



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT V, NEW DELHI

C.A. (I.A.) No. 1004/2018

IN

Company Petition No. (IB) – 227/(PB)/2017

*Under Section 60(5) read with Section 21 of the Insolvency
and Bankruptcy Code, 2016*

IN THE MATTER OF:

THE INDURE PRIVATE LIMITED.

.... OPERATIONAL
CREDITOR/APPLICANT

VERSUS

B.K. COAL FIELDS PVT. LTD.

.... CORPORATE
DEBTOR/ RESPONDENT

Order Pronounced on: 04.06.2026

CORAM:

**SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)**

**MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant: Mr. Sunil Fernandes, Sr. Adv., Mr. Prashant Mehta, Mr. Varun Gupta, Ms. Simran Wason, Mr. Raghav Marwah, Ms. Rajshree Chaudhary, Advs.

For the RP: Mr. Krishnendu Datta, Sr. Adv., Mr. Nakul Mohta, Mr. Hitesh Nagar, Ms. Sajjal Arora, Mr. Harsh Gurbani, Advs.

For the CoC: Mr. Siddharth Yadav, Sr. Adv., Mr. Apoorv Agarwal, Ms. Vaishnavi, Advs.

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ORDER

1. The present Application has been filed by M/s The Indure Pvt. Ltd., (Operational Creditor on whose Petition CIRP has been initiated) under Section 60(5) read with Section 21 of the Insolvency and Bankruptcy Code, 2016 against Corporate Debtor seeking following prayers:

In view of the aforesaid circumstances, the Applicant / Operational Creditor respectfully prays that the Hon'ble Tribunal may be pleased to:

- i) Dissolve the present CoC constituted by the Interim Resolution Professional in gross violation of section 21 (2) of IBC;*
- ii) Set aside all the decisions taken by the CoC;*
- iii) Direct the constitution of new committee of Creditors consisting of Operational Creditors under the Regulation 16 of the Insolvency Resolution Regulations, 2016; and*
- iv) Pass any other as the Hon'ble Adjudicating Authority deems fit and proper in the facts and circumstances of the case in favour of the Applicant.*

Contentions of the Applicant

2. The Applicant had filed Petition bearing CP-IB-227(PB)/2017 under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking CIRP of the Corporate Debtor. This Adjudicating Authority vide Order dated 07.06.2018 ordered initiation of CIRP and appointed Interim Resolution Professional (IRP). The IRP constituted the Committee of Creditors of the Corporate Debtor on 18.07.2018 under Section 21 of the IBC, comprising of the Financial Creditors i.e., M/s South West Mining Limited and M/s A.P. Coal Washeries Pvt. Ltd.

3. Committee of Creditors constituted by the Interim Resolution Professional is patently illegal, unlawful and in gross violation of Section 21 (2) of the Code because as per the proviso to Section 21 (2) of the Code, if the Financial Creditor(s) is a related party of the Corporate Debtor, such Financial Creditor(s) shall have no right of representation, participation or voting in a meeting of the Committee of Creditors.

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4. Financial Creditors of the Corporate Debtor i.e. M/s A.P. Coal Washeries Pvt. Ltd. and M/s South West Mining Ltd. and the Corporate Debtor are either directly and indirectly managed and controlled by Mr. Sandeep Kumar Jajodia who is the promoter of the Monnet Group.

5. As per the Applicant, facts to establish Financial Creditor i.e. A.P. Coal Washeries Pvt. Ltd. is a related party to the Corporate Debtor are as follows:-

5.1 A.P. Coal is a 'Related Party' to the CD in terms of Section 5(24)(h) of IBC which means 'any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act'. Further, A.P. Coal Washeries Pvt. Ltd. is also a 'Related Party' to the CD in terms of Section 5(24)(j) of IBC which means 'any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement'.

5.2 Mr. Sandeep Kumar Jajodia is having 64% shareholding in the Financial Creditor namely A.P Coal Washeries Pvt. Ltd. Mr. Sandeep Kumar Jajodia is a promoter of the Monnet Group and either directly or indirectly controlled the management of Corporate Debtor through his group/ associate companies.

5.3 The transactional relationship between Monnet Ispat and the Corporate Debtor already stands crystalized by way of the Tripartite Agreement entered into amongst Corporate Debtor, Operational Creditor and Monnet Ispat.

5.4 Shareholder companies of the Corporate Debtor have cross holdings amongst themselves as shareholders. If the said cross holding of the corporate persons is ignored, the ownership control of these companies would clearly suggest the same lies with Mr, Sandeep Kumar Jajodia who holds amongst the entire share capital other than the said cross holding.

5.5 In order to camouflage the relation between M/s A.P. Coal Washeries Pvt. Ltd. and the Corporate Debtor, the directorship of both the companies have been manipulated to create an artificial opaqueness. Mr. Mahesh Kumar Sharma was on the Board of Directors of the Corporate Debtor till December

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2017 and presently is the Director of M/s A.P. Coal Washeries Pvt. Ltd. Mr. Mahesh Kumar Sharma resigned from the Directorship only after this Tribunal reserved the orders in the main Section 9 Application, that is, after 25.09.2017 but before 07.06.2018, to escape the related-party issue.

5.6 Mr. Vivek Kumar Gadkari, who was appointed as a Director of Corporate Debtor on 12.12.2017 to replace Mr. Mahesh Kumar Sharma, is a Director in Monnet Daniels Coal Washeries Ltd – Associate/Group Company of Monnet Group and promoted by Mr. Sandeep Kumar Jajodia. Mr. Vivek Kumar Gadkari resigned from the Directorship on 20.10.2018, after the initiation of CIRP on 07.06.2018.

5.7 Mr. Rajesh Kumar Rana, who was appointed as a Director of CD on 25.07.2003, is also Director in Mass Skilltech Pvt. Ltd. – Associate/Group Company of Monnet Group and promoted by Mr. Sandeep Kumar Jajodia.

5.8 Monnet Group (directly/indirectly through Associate/Group Companies) controls the composition of Board of Directors of both A.P. Coal Washeries and the CD. Therefore, A.P. Coal Washeries is a Related Party to the CD in terms of Section 5(24) (l) of IBC.

5.9 A.P. Coal Washeries is a Related Party to the CD in terms of Section 5 (24) (l) of IBC as the Monnet Group (directly/indirectly through Associate/Group Companies) controls the composition of Board of Directors of both A.P. Coal Washeries and the Corporate Debtor. Further, A.P. Coal Washeries is also a 'Related Party' to the Corporate Debtor in terms of Section 5 (24) (m) (i) and (ii) as M/s A.P. Coal Washeries is associated with the CD on account of participation in policy making process and interchange of managerial personnel.

5.10 Corporate Debtor and M/s A.P. Coal Washeries have common Registered Office situated at 10, Masjid Moth, Greater Kailash – II, New Delhi – 110048.

6. As per the Applicant, facts to establish Financial Creditor i.e. M/s South West Mining is a related party to the Corporate Debtor are as follows:-

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6.1 M/s South West Mining is a 'Related Party' to Mr. Sandeep Jadojia in terms of Section 5(24)(A) of IBC which clearly stipulates that a person will be a 'Related Party' to an individual if that person is a relative of the individual or a relative of the spouse of the individual.

6.2 JSW Investment has 51% shareholding in M/s South West Mining. Further, 99.99% of equity shares of JSW Investment is held by Mr. Sajjan Jindal. Mr. Sajjan Jindal's sister, Mrs. Seema Jajodia, is married to Mr. Sandeep Kumar Jajodia who is the individual who has direct/indirect control of M/s A.P. Coal Washeries, the second constituent of the CoC of the CD, Promoter of Monnet Group. Therefore, Mr. Sajjan Jindal is the brother-in-law of Mr. Sandeep Kumar Jajodia and a 'Related Party' to Mr. Sandeep Kumar Jadojia in terms of Section 5 (24) (A) of IBC.

7. As per the CoC Meeting dated 25.07.2018, Monnet Ispat has been given a right to attend COC Meetings in terms of Section 24 (3) (c) of IBC. The Jajodia Family holds 28.41% in Monnet Ispat individually without considering the shareholding of the Corporate Person. As per Section 24 (3) (c) of IBC, an Operational Creditor can attend the COC Meetings only when the aggregate dues is not less than 10% of the debt. It is submitted that the RP failed to disclose the total dues of Monnet Ispat while declaring that Monnet Ispat's dues account of 10% of debt of CD.

8. M/s A.P. Coal Washeries and South West Mining are 'Related Parties' to the CD and Monnet Group, directly/indirectly, individually and through Group/Associate Companies has been in a position to drive the outcome of the entire CIRP.

9. Contentions of the Resolution Professional on behalf of Respondent Corporate Debtor

9.1 Allegations raised by the Operational Creditor, in the present application have already been raised earlier by him in reply to C.A. No. 724 of 2018 filed by the Committee of Creditors (CoC) under Section 22 (3) (b) of the Code. This Tribunal after considering the entire conspectus of the matter

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allowed C.A. No. 724 of 2018. While it is not disputed that vide order dated 25.09.2018, the Operational Creditor was permitted to file an appropriate application with regard to the objections raised by it, the said application was required to be "in accordance with law". Principles of "res-judicata" and "constructive res-judicata" are settled principals and apply to the present proceedings. The Operational Creditor having itself elected its remedy of raising its objection with regard to the formation of the CoC through a reply and not an application, at the first available opportunity, cannot now be allowed to have a second innings. Further, a perusal of the Order dated 13.08.2018 passed by this Hon'ble tribunal shows that the objection of the Applicant with regard to the formation of the CoC was recorded and taken note of by this tribunal. Thereafter, at every subsequent date the Applicant has been present to have its objections adjudicated. Accordingly the present application deserves to be dismissed at the very threshold as being an attempt to re-agitate settled issues.

9.2 The objections on CoC raised in the present application have been responded too in detail vide reply dated 04.09.2018 filed on behalf of the erstwhile IRP in C.A. 724/2018, dealing extensively with each and every objection raised by the Operational Creditor. Copy of the said reply is annexed with this reply.

9.3 While the Operational Creditor has sought to allege a defect in the constitution of the CoC on the basis of "related party", it has failed to substantiate its allegation either by way of pleading or any documentary proof thereof. Even on a mere reading of definition of "related party" in Section 5 (24) of the Code, the Operational Creditor has failed to satisfy any of the parameters laid down therein. In order to make out a case of related party, one or the other Clauses from 5 (24) (a) to 5 (24) (m) are required to be satisfied. An imaginary third-party link through a corporate chain / person unrelated to the Corporate Debtor cannot become the basis to allege that the Financial Creditors of the Corporate Debtor are a related party.



10. **Response to the allegation of M/s A.P. Coal Washeries Pvt. Ltd. being a related party**

10.1 The allegation of the Operational Creditor that M/s. A.P. Coal Washeries Pvt. Ltd. is a related party to the Corporate Debtor in view of the fact that Mr. Sandeep Jajodia has 64 % shareholding in M/s A.P. Coal Wsheries Pvt. Ltd., is unfounded since Mr. Sandeep Jajodia was neither shareholder nor a Director of the Corporate Debtor on the date of the commencement of the Corporate Insolvency Resolution Process. Further, the Applicant has failed to establish as to how Mr. Sandeep Jajodia being the Promoter of Monnet Group controls and manages the affairs of the Financial Creditor i.e. M/s A.P. Coal Washeries Pvt. Ltd. There is not even a single document on record to show any participation by Mr. Jajodia directly or indirectly in the affairs of the Financial Creditor.

10.2 Allegation made by the Applicant is that Mr. Mahesh Kumar Sharma is the Chief Financial Officer and full time Director of Monnet Industries Ltd. and also holds the post of Director in various Group Companies of the Monnet Group. It is the Applicant's allegation that Mr. Mahesh Kumar Sharma was on the Board of Directors of the Corporate Debtor till December 2017 and is presently the Director of A.P. Coal Washeries Pvt. Ltd. However, Mr. Mahesh Kumar Sharma being a part of Monnet Industries is itself of no consequence to bring in the disqualification under Section 5 (24) since the Corporate Debtor is neither controlled nor managed by the Monnet Group of Companies. In terms of Section 5 (24) (d). As per Section 5(24)(d), disqualification occur only where there is common director and the director hold more than 2% shareholding. Mr. Mahesh Kumar had resigned from the Board of Corporate Debtor prior to the commencement of the present proceedings and in any case at no time did he have a holding of 2% in the Corporate Debtor.

10.3 The mere fact that appointment of Mr. Mahesh Sharma as a Director of M/s A. P. Coal Washeries Pvt. Ltd. coincide with the resignation of Mr. Sandeep Jajodia from the Board of A.P. Coal Washeries Pvt. Ltd. does not in any manner bear any link with the Corporate Debtor.



10.4 In respect of the allegation of the Applicant is with regard to Mr. Rajesh Rana being a Director of the Corporate Debtor as also being a Director in one of the Associate / Group Company of the Monnet Group, it is submitted that in absent any relation between Mr. Rajesh Rana and the Financial Creditor there is no restriction, even if Mr. Rajesh Rana is in employment with any of the Monnet Group Companies. The Applicant has failed to make out a case much less make any averment of any sort of relation between Mr. Rajesh Rana and any of the two Financial Creditors.

10.5 Mere fact that the registered office of A.P. Coal Washeries Pvt. Ltd. and the Corporate Debtor is the same does not by itself make the Financial Creditor a related party to the Corporate Debtor.

11. Response to the allegation of M/s South West Mining Ltd. being a related party

11.1 The allegation that M/s South West Mining Ltd. being a related party by virtue of the said Company being held by JSW Investment Pvt. Ltd. in which 99.9% share are owned by Mr. Sajjan Jindal whose sister is married to Mr. Sandeep Jajodia is de hors the provisions of the Code. Further, the Applicant has failed to furnish any particulars of any common Director between South West Mining Pvt. Ltd. as a Financial Creditor and the Corporate Debtor, Mr. Sandeep Jajodia is not related party to the Corporate Debtor.

Contentions of the CoC

12. CoC has filed additional affidavit dated 09.05.2019 wherein it is stated that table at paragraph 8 of the present IA is not a correct shareholding pattern of corporate debtor.

Contentions of the Financial Creditor M/s A. P. Coal Washeries Pvt. Ltd.

13. Financial Creditor A. P. Coal Washeries Pvt. Ltd. has filed additional affidavit dated 28.03.2019 stating that Monnet Ispat and Energy Ltd. is having NIL shareholding in the Financial Creditor A.P Coal Washeries Pvt.



Ltd. Further, AP Coal Washeries Pvt. Ltd. is not a related party of the corporate debtor in law and /or in fact.

Contentions of the Financial Creditor M/s South West Mining Ltd.

14. Financial Creditor M/s South West Mining Ltd. has filed additional affidavit dated 16.03.2019 stating that South West Mining Ltd., is not a related party of the corporate debtor in law and / or in fact. Further, Monnet Ispat and Energy Ltd. and Sandeep Jajodia are having NIL shareholding in the South West Mining Pvt Ltd. Sandeep Jajodia was never appointed as Director in South West mining Ltd.

Analysis

15. We have considered the submissions made by Ld. Sr. Advocate Shri Sunil Fernandes on behalf of the Applicant and Shri Mukul Mohta Ld. Counsel on behalf of Resolution Professional and Ld. Counsel on behalf of CoC. We have perused the pleadings and case laws cited by the parties.

16. The present Application has been filed questioning the inclusion of Financial Creditor M/s A. P. Coal Washeries Pvt. Ltd and M/s South West Mining Ltd. on the ground of 'related party' in terms of proviso to Section 21 (2) of the Code. Section 21 (2) read as under:

21. Committee of creditors

(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors.



Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.”

Thus, as per the first proviso any financial creditor, barring the exceptions provided in the second proviso, shall not have any right of representation, participation and voting in the meeting of the CoC, if it is a related party of the Corporate Debtor.

17. The term ‘related party’ in relation to a corporate debtor is defined in Section 5(24) of the Code. Section 5(24) read as under:

5. (24) related party, in relation to a corporate debtor, means--

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) any body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;



(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of--

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

(iii) interchange of managerial personnel between the corporate debtor and such person; or

(iv) provision of essential technical information to, or from, the corporate debtor;

18. The issues which need to be considered is whether financial creditors namely, M/s A. P. Coal Washeries Pvt. Ltd and M/s South West Mining Ltd. can be considered disqualified in terms of proviso to Section 21(2) of the Code on the ground of related party at relevant point of time in terms of Section 5(24) of the Code.

19. A three (3) Judge Bench of the Supreme Court in **Phoenix Arc Private Limited vs Spade Financial Services Limited & Ors.** Civil Appeal No. 3063 of 2020 in their judgment dated 01.02.2021 whether the disqualification under the proviso to Section 21(2) of IBC would attach to a Financial Creditor only in praesenti, or if the disqualification also extends to those Financial



Creditors who were related to the corporate debtor at the time of acquiring the debt. Supreme Court held as under:

*“94. Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing between a related party financial creditor and the corporate debtor. **As such, the financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC.** However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso.*

95. Hence, while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties in praesenti would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder. Mr Kaul has argued, correctly in our opinion, that if this interpretation is not given to the first proviso of Section 21(2), then a related party financial creditor can devise a mechanism to remove its label of a ‘related party’ before the Corporate Debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors.”

20. Thus, in terms of above judgment of the Hon’ble Supreme Court, disqualification in terms of proviso to Section 21(2) of the IBC would be attracted if Financial Creditor at the time of CIRP or constitution of CoC is a related party in terms of Section 5(24), except in certain circumstances past relationship between Financial Creditor and Corporate Debtor can also be considered.

21. The contention of the Resolution Professional that present Application is hit by ‘res judicate’ has no merit as this Adjudicating Authority itself has allowed the Applicant to raise the issue of ‘related party’.



22. In the present case in hand, the Applicant has alleged that M/s A. P. Coal Washeries Pvt. Ltd. is related party of Corporate Debtor in terms of (a) Section 5(24)(h) of IBC which means 'any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act' (b) Section 5(24)(j) of IBC which means 'any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement'. It is the contention of the Applicant that Mr. Sandeep Jajodia, who is the Promoter of Monnet Group, has 64% shareholding in A.P. Coal Washeries and Mr. Sandeep Jajodia controls the management of Corporate Debtor directly/indirectly through its Associates and Group Companies. A reference of Tripartite Agreement entered into amongst Corporate Debtor Operational Creditor and Monnet Ispat has been made.

23. The Corporate Debtor in their reply has categorically stated that Mr. Sandeep Jajodia was neither shareholder nor a Director of the Corporate Debtor on the date of the commencement of the Corporate Insolvency Resolution Process. Further, the Applicant has failed to establish as to how Mr. Sandeep Jajodia being the Promoter of Monnet Group controls and manages the affairs of the Financial Creditor i.e. A.P. Coal Washeries Pvt. Ltd.

24. The applicant has also alleged that shareholding pattern of A.P. Coal Washeries indicate that (64% shareholding of Mr. Sandeep Jajodia), Shareholding Pattern of Corporate Debtor and the cross shareholding between the Shareholders of Corporate Debtor establishes that A.P. Coal Washeries is a 'Related Party' to the CD in terms of Section 5 (24) (h) and 5 (24) (j) of IBC as both, the CD and A.P. Coal Washeries are accustomed to act on the advice, directions and instructions of the Monnet Group and Monnet Group controls more than 20% shareholding in both the CD and A.P. Coal Washeries Pvt. Ltd.

25. In order to attract Section 5(24) (h), the Applicant has to substantiate that Corporate Debtor accustomed to act on the advice, direction or instruction of M/s A.P. Coal Washeries Pvt. Ltd. The Applicant has not placed on record any document to substantiate that any director or manager of the

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Corporate Debtor was accustomed to act on the advice, direction or instruction of M/s A.P. Coal Washeries Pvt. Ltd. Further, no material has been brought on record to substantiate that Mr. Sandeep Jajodia being the Promoter of Monnet Group controls and manages the affairs of the Financial Creditor i.e. A.P. Coal Washeries Pvt. Ltd. The Corporate Debtor in their reply has categorically stated that Mr. Sandeep Jajodia was neither sharer holder nor a Director of the Corporate Debtor on the date of the commencement of the Corporate Insolvency Resolution Process.

26. The Applicant has alleged that Mr. Mahesh Sharma was a Director of A. P. Coal Washeries Pvt. Ltd. and also of the Corporate Debtor. However, at the time of initiation of CIRP, Mr. Mahesh Sharma was not a Director of the Corporate Debtor. He had resigned in December 2017. The Corporate Debtor has categorically stated that Mr. Mahesh Sharma did not have a holding of 2% share in the Corporate Debtor in terms of Section 5(24)(d).

27. Further, the Applicant has failed to substantiate that Mr. Jajodia or Financial Creditor A.P. Coal Washeries was participating in policy making of the corporate debtor.

28. The Applicant has also alleged that Mr. Vivek Kumar Gadkari, who was appointed as a Director of Corporate Debtor on 12.12.2017 to replace Mr. Mahesh Kumar Sharma, is a Director in Monnet Daniels Coal Washeries Ltd – Associate/Group Company of Monnet Group and promoted by Mr. Sandeep Kumar Jajodia. Mr. Vivek Kumar Gadkari resigned from the Directorship on 20.10.2018, after the initiation of CIRP on 07.06.2018. However, this fact do not substantiate relationship between the financial creditor and corporate debtor.

29. Contention of the Applicant that Mr. Rajesh Kumar Rana, who was appointed as a Director of Corporate Debtor on 25.07.2003, is also Director in Mass Skilltech Pvt. Ltd. – Associate/Group Company of Monnet Group and promoted by Mr. Sandeep Kumar Jajodia has no direct relevance to establish relationship between Financial Creditor and Corporate Debtor.



30. There is no prohibition in the law to have registered office of two entities at the same address. Therefore, there is no force in the contention of the Applicant on this issue.

31. Keeping in view the material brought on record and in view of the Supreme Court judgment in **Phoenix Arc Private Limited vs Spade Financial Services Limited & Ors.**, (Supra) in our view the Applicant has failed to substantiate that Financial Creditor M/s A.P. Coal Washeries Pvt. Ltd. was disqualified in terms of proviso to Section 21(2) of the Code on the ground of 'related party' at relevant point of time.

32. In respect of another Financial Creditor namely, M/s South West Mining Ltd., the applicant has alleged that JSW Investment has 51% shareholding in South West Mining. Further, 99.99% of equity shares of JSW Investment is held by Mr. Sajjan Jindal. Mr. Sajjan Jindal's sister, Mrs. Seema Jajodia, is married to Mr. Sandeep Kumar Jajodia who is the individual who has direct/indirect control of A.P. Coal Washeries, the second constituent of the CoC of the CD Promoter of Monnet Group. Thus, Mr. Sajjan Jindal is the brother-in-law of Mr. Sandeep Kumar Jajodia and a 'Related Party' to Mr. Sandeep Kumar Jajodia in terms of Section 5 (24) (A) of IBC.

33. Such kind of indirect relationship is not considered related party in the IBC. There is no common directorship between the financial creditor and corporate debtor. Further, the relationship between Sandeep Jajodia and corporate debtor has already been discussed above. The applicant has not placed on record any material to substantiate that how the financial creditor was a related party to the corporate debtor at the relevant point of time.

34. Keeping in view the material brought on record and in view of the Supreme Court judgment in **Phoenix Arc Private Limited vs Spade Financial Services Limited & Ors.**, (Supra) in our view the Applicant has failed to substantiate that financial creditor M/s South West Mining Ltd. was disqualified in terms of proviso to Section 21(2) of the Code on the ground of 'related party' at relevant point of time.



35. Accordingly, the instant application bearing **C.A. (I.A.) 1004/2018** in CP (IB) 227/2017 is **dismissed**.

Let a copy of the order be served to the parties.

Sd/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)