authority.—(1) *Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.”

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O, may be filed on grounds of material irregularity or fraud committed in relation to such an order.”

(emphasis supplied)

- As per Section 7 of the I & B Code, 2016, a ‘Financial Creditor’ either by itself or jointly with other ‘Financial Creditors’ may file an Application for initiating ‘Corporate Insolvency Resolution Process’ against the ‘Corporate Debtor’ before the ‘Adjudicating Authority’ when the default has occurred.
- The ‘Adjudicating Authority’ shall, within 14 days of receipt of the application, ascertain the existence of default and where the ‘Adjudicating Authority’ is satisfied that the default has occurred and application is complete, admit such application and ‘Corporate Insolvency Resolution Process’ shall commence from the date of such admission of the application.
- According to scheme under Section 7, the ‘Adjudicating Authority’ is not required to look into other criteria for admission.

- As per Section 5 (7) of the I & B Code, 2016, 'Financial Creditor', means any person to whom the financial debt is owed and includes a person to whom such a debt is legally assigned or transferred. Where an assignment agreement legally assigns the impugned debt to a person, such a person becomes a financial creditor within a meaning of Section 5(7) of the I & B Code, 2016. In such case, the assignee steps into the shoes of the 'Financial Creditor' and as such he is entitled to the reliefs as available in the I & B Code, 2016.
- In the present case, undisputedly, the 1st 'Respondent' became 'Financial Creditor' since the assignment was created with all requisite formalities and the 'Corporate Debtor' has not denied the financial transaction. In such case, the 'Adjudicating Authority' is supposed to admit Section 7 Application.
- It is the case of 'Appellant' that Section 7 Application was filed by the 'Financial Creditor' in collusion with the 'Corporate Debtor'.
- After reading Section 61(1) of the I & B Code, 2016, it becomes clear that "any person aggrieved" by the order of the 'Adjudicating Authority' may prefer an appeal to "National Company Law Appellate Tribunal".
- The definition of "person" has been given in Section 3(23) of the I & B Code, 2016 which includes an "individual". This does not specifically mention "shareholder". However, "individual" is wider term and can include "shareholder".
- Section 6 of the I & B Code, 2016 prescribes as to who may initiate 'Corporate Insolvency Resolution Process'. It includes a 'Financial

Creditor' or an 'Operational Creditor' or the 'Corporate Debtor' itself. This definition is restrictive and includes only 'Creditors' both 'Financial Creditors' & 'Operational Creditors' and the 'Corporate Debtor' who may wilful.

- As already discussed earlier in preceding paras, the 'Financial Creditor' either by itself or jointly with others may file an application for 'Corporate Insolvency Resolution Process'. In the present case, the 'Financial Creditors' had filed the application under Section 7 of the I & B Code, 2016 before the 'Adjudicating Authority' which was admitted and 'Corporate Insolvency Resolution Process' was initiated.
- The 'Appellants' herein filed two intervention applications, namely, I.A No. 86 of 2022 and I.A No. 87 of 2022 before the 'Adjudicating Authority' claiming to be aggrieved persons seeking to intervene in CP (IB) No. 11/2022 with prayer to declare that the CP amounts to fraudulent and malicious initiation of proceedings under I & B Code, 2016 and to dismiss CP (IB) No. 11/2022.
- The 'Adjudicating Authority' had discussed this aspect in details in para-20 of the 'impugned order' which reads as under:-

"It is the case of the Intervening Applicants that they are holding certain shares in the Respondent/Corporate Debtor Company and if the C.P. is admitted and the Insolvency Resolution Process is initiated against the Corporate Debtor, their right as shareholders will be severely affected and their interest will be prejudiced. It is the settled principle of law that in an Application U/s. 7 of the

Code, there is no place for any third party other than the Financial Creditor and the Corporate Debtor. The Shareholders of the Financial Creditor or of the Corporate Debtor in their capacity as a shareholder have no locus standi to get themselves impleaded in the C.P. filed U/s.7 of the IBC, 2016. If any Shareholder of the Financial Creditor or the Corporate Debtor have any grievances with regard to the representation of the Company in the C.P., they can agitate their rights as Shareholders under the applicable provision of the Companies Act, 2013 but cannot be allowed to be impleaded or intervened in the C.P. This Adjudicating Authority, while exercising summary jurisdiction such as Section 7 of the IBC, 2016, cannot adjudicate the disputes, if any, inter se, between the Shareholders or Directors of the Corporate Debtor, Accordingly, both the Interlocutory Applications are dismissed.”

(emphasis supplied)

- It is the case of the ‘Appellants’ that being “shareholders”, if ‘Corporate Insolvency Resolution Process’ is allowed to continue their ‘financial interest’ will be adversely affected and therefore, they are aggrieved by the ‘impugned order’.
- The ‘Appellants’ cited the judgment of **P. Naveen Chakravarthy vs. Punjab National Bank**” (W.P No. 27780 of 2019) and “**Periasamy Palani Gounder Vs. Radhakrishnan Dharmarajan**” (2022 SCC OnLine NCLAT 86) to support their averments.

- The 'Appellants' have further argued that the interest of 'Financial Creditor' is to recover his money and to put 'Corporate Debtor' into 'Corporate Insolvency Resolution Process' or 'Liquidation'.
- To protect the financial interest of a company having assets in form of shares in the other companies of more than Rs. 1000 crores, the 'Appellants' as shareholders are willing to pay the entire outstanding debt including interest.
- In response to a pointed query by this 'Appellate Tribunal' to the 'Appellants', whether the proposition of shareholders to settle the outstanding dues of the 'Corporate Debtor' by shareholders, is permitted by any law especially under the I & B Code, 2016 or the Companies Act, 2013, it transpires that there is no such direct and specific provision allowing the same.
- Similarly, on further specific query by this 'Appellate Tribunal' of any precedent through judgments of the Hon'ble Supreme Court of India or this 'Appellate Tribunal' which permitted such settlement of outstanding dues of the 'Corporate Debtor' by the shareholders, the 'Appellants' could not give any direct citations except few citations mentioned earlier which are not directly connected here looking to the facts herein.
- This 'Appellate Tribunal' notes that citations made by the 'Appellants' in the 'Written Submissions' and during averments made by the 'Appellants', are not directly on this point and do not support claims of the 'Appellant'.

- It has further been argued by the ‘Respondents’ that the ‘Appellants’ have sought to maintain the present appeal as a derivative action which cannot be maintained. Once an IRP/RP has been appointed, he/she becomes responsible for the functioning of the ‘Corporate Debtor’ and has the sole authority to represent the ‘Corporate Debtor’ and a derivative action, both at the stage of admission and/or after the corporate debtor has been admitted into ‘Corporate Insolvency Resolution Process’ cannot be maintained.
- During averments, it has been brought to the notice of this ‘Appellate Tribunal’ one judgment of Delhi High Court on derivative action on behalf of the Corporate Debtor under I & B Code, 2016. In the case of ***ICP Investments v. Uppal Housing***, 2019 SCC OnLine Del 12371, following has been recorded in the judgment :-

“18. The IRP appointed with respect to Umang, under the law having powers/authorities as aforesaid, I have wondered about the maintainability of a derivative action on behalf of Umang.

20. It is felt that once the affairs of the Umang are taken over by an IRP, the Directors of Umang can no longer be blamed for not taking the requisite steps to seek redress for the wrong if any done to Umang, and a derivative action by plaintiff, as a majority shareholder, for the benefit of Umang would not be maintainable. The plaintiff now has to approach the IRP for taking action against Uppal and it is the IRP who has to, if finds any merit in the grievance of the plaintiff, take appropriate remedy on behalf of Umang.

Moreover, if the plaintiff remains dissatisfied with the decision of IRP, has remedy before the NCLT.

22. *I must however note that the aforesaid cases involved a company which was at the stage of liquidation, as distinct from Umang in the present case, against which only the insolvency process has begun. However considering the duties and role of the IRP under the IBC as discussed hereinabove, the principle in each of the aforesaid cases i.e. of the management of the company, on whose fraud/mismanagement a derivative action becomes maintainable, being no longer in power/control, and consequently a derivative action being no longer maintainable, also applies to the present case.”*

23. *I also find a Single Judge of the High Court of Madras in Jai Rajkumar v. Stanbic Bank Ghana Ltd. 2018 SCC OnLine Mad 10472 to have held a suit by way of a derivative action to be not maintainable when the company, for whose benefit derivative action was initiated, was under insolvency. It was held that it is for the RP to act on behalf of the corporate debtor and to initiate suitable proceedings if any deemed necessary for the benefit of the corporate debtor and its creditors.*

24. *I respectfully concur.*

(emphasis supplied)

- It infers that the ‘Appellants’ even as “shareholders” cannot be aggrieved merely by the admission of the ‘Corporate Debtor’ into ‘Corporate Insolvency Resolution Process’. Such objection may render the object of I & B Code, 2016 illusory since any shareholder of any

‘Corporate Debtor’ against which Insolvency proceedings have been initiated can then seek to maintain a derivative action and sabotage a valid ‘Corporate Insolvency Resolution Process’ initiated by the Adjudicating Authority.

- The ‘Appellants’ have prayed for setting aside the ‘impugned order’ dated 08.04.2022 in their C.A (AT) (Ins.) No. 174 of 2022 whereas in C.A (AT) (Ins.) No. 142 of 2022 the prayer has been made to stay ‘operation of the impugned order’.
- Although, the ‘Appellants’ have not asked in their prayers before this ‘Appellate Tribunal’ for any liberty to seek permission to pay all outstanding dues of the 1st Respondent herein/ Financial Creditor, it has been made in ‘Written Submissions’ as well as in the main application seeking intervention before the ‘Adjudicating Authority’ whereas such requests/ averments were made by the ‘Appellants’.
- As discussed prima-facie there is no specific law which allows any shareholder of the ‘Corporate Debtor’ to challenge the admission of ‘Corporate Insolvency Resolution Process’ of the ‘Corporate Debtor’, once the debt due and default is established by the ‘Adjudicating Authority’, in an application made by the ‘Financial Creditor’ filed under Section 7 of the I & B Code, 2016 before the ‘Adjudicating Authority’.
- Moreover, there is no law which allows a third-party to settle the claims of the ‘Financial Creditor’ on behalf of the ‘Corporate Debtor’, more so without any consent of the ‘Corporate Debtor’ and in the

teeth of opposition by the 'Financial Creditor'. The 'Appellants' could not produce any precedents in this regard.

- Theoretically, even a 'person' aggrieved by the 'impugned order' challenges admission of 'Corporate Insolvency Resolution Process', it is not going to resolve the issues under any relevant law and the whole exercise with such appeal become futile, purposeless and will only cause delay in resolution, for which the 'Resolution Plan' has already been approved by the 'Committee of Creditors' and is under consideration of the 'Adjudicating Authority'.
- We also take into account the judgment of this 'Appellate Tribunal' wherein, it was held that the no direction can be given to any third-party for the settlement between other parties as observed in I.A. No. 642 of 2019 in Company Appeal (AT) (Insolvency) Nos. 255-256 of 2018 in the matter of **Punit Garg . Vs. Ericsson India Pvt. Ltd. & Anr.**, in I.A. No. 637 of 2019 in Company Appeal (AT) (Insolvency) Nos. 257-258 of 2018 in the matter of **Satish Seth Vs. Ericsson India Pvt. Ltd. & Anr.** and in I.A. No. 638 of 2019 in Company Appeal (AT) (Insolvency) Nos. 259-260 of 2018 in the matter of **Mr. Suresh Madihally Rangachar Vs. Ericsson India Pvt. Ltd. & Anr.** wherein this 'Appellate Tribunal' observed as under :-

“45. In view of the observations made above, in an appeal filed under Section 61 of the 'I&B Code', no direction can be given to any party to the settlement (particularly the third party) to perform certain duties to ensure settlement between other parties.”

(emphasis supplied)

- Similarly, this ‘Appellate Tribunal’ also take note of its earlier order, where it has been held that an investor in a ‘Corporate Debtor’ cannot claim to be an ‘aggrieved person’ for preferring an appeal against an order against insolvency petition in Company Appeal as held in CA (AT) (Insolvency) No. 296 of 2017 in the matter of **Anant Kajare Vs. Eknath Aher & Anr.** wherein the relevant para reads as under :-

“4. Heard learned counsel for the Appellant. Admittedly, the Appellant is an Investor therefore, the Appellant cannot claim to be an ‘aggrieved person’ for preferring appeal against the order dated 2nd May, 2017 passed by Adjudicating Authority whereby the application under Section 9 of the ‘I&B Code’ was admitted. In fact, the Appellant being an investor is entitled to file its claim before the ‘Insolvency Resolution Professional.’”

(emphasis supplied)

- The term ‘investor’ has not been defined in the I & B Code, 2016 as well as in the Companies Act, 2013. A reference, therefore, has been made to ‘Investopedia’ where investor has been defined as under :-

“What Is an Investor?”

An investor is any person or other entity (such as a firm or mutual fund) who commits capital with the expectation of receiving financial returns. Investors rely on different financial instruments to earn a rate of return and accomplish important financial objectives like building

retirement savings, funding a college education, or merely accumulating additional wealth over time.

A wide variety of investment vehicles exist to accomplish goals, including (but not limited to) stocks, bonds, commodities, mutual funds, exchange-traded funds (ETFs), options, futures, foreign exchange, gold, silver, retirement plans, and real estate. Investors can analyze opportunities from different angles, and generally prefer to minimize risk while maximizing returns.

Investors typically generate returns by deploying capital as either equity or debt investments. Equity investments entail ownership stakes in the form of company stock that may pay dividends in addition to generating capital gains. Debt investments may be as loans extended to other individuals or firms, or in the form of purchasing bonds issued by governments or corporations which pay interest in the form of coupons.”

(emphasis supplied)

- Therefore, a shareholder is also technically speaking an “investor”/ “owner”, who owns limited investment in the company to the extent of share capital subscribed by him. Therefore, the judgement of **Anant Kajare (Supra)** is applicable in the present appeal as discussed in preceding paragraphs.
- This ‘Appellate Tribunal’ carefully examined the averments made on behalf of the ‘Appellants’ that this ‘Appellate Tribunal’, has already allowed such appeals in cases of **P. Naveen Chakravarthy v. Punjab**

National Bank (WP No. 22780 of 2019) where it has been held that the right of a shareholder of a 'Corporate Debtor' is not jeopardized in so much as a shareholder can espouse their cause qua the 'Corporate Debtor' while seeking to right a perceived wrong. This 'Appellate Tribunal' also examined citations quoted by the 'Appellants' in the case of **Periasamy Palani Gounder v. Radhakrishnan Dharmarajan** (2022 SCC OnLine NCLAT 86), wherein this 'Appellate Tribunal' has held that nothing prevents a shareholder from producing evidence to establish the illegality in the 'Corporate Insolvency Resolution Process'.

- However, this 'Appellate Tribunal' after careful considerations of these 'Citations / Judgements', comes to the conclusion that these cases are not directly connected or similar to the present 'Appeal', and therefore, it is not of any assistance to the 'Appellants'.
- Having considered all the averments made by the 'Appellants' as well as the 'Respondents', including various Written Submissions made available to this 'Appellate Tribunal' and after careful consideration of various judicial pronouncements of the Hon'ble Supreme Court of India as well as this 'Appellate Tribunal', comes to concrete conclusion without any hesitation that in the present 'Appeals', the 'Appellants' do not have any 'Locus', and therefore the present 'Appeals', are 'not maintainable'. This 'Appellate Tribunal', therefore, does not find any 'Error' / 'Legal Infirmary', in the 'impugned order', on this issue.
- Having decided the non-maintainability of the 'Appeals' itself, this 'Appellate Tribunal', has not traversed on any other issues, touching

upon the `Appeal`, as it is unnecessary to go into the same and as such, they have not been discussed.

89. In fine, the `Appeals` fail and are dismissed. No costs. The connected `Pending Interlocutory Applications`, if any, are closed.

**[Justice M. Venugopal]
Member (Judicial)**

**[Naresh Salecha]
Member (Technical)**

Simran