



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

IA (IB) No. 5392 of 2025

in CP(IB) No. 06 of 2023

Under Sections 43 of the Insolvency and Bankruptcy Code, 2016;

In the matter of:

Ritesh Agarwal

(Resolution Professional of Nufuture Digital (India) Limited)

....Applicant/ Resolution Professional

Versus

Mr. Rupchand Paswan

(Suspended Board of Director of the Corporate Debtor)

...Respondent No. 1

Mr. Purushottam Pandurang Divnale

(Erstwhile Director of the Corporate Debtor)

..... Respondent No. 2

Mr. Digamber Jadhav

(Suspended Board of Director of the Corporate Debtor)

..... Respondent No. 3

Mr. Deepak Jalinder Kamble

(Suspended Board of Director of the Corporate Debtor)

..... Respondent No. 4

Galaxy Cloud Kitchens Ltd.



(CIN: L47110MH1981PLC024988)

....Respondent No. 5

Mr. Sanjay Rathi

(Representative of erstwhile management of Corporate Debtor)

..... Respondent No. 6

Mr. Akhilesh Kalra

(Authorised representative of Corporate Debtor)

.....Respondent No. 7

In the original matter of:

HEWLETT PACKARD FINANCIAL SERVICES (INDIA) PRIVATE LIMITED

.... Financial Creditor

Versus

NUFUTURE DIGITAL (INDIA) LIMITED

.....Corporate Debtor

Order pronounced on 04.09.2026

Coram :

Shri Prabhat Kumar

Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Ganesh Remani, Adv. Annu Sharma,
Adv. Priyanka Jain i/b Swastika Mukherjee

For the Respondent No. 2 to 4 : Adv. Shyam Kapadia a/w Adv. Harsh Moorjani,
Adv. Jash Dalia

For the Respondent No. 5 : Adv. Abdullah Katlaiwala, Adv. Malhar Zatakia



For the Respondent No. 6 & 7 : Adv. Aakanksha S, Adv. Ankit Padey

ORDER

Brief background of the case:

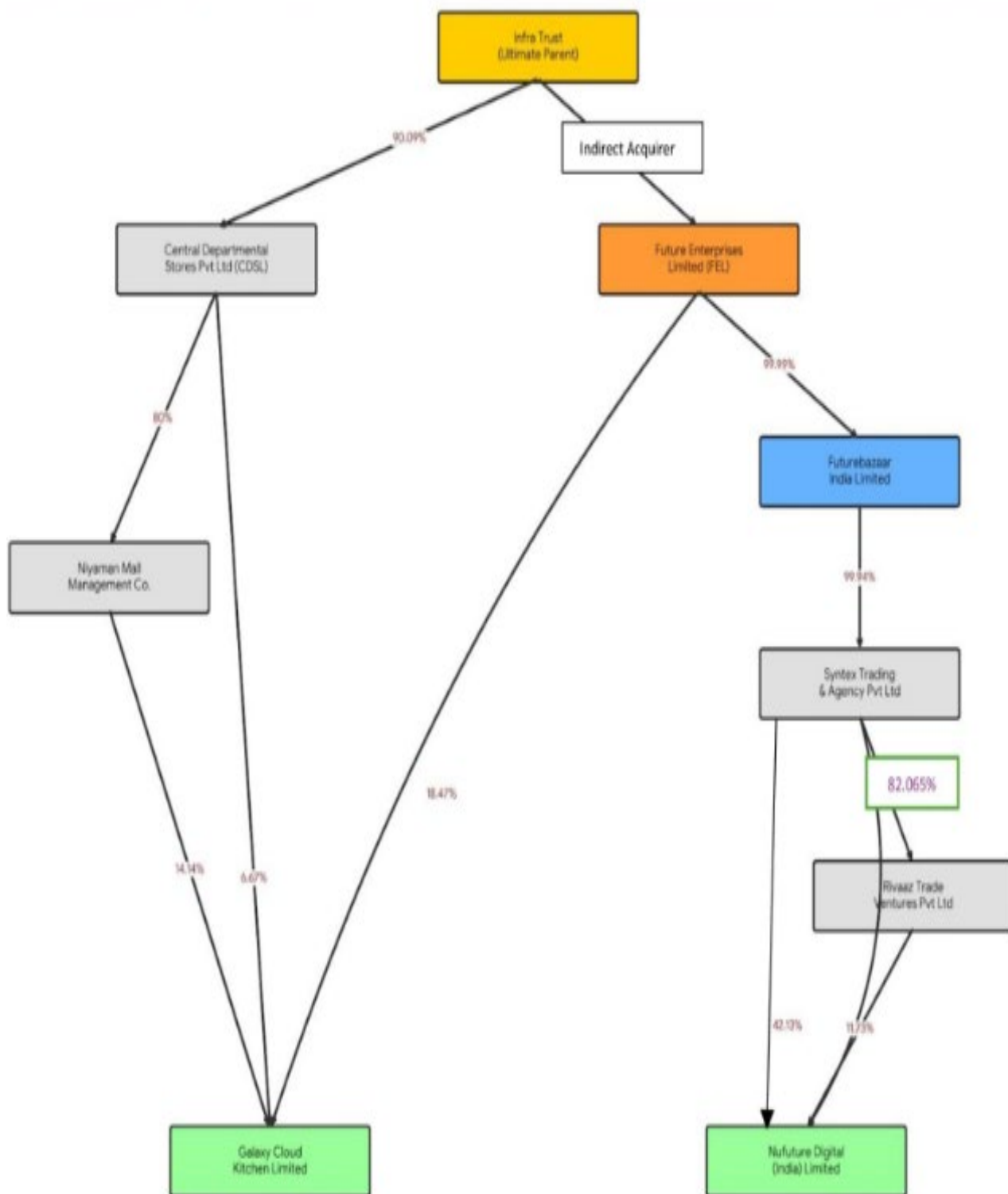
1. The present **Interlocutory Application No. 5392 of 2025 in CP (IB) No. 06 of 2023**, is filed by **Mr. Ritesh Agarwal**, the Resolution Professional (RP) of Nufuture Digital (India) Limited (the Corporate Debtor) against Mr. Rupchand Paswan (Respondent No. 1), Mr. Purushottam Pandurang Divnale (Respondent No. 2), Mr. Digambar Jadhav (Respondent No. 3), Mr. Deepak Jalinder Kamble (Respondent No. 4), M/s Galaxy Cloud Kitchens Ltd. (Respondent No. 5), Mr. Sanjay Rathi (Respondent No. 6), Mr. Akhilesh Kalra (Respondent No. 7) in the Corporate Insolvency Resolution Process ('CIRP') in case of **Nufuture Digital (India) Limited** (hereinafter referred to as the Corporate Debtor), seeking appropriate directions under Section 43 and 44 of the Insolvency and Bankruptcy Code of India ('Code/IBC'). The primary relief sought is an order directing the reversal of a Rs.50,00,000/- payment made to Respondent No. 5, which the RP alleges to be a "preferential transaction".
2. The application for initiating the Corporate Insolvency Resolution Process ('CIRP') against Corporate Debtor was filed by Hewlett Packard Financial Services (India) Private Limited ('Financial Creditor') under Section 7 of the Code and was admitted vide order dated **03.10.2024** (hereinafter referred to as the Insolvency Commencement Date). Respondent Nos. 1, 3 and 4 are continuing suspended directors of the Nufuture Digital (India) Limited, and Respondent No. 2 was director of corporate debtor during the time the impugned transactions took place. Respondent No. 5 is the person, to whom the corporate debtor made a payment of Rs. 50.00 Lakhs towards repayment of an outstanding unsecured loan, which is alleged as a preferential transaction. Respondent No. 6 i.e. Mr. Sanjay Rathi, represent the erstwhile management of the Corporate Debtor. Respondent No. 7 acts as the authorized representative pursuant to a Board Resolution dated 22.07.2024.



3. The RP states that he reviewed the Corporate Debtor's books, bank statements, and ledger records. He noticed an opening balance of Rs.50,00,000/- in the ledger account of Respondent No. 5 (Galaxy Cloud Kitchens Ltd.) for the Financial Year (FY) 2020-21, reportedly repaid on 08.05.2023. The RP alleges that Respondent No. 5 is a "related party" of the Corporate Debtor under Section 5(24) of the Code, accordingly, the impugned payment was made within two years from the date of commencement of CIRP.
4. To investigate further, the RP states to have appointed a Transaction Auditor, M/s S L Gupta and Associates, on 15.02.2025. The Auditor submitted a "Transaction Audit Report " dated 18.07.2025. It is submitted by the Applicant that based on the limited documents available, the Auditor identified the payment of **Rs.50,00,000/-**(Rupees Fifty Lakhs only) to Galaxy Cloud Kitchens Ltd. as a "Preferential Transaction". The RP argues the payment of Rs.50 Lakh paid on 08.05.2023, by the Corporate Debtor, was a discharge of an antecedent (pre-existing) financial debt to a related party, made during a time of financial distress. It is further stated by the RP that the payment was made within two years preceding the Insolvency Commencement Date (03.10.2024), falling squarely within the applicable look-back period for related party transactions. No contemporaneous consideration was received by the Corporate Debtor at the time of making this payment. By making this selective repayment to one creditor (a related party) while other creditors remained unpaid, the Corporate Debtor gave Respondent No. 5 a preferential advantage. The RP contends, such payment violates the *pari passu* distribution principle of the IBC and prejudices other creditors. Hence, the Applicant prays the following reliefs:
 - a. *To allow the present application;*
 - b. *To pass an appropriate order/ orders under Section 44(d) of the Insolvency and Bankruptcy Code, 2016 against Respondent No. 5.*
 - c. *To pass an appropriate order directing Respondent No. 5 for reversal of Rs. 50,00,000/- as alleged in this application. Such further and/or other order(s) as this Hon'ble Tribunal may deem fit and proper.*



5. It is the case of the Applicant that the Corporate Debtor and Respondent No. 5 are related parties in terms of section 5(24)(e), 5(24)(h), 5(24)(i) and 5(24)(l) of IBC and for this purpose, the applicant has relied upon decision in case of Referring to the judgement of *Hari Vitthal Mission v. Ravi Sethia (RP) and Ors. (Company Appeal (Ins) No. 1206 of 2022)*. It is further stated the Corporate Debtor and Respondent No. 5 have common directorship of Mr. Sharad Bhagwat Rustagi and following other relationships are, inter alia, canvassed by the Applicant :
- a. Respondent No. 5 itself disclosed the Corporate Debtor as a related party in its audited financial reports in the Annual Reports for the Financial Years 2023-24 and 2024-25 (Exhibit-I of the Application, Volume I, pages 98 and 192), and Future Enterprises Limited ("FEL") is declared as part of its promoter group in statutory obligations under the SEBI (Listing Obligations and Disclosure Requirements) Regulations and the Companies Act, 2013 by it.
 - b. FEL is a holding company of the Corporate Debtor holding 51.72% shareholding therein a layered holding structure in the corporate entity viz. through M/s Syntex Trading & Agency Private Limited and M/s Rivaaz Trade Ventures Limited, which are subsidiaries of Future Bazaar Limited, a 100% subsidiary of FEL. Therefore, the applicant states that this substantial shareholding establishes that FEL exercises significant influence and de facto control over the Corporate Debtor. The tabular representation of layered holding is reproduced below:



- c. Mr. Vivek Biyani, who served as a director of the Corporate Debtor from September 2018 until March 2023 shortly before the impugned payment, currently functions as the Managing Trustee of Infra Trust and holds a significant beneficial



- ownership in Respondent No. 5, as declared in Form BEN-1, thereby demonstrating his continued influence and stake in both entities during the relevant period.
- d. Respondent No. 5 has officially disclosed Niyaman Mall Management Co. Pvt. Ltd. as part of its promoter group and as a related party;
- e. Mr. Digambar Jadhav was a common director of both that company and the Corporate Debtor at the time of the disputed transaction, further reinforcing the interconnectedness between the parties.
- f. Mr. Sharad Bhagwat Rustagi held concurrent directorships in Respondent No. 5 (from September 2015 to July 2022) and the Corporate Debtor (from September 2016 to July 2022), and it was during this period of overlapping directorship that the underlying unsecured loan later repaid on 08.05.2023 was originally advanced.
6. The Respondent No. 2 to 4 have filed joint reply contending that they have been improperly impleaded as Section 43 proceeding is against the transferee of the transaction (Respondent No. 5), and not against former directors; Respondent No. 4 was not even a director on the date of the alleged transaction (08.05.2023), and he did not hold shares in either company, a key requirement under Section 5(24)(e) of the IBC; Mr. Mr. Sharad Bhagwat Rustagi had ceased to be a director on 26.07.2022, almost a year before the May 2023 transaction the repayment was made in the ordinary course of business, accordingly, the transaction cannot be impugned u/s 43(3) of IBC as the repayment of a loan arising out of past dealings is a normal financial operation; and the Respondent No.5 had become a related party of corporate debtor after the impugned transaction.
7. Respondent No. 5 (Galaxy Cloud Kitchens Ltd.), the recipient of the Rs.50 Lakh payment, submits that the impugned transaction was a genuine, bona fide commercial transaction; Respondent No. 5 is a third party and has no control over the Corporate Debtor's records, no adverse inference can be drawn against it for missing documents/information having been not made available by the corporate debtor or its suspended management; the transaction falls under the exception in Section 43(3) as the repayment was a routine transaction arising from past financial dealings; while



Mr. Sharad Bhagwat Rustagi was a non-executive director in both companies, however, he did not hold any shares in either, and, on the date of the impugned transaction, i.e., 08.05.2023, Mr. Rustagi had already ceased to be a director of both the Corporate Debtor (on 03.07.2022) and Respondent No. 5 (on 26.07.2022) approximately 10 months before the impugned transaction; Mr. Rustagi held non-executive directorships in both entities and did not hold any shareholding in either entity; and mere fact of a past common directorship, which had ceased to exist well before the impugned transaction, cannot establish a related party relationship.

8. Respondent No. 5 has distinguished the decision in case of ***Hari Vitthal Mission (Supra)*** stating that, in the present case, the common entity FEL holds only 18.63% shareholding in Respondent No. 5, which is insufficient even to constitute even an associate company. The chain of control is indirect, through at least three intermediary entities without any supporting contractual arrangement giving governance rights. The only alleged common director, Mr. Vivek Biyani, had ceased to be a director of the Corporate Debtor two months before the impugned transaction, and the Applicant has produced no evidence that the Corporate Debtor ever acted on the advice, directions, or instructions of FEL, Infra Trust, or Respondent No. 5.
9. Respondent No. 6 argued that he was the authorized representative of the Corporate Debtor and had no role whatsoever with regard to the impugned transaction. It is stated by the Respondent no. 6 that the Applicant himself has admitted in the Rejoinder that Respondent No. 6 served as a Director of the Corporate Debtor only during the period from 08.10.2007 to 21.02.2012. There is a gap of more than eleven years between the cessation of Respondent No. 6's directorship and the date of the impugned transaction. The Applicant has placed reliance on the profile of Respondent No. 6 available in the public domain, which indicates that Respondent No. 6 was associated with the Future Group for a period exceeding 15 years, however, it is argued by Respondent No. 6 mere past association with a group entity does not, by any stretch of imagination, render a person liable for transactions undertaken by the Corporate Debtor years after such association ceased.



Findings

10. Heard the Learned counsels for the parties and perused the material available on records.
11. It is not in dispute that a sum of Rs. 50.00 Lakhs was paid by the Corporate Debtor to Respondent No. 5 towards repayment of its antecedent debt beyond a period of one year but within two years of the commencement of CIRP, and Respondent No. 5, being unsecured creditor, would not have received any amount in the event of distribution in terms of section 53 of IBC in case of liquidation. The Respondents have disputed the relationship between Corporate Debtor and Respondent No. 5 in terms of section 5(24) of IBC, and have also, alternatively, contended that such repayment of loan was in ordinary course of business and financial affairs of the Corporate Debtor and Respondent No. 5.
12. Since, this payment was made beyond period of one year of the commencement of CIRP, the said payment would fall beyond specified period stated in section 43(4) of the IBC, accordingly, it is relevant to first examine whether Respondent No. 5 is a related party in terms of clause (e) or clause (h) or clause (i) or clause (l) of Section 5(24).
13. The relevant part of the definition of ‘related party’ under the Section 5(24) of the Code is reproduced as under:

*“(24) “**related party**“, in relation to a corporate debtor, means—*

.....

(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;

.....

(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;

.....”

14. In the case of ***P. Kasilingam and Others vs. P.S.G. College of Technology and others*** 1995 Supp (2) Supreme Court Cases 348, it is held that –

“19. A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicate that "definition is a hard- and-fast definition. and no other meaning can be assigned to the expression that is put down in definition." [See *Gough v. Gough*, (1891) 2 QB 665; [Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court](#), (1990 (3) SCC 682, at p. 717]. The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions....."

(emphasis supplied)

15. It follows from the above decision that the definition of the ‘Related Party’ using the words ‘means’ is to be strictly construed and the persons falling within the four corners of the definition can only be termed as ‘Related Party’ u/s 5(24) of IBC. During the course of arguments as well as in the written submissions, the applicant restricted its case to clause (h) and (i) of section 5(24) of IBC.

16. Clause (h) of Section 5(24) of the IBC terms a person as related party of corporate debtor if a director, partner or manager of the corporate debtor is accustomed to act on advice, directions or instructions of such person.

17. In the case of ***Phoenix ARC Private Limited vs. Spade Financial Services Limited & Ors.*** (2021) 3 Supreme Court Cases 475 that “84 Thus, facially, it would appear that the use of the simple present tense in the first proviso to Section 21(2) indicates



that the disqualification applies in praesenti. Furthermore, this interpretation would also be supported by a reading of the first proviso to Section 21(2), in light of the definition of 'related party' under Section 5(24), which uses phrases such as 'is accustomed to act' or 'is associated' to define a related party in the present tense."

18. It is clear from the aforesaid decision that the relationship between the Corporate Debtor and the concerned person should be examined as on date of transaction, and any historical relationship between two of them would not bring them within the ambit of section 5(24), if the said relationship does not subsist on the date of transaction. Section 43 of the IBC impugns a transaction which it takes place, as the words used in Section 43(2) are "there is transfer" and section 43(4) of the IBC also speaks of 'in praesenti' providing that 'A preference shall be deemed to be given at a relevant time, if it is given to a related party'. The words 'at relevant time' refers to the time when the transaction sought to be impugned transfer took place to a related party.
19. It is contended by the Applicant that the overlap in his directorship tenures indicates that the Corporate Debtor and Respondent No. 5 were under common directorship during the material period, and the outstanding unsecured loan in question from Respondent No. 5 to the Corporate Debtor was availed during the period of such common directorship, accordingly, these circumstances, taken together, suggest that Respondent No. 5 falls within the scope of a "related party" to the Corporate Debtor for the purposes of the present proceedings.
20. It is seen from the records that Mr. Sharad Rustagi was an additional director of Nufuture Digital (India) Limited from 31.08.2016 to 03.07.2022 and a director in Galaxy cloud kitchens limited from 29.09.2015 to 26.07.2022. It is also to be noted that from the information provided in Form No. BEN-1 submitted by Mr. Vivek Biyani, Niyman Mall Management Company Private Limited has purchased 63,57,910 Equity Shares (14.15%) of Galaxy Cloud Kitchens Limited from Central Departmental Stores Private Limited. Mr. Vivek Biyani has significant influence (as defined under Rule 2 {i} of the Companies (Significant Beneficial Owners) Rules,



2018), over Galaxy Cloud Kitchens Limited (the Reporting Company), by virtue of him being managing trustee of the Infra Trust (the Trust) which is an indirect shareholder of Niyman Mall Management Company Private Limited. It is to be noted that Mr. Vivek Biyani held the directorship of Nufuture Digital (India) Limited on 27.03.2012 to 17.09.2015. Further, Respondent No. 4 also ceased to be director of Respondent No. 5 prior to impugned transaction of repayment. Accordingly, the relationship between the Corporate Debtor and Respondent No. 5, through Mr. Sharad Bhagwat Rustagi or Mr. Vivek Biyani or Respondent No. 4 does not have any relevance to the present facts of the case, as they had ceased to be director in either of two companies prior to the impugned transaction of repayment.

21. Before we proceed further, it is pertinent to refer to decision in case of ***Spade Financial Services*** (Supra), wherein it is also held that the relationship is to be examined strictly in terms of section 5(24) of IBC only. The relevant part of the decision is reproduced below -

“62. The definition describes a commutative relationship, meaning that X can be a related party of Y, if either X is related to Y, or Y is related to X. The definition of ‘related party’ under the IBC is significantly broad. The intention of the legislature in adopting such a broad definition was to capture all kinds of inter relationships between the financial creditor and the corporate debtor.

59 The term ‘related party’ has also been defined by Parliament in the Companies Act, 2013 for all corporations. The definition of the expression has also been expanded for listed entities by the Securities Exchange Board of India by amendment to the Equity Listing Agreement to include elements mentioned under applicable accounting standards. However, in the present case, we are assessing its definition only under the IBC, which is exhaustive. The purpose of defining the term separately under different statutes is not to avoid inconsistency but because the purpose of each of them is different. Hence, while understanding the meaning of ‘related party’ in the context of the IBC, it is important to keep in mind that it was defined to ensure that those entities which are related to the



Corporate Debtor can be identified clearly, since their presence can often negatively affect the insolvency process.”

(emphasis supplied)

22. FEL is a holding company of the Corporate Debtor holding 51.72% shareholding therein through layered holding structure in the corporate entity, therefore, the applicant states that this substantial shareholding establishes that FEL exercises significant influence and de-facto control over the Corporate Debtor. It is also contended by the Applicant that FEL's disclosed promoter-group status, read with the shareholding structure, beneficial ownership, common controlling persons and overlapping directorships, establishes common control and influence under Section 5(24)(h), and FEL being part of the promoter structure of both entities, exercised de-facto control and influence over the decision-making of the Corporate Debtor as well as Respondent No. 5, and their respective managements were accustomed to act upon its advice, directions or instructions.
23. It is also stated by the Applicant that in the Annual Report of Respondent No. 5 for the Financial Year 2023-24, under the column "Name of the Related Party and its Relationship with the Listed Entity or its Subsidiary, including Nature of its Concern or Interest (Financial or Otherwise)," the Corporate Debtor has been explicitly identified, and all entities listed as related parties are under common group control, accordingly, these disclosures unequivocally establishes that the transactions between Respondent No. 5 and the Corporate Debtor were related party transactions.
24. It is noted that the explanatory statement annexed to the notice dated 12.08.2024 attached to Annual Report of Respondent No. 5 for the Financial Year 2023-24, the Respondent No. 5 is stated as a related parties, being an entity under common group control. Further, the Respondent No. 5 is classified as Related Party in the Financial Statements for the year ended 2024-25 in note no. 35 to the Financial Statements. However, note no. 34 of the financial statement for the year 2023-24 does not list Respondent No. 5 as related party, implying that the Respondent No. 5 would have become related party under SEBI Regulations after 31.3.2024 but before 12.8.2024. The impugned transaction took place on 08.05.2023 meaning thereby the Respondent



No. 5 was not a related party even in terms of SEBI Regulations or Companies Act, 2013. Accordingly, even the classification of Corporate Debtor as Related Party in terms of SEBI Regulations or Companies Act, 2013 does not support the contention of the applicant.

25. There is no quarrel that Respondent No. 5 is a person u/s 3(23) of IBC, however, the application does not specify any instance where any direction, advice or instruction was given by Respondent No. 5 to the Board of Directors of Corporate Debtor and they acted in accordance with such direction, advice or instruction. Further, it is relevant to note that section 5(24)(h) requires a director or manager to be accustomed to act, which contemplates a regular pattern of obedience to direction, advice or instruction of the person, who can be termed as related person under clause (h). Nonetheless, even if the contention of the applicant is worth consideration, it is FEL, which shall be classified as related party qua Corporate Debtor and Respondent No. 5 and not the Respondent No. 5 qua Corporate Debtor, as it is the person on whose advice the board is accustomed to act, which, as per own case of the applicant, is FEL.

26. It is also relevant to refer to decision in case of **ODAT GmbH v. CA Shantanu Brahma IRP and Anr. (2024) ibclaw.in 87 NCLAT**, wherein it is held that “12 The crucial words in the Section 5(24)(h) is “a person on whose advice, directions or instructions, the individual is accustomed to act”. Thus, for applying Section 5(24)(h) it has to be proved that on the advice of Appellant a Director, Partner or Manager of the Corporate Debtor is accustomed to act. The mere fact that one of the Director i.e. Rembert Biemond is common in Appellant as well as the Corporate Debtor shall not ipso facto lead to prove fulfilment of Section 5(24)(h). It has to be pleaded and proved that on advise, direction or instruction of the Appellant, a Director, Promoter or Manager of the Corporate Debtor is accustomed to act. The Appellant is only financial lender, who has extended loan facility to the Corporate Debtor. No material has been placed on record to indicate that Appellant has given advise, direction or instruction to Director, Promoter or Manager of the Corporate Debtor who is accustomed to act accordingly. ”



27. It is further contended that a harmonious reading of Sections 5(24)(i) and 3(37) of the Code with the definitions of “Associate Company”, “Promoter” and “Control” under the Companies Act, 2013 shows that significant influence may arise through either 20% voting power or control over, or participation in, business decisions under an agreement, though, FEL holds 18.63% in Respondent No. 5, its promoter-group status, common-group-control disclosures, beneficial ownership and overlapping directorships warrant the inference of FEL’s significant influence and the underlying arrangement.
28. There is no dispute that neither Corporate Debtor nor Respondent No. 5 are subsidiary or holding company of each other, and they are also not fellow subsidiaries of common person. The word ‘Associate Company’ is not defined under IBC, however, section 2(6) of the Companies Act, 2013 defines it to mean “*a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.*” Explanation thereto defines “Significant control” to mean “*control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement*”.
29. Again, neither the Corporate Debtor nor Respondent No. 5 exercises at least twenty per cent of voting power, or control of or participation in business decisions under an agreement. The applicant’s case is founded on the common shareholding of India Trust in these two companies held through chain of step down companies in Corporate Debtor and Respondent No. 5. There is no provision in law whereby associate(s) of a common shareholder becomes associates of each other. Hence, clause (i) of section 5(24) of IBC is also not applicable to the present case.
30. The Applicant has relied on the decision in ***Hari Vitthal Mission v. Ravi Sethia (RP) & Ors., Company Appeal (AT) (Ins.) No. 1206 of 2022 reported at 2024) ibclaw.in 720 NCLAT***. In this case, ***Hari Vitthal Mission*** was held as related party of the corporate debtor as Kanoria Foundation held 99.9% of ***Hari Vitthal Mission and 31% of Corporate Debtor indirectly*** besides TAIML, who as investment manager



controlled SIPL & PCPL, having express right to appoint and remove trustees, manage portfolio company affairs, and nominate directors on the board of the Corporate Debtor. The Hon'ble NCLAT had noted at Para 43 that "*The AA found that Suasth Healthcare Foundation had historically been accustomed to acting on the advice, directions, and instructions of Kanoria Foundation*", and it further observed at Para 45 that "*However, we have seen, how TAIML as Investment Manager, controls both the subsidiaries of SAIT viz. SIPL and PCPL. SIPL in turn holds 51% in CD and PCPL holds 49% in CD. The investment Manager for SAIT is TAIML which exercises control over CD through SIPL and PCPL. This multi-tier shareholding structure establishes a clear chain of control from the Kanoria Foundation down to the Corporate Debtor, with the Appellant falling within this chain of control*".

31. In the present case, FEL only holds 18.63% of Respondent No. 5's share capital and there is no arrangement between FEL and other shareholder(s) vesting right in FEL to control the directors of Respondent No. 5, accordingly, the facts of present case are distinguishable from the facts in case of Hari Vitthal Mission (Supra).
32. The applicant has contended that it is a fit case to pierce the corporate veil to give effect to their true relationship and prevent the object of Sections 43 and 5(24) of the Code from being defeated. As noted above, both section 43 and section 5(24) have to be strictly construed, and its scope can not be enlarged by piercing the corporate veil. It is not case of the applicant that some fraud has taken place necessitating piercing of the corporate veil to look through it.
33. The decision in case of ***Alpha Corp Development Pvt. Ltd. v. GNIDA & Ors. (Civil Appeal No. 1526 of 2023) reported at (2026) ibclaw.in.242 SC*** is also distinguishable on facts wherein it was said at para 54 that "*As is clear from the aforesaid observations when, in reality, associated or group companies are inextricably connected so as to form part of one concern, the corporate veil should be lifted. Applying this principle in ArcelorMittal India Private Limited vs. Satish Kumar Gupta and others [(2018) ibclaw.in 31 SC]*¹⁴, this Court affirmed that where protection of public interest is of paramount importance or where a company has



been formed to evade obligations enforced by law and by the Courts, the Court would disregard the corporate veil. It was further observed that this principle would be applied even to group companies so that one is able to look at the economic entity of the group as a whole.”

34. In that case, the Hon’ble Supreme Court observed that two companies are wholly owned subsidiaries of corporate debtor, and 98% of third one is held by corporate debtor, all the three companies shared common directors with corporate debtor, and had only lands leased to them by GNIDA for development of projects thereon. In the present case, FEL is common link between Respondent No. 5 and Corporate Debtor, however, FEL only holds 18.63% of Respondent No. 5, even though FEL holds 51.72% of Corporate Debtor. Further, in the case of Alpha Corp (Supra), the corporate veil was lifted while considering the resolution plan as corporate debtor in that case had invested amounts in the projects developed by these subsidiaries in public interest. It is pertinent to note that Hon’ble Supreme Court also said at Para 56 that *“Each case that comes before a Court, in the context of lifting of the corporate veil, would have to turn upon its own individual facts. Given the facts obtaining presently, we are of the firm view that this was an eminently fit case for lifting the corporate veil, as EIL was the main driving force in the development of the projects and in payment of GNIDA’s dues. The subsidiary companies were only a front.”* In the present case, it is not case of Applicant that Respondent No. 5 was a front of FEL, and it is also not discernible from the facts before us.

35. In view of the aforesaid discussion, we are of considered view that Respondent No. 5 is not a related party of Corporate Debtor in terms of Section 5(24) of IBC, and since the impugned payment was made beyond one year of insolvency commencement date, the said payment falls beyond the period specified in section 43(4) of the IBC, hence, can not be impugned u/s 43 of IBC.

36. In terms of above, **IA 5392 of 2026 is dismissed and disposed of.**

Sd/-

Prabhat Kumar
Member (Technical)

Vaishnavi B

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)