IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH - BENGALURU
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(*Through web-based video conferencing platform)*

I.A.No.575/2022
Under Rule 60 (5) of the I & B Code, 2016
R/w Rule 11 of the NCLT Rules, 2016
&
I.A.No.326/2023
Under Rule 60 (5) of the I & B Code, 2016
R/w Rule 11 of the NCLT Rules, 2016
in
C.P. (IB) No.123/BB/2019
U/s.7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

CANARA BANK
ARM Branch,
No.86, Spencer Tower,
M.G Road, Bengaluru ... Applicant

And

1. DUNLOP POLYMERS PRIVATE LIMITED,
Plot No.139C, Belagola Industrial Area,
Metagallli Industrial Estate Road,
Mysore -570016 ... Respondent No.1/ Corporate Debtor

2. **SURYAMANI FINANCING COMPANY LIMITED,**
No.9, EZRA Street, Top Floor,
Room No.47,
Kolkata- 700001 ... Respondent No.2

3. **MILLER TRADERS PRIVATE LIMITED,**
No.9, EZRA Street
Kolkata – 700001 ... Respondent No.3

4. **DAHISAR TRADERS PRIVATE LIMITED,**
1, Sarojini Naidu Sarani,
Kolkata - 700017 ... Respondent No.4

5. **KANTI COMMERCIALS PRIVATE LIMITED,**
1, Zumrudpur, Community Centre,
Kailash Colony,
NewDelhi-110048 … Respondent No.5

<u>I.A. No. 326 OF 2023</u>

MILLER TRADERS PRIVATE LIMITED,
No.9, EZRA Street
Kolkata – 700001 … Applicant

<u>And</u>

1. **DUNLOP POLYMERS PRIVATE LIMITED,**
Plot No.139C, Belagola Industrial Area,
Metagallli Industrial Estate Road,
Mysore -570016
Under Corporate Insolvency Resolution process … Respondent No.1

2. **CANARA BANK**
ARM Branch,
No.86, Spencer Tower,
M.G Road, Bengaluru … Respondent No. 2

3. **SUBHLAXMI COMPUSIS PRIVATE LIMITED,**
9, Ezra Street,
Kolkata – 700001 … Respondent No.3

4. **SURYAMANI FINANCING COMPANY LIMITED,**
No.9, EZRA Street, Top Floor,
Room No.47,
Kolkata- 700001 … Respondent No.4

5. **DAHISAR TRADERS PRIVATE LIMITED**
2/7, Sart Bose Road,
Vasundhara, 6th Floor,
Spare No.7, Kolkata – 700020 … Respondent No.5

6. **NANDAKINI CONTRACTORS PRIVATE LIMITED,**
9, Ezra Street,
Kolkata – 700001 … Respondent No.6

7. **KANTI COMMERCIALS PRIVATE LIMITED,**
1, Zumrudpur Community Center,
Kaliash Colony Extension,
New Delhi – 110048 … Respondent No.7

8. **LUNI HOUSING AND DEVELOPERS PRIVATE LIMITED,**
5A, Anandilal Poddar Sarani,
1st Floor, Kolkata – 700071 … Respondent No.8

9. **SWAPANLI TRADE AND COMMERCE PRIVATE LIMITED,**
29A Weston Street, 3rd Floor,
Room No.C5,
Kolkata – 700012 … Respondent No.9

10. **STEPHENS FINANCILAS SERVICES PRIVATE LIMITED,**
9, Ezra Street,
Kolkata – 700001 … Respondent No.10

11. **KANPUR PROPERTIES AND FINANCE PRIVATE LIMITED,**
9, Ezra Street,
Kolkata – 700001 … Respondent No.11

Order delivered on: 7th December, 2023

Coram: 1. Hon'ble Justice (Retd.) T Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Applicant in I.A No. 575/2022 & Respondent in I.A No.326/2023 : Shri Hemanth R Rao
For Applicant in I.A No.326/2023 & Respondent in I.A No.575/2022 : Shri Samjyor L with Shri Dibyayan B.

O R D E R
Per: B E N C H

I.A.No.575/2022

1. The present application is filed on 21.10.2022 by Canara Bank (Applicant) against the Respondents under Section 60(5) of the I & B Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 *interalia* seeking to declare the Respondents No.2 to 5 as related parties of the Corporate Debtor; appoint Mr. Kanekal Chandrashekar as the Resolution Professional to conduct the

CIRP of the Corporate Debtor; and direct the RP to constitute a new Committee of Creditors in accordance with law.

2. The application under Section 7 bearing C.P (IB) No.123/BB/2019 was filed on 19.02.2019 by the Financial Creditor for initiating Corporate Insolvency Resolution Professional in respect of the Corporate Debtor M/s. Dunlop Polymers Private Limited and the CIRP was initiated vide order dated 25.06.2019 by this Adjudicating Authority.

3. Brief facts of the instant Application, which are relevant to the issue in question, are as follows:

    i. The Applicant is a Financial Creditor of the Respondent No.1 Corporate Debtor. The other Respondents No. 2 to 5 are the members of the Committee of Creditors of the Corporate Debtor.

    ii. It is stated that the Applicant filed T.A No.687/2017 against the Corporate Debtor before the Debts Recovery Tribunal Bengaluru (DRT) for recovery of its dues and the DRT vide its order dated 31.03.2017 allowed the TA with costs. In order to scuttle the Applicant Bank's recovery efforts, the corporate debtor in collusion with the Respondent No.3 got to file petition u/s 7 of the IBC and the Tribunal admitted the same vide its order dated 25.06.2019 appointing Mr. Tuhin Kumar Chatterjee as its Interim Resolution Professional.

    iii. Further, the applicant was informed by the IRP regarding initiation of CIRP vide letter dated 29.06.2019. The Applicant submitted its Form-C claiming a sum of Rs.39,32,29,580.84/- and brought the aforementioned DRT proceedings to the knowledge of the IRP. Instead of admitting the claim, the IRP sent a letter dated 12.07.2019 reducing the Applicant Bank's claim to Rs.29.02 crores on a flimsy basis. The Applicant Bank replied that its claim has already been adjudicated upon by the DRT and that the IRP cannot sit on appeal over the DRTs order. The IRP sent an email dated 26.07.2019 notifying the 1st CoC meeting to be held on 30.07.2019 in Kolkata. By another email on the same date the IRP informed the Applicant that he had verified the claims and provided a list of COC members.

On 29.07.2019 the Applicant issued a legal notice bringing to the IRP's notice that he had not given sufficient notice for the CoC meeting as required under the law and requested the IRP to provide details of other Financial Creditors and their claim.

iv. However, the IRP conducted the CoC meeting on 30.07.2019 and sent an email to the Applicant dated 01.08.2019 with the minutes of meeting. By email dated 02.08.2019 the Applicant once again reiterated its objections and casted its e-vote without prejudice to its "*protest letter, our claim as a sole secured creditor or our right to approach any forum/ authority/ court.*"

v. It is stated that the IRP replied to the Bank's objections stating that he had conducted the CoC meeting in accordance with law and that the Bank was not the "*adjudicating authority to verify the list of Financial Creditors*" and that the Applicant had no right "*to order the IRP to provide you any sorts of documents pertaining to the other financial creditor.*".

vi. It is stated that due to the deliberate refusal of the IRP, the Applicant was constrained to independently obtain the financial documents of the other creditors. On perusal of the financial documents, the collusive nature of the entire proceedings and the illegal constitution of the CoC became evidence. Hence the Applicant Bank immediately approached the Hon'ble High Court of Karnataka by filing W.P No. 42878/2019 challenging the entire proceedings. At the first instance the High Court was pleased to stay the captioned proceedings vide its order dated 19.09.2019. However, the Writ Petition was later disposed vide Order dated 13.09.2022 reserving liberty to the Applicant to challenge such action in accordance with law.

vii. It is stated that the Applicant Bank has challenged the constitution of CoC but the IRP has refused to consider any of the objections raised by the Applicant Bank. The Applicant has relied upon the provisions of Section 5 (24) (f) of the IBC to contend that Respondent No.2 to 5 are a related parties to the Corporate Debtor. In the instant case, the erstwhile director of the corporate Debtor Mr. A.K.Goenka is also the Director of Suryamani Financing Company Limited, the Respondent No.2 herein, which has 20.66% voting share in the CoC. Further, the Respondent No.2 also has a shareholding of 18.52% in the Corporate Debtor. Thus the Respondent No.2 is a related party as a Director of the Corporate Debtor can influence the Board of Directors of the Respondent No.3 Company and could not have been included in the CoC.

viii. It is stated that the Respondent No.2 which is a related party has a shareholding of 18.45% in the Respondent No.3. Similarly, the Respondent No.5 is also a shareholder in the Respondent No.2 Company holding 9.91% shares. Thus the Respondent No.3 being controlled by a related party is also a related party. Further, the Respondents No.2 & 3 are shareholders of the Respondent No.4 as is evident from there balance sheets. Further, Mr. S.D Roy who is a director in the Respondent No.3 Company is also director in the Respondent No.4 Company. Thus it is evident that the Respondent No.4 Board is controlled by the Respondents No.2 & 3 Company.

ix. It is further stated that the Respondent No.2 is a shareholder in the Respondent No.5 holding 29.89% shares. Mr. Amit Kumar Joshi who is director in the Respondent NO.2 is also a Director in the Respondent NO.5 Company. Both the facts show that the Respondent No.5 is being controlled by the Respondent No.2. Therefore, it is evident that the Respondent No.2 is a common source of control over all the other Respondents and the Respondent No.2 to 5 are related parties of the corporate Debtor. Thus, the Respondents having initiated collusive proceedings against the Respondent No.1 to defeat the rights of the Creditors, have also hijacked the CoC by influencing the IRP to illegally and incorrectly included them in the CoC. Section 21 (2) of the code clearly stipulates that related parties cannot have any voting right in the CoC. In the instant case, the entire CoC except this Applicant consists of only related parties. Further, the IRP has refused to provide any explanation for admitting the other members to the CoC inspite of repeated requests of this

Applicant. Therefore, the CoC has been constituted in collusion with the related parties of the corporate Debtor. Hence the constitution of the CoC is illegal and it has to be reconstituted.

x. It is stated that during the proceedings before the High Court, it was informed that the IRP has expired. Due to the IRP's untimely demise, the entire CIRP is in a limbo as there is no resolution professional to convene CoC meetings or take appropriate steps for resumption of CIRP. Further all other members being related parties are not interested in resuming the CIRP. Hence, the Applicant has filed the present application for constitution of the COC and resumption of the CIRP. Further, the name of the Shri Kanekal Chandrashekar has been proposed as RP with a request to Adjudicating Authority to appoint him as RP.

4. Only the Respondent No.3 has filed the statement of objections vide Dy. No. 3725 dated 14.07.2023. No objection has been filed by the Respondents No. 1, 2, 4 & 5. The Respondent No.3 has contended as under:

   i. Respondent No. 3 is a private limited company under the provisions of the Companies Act, 1956 and engaged in the business of financing, industrial enterprises whether by way of making loans or advances. Furthermore, Respondent No.3 is a non-deposit-taking and non-banking financial company registered with the Reserve Bank of Indi vide registration certificate dated 23.09.1998.

   ii. It is stated that due to the interim order obtained by the Applicant from the Hon'ble High Court, the CIRP could not be conducted between 2019 to 2022. Upon the writ petition being dismissed, the Applicant has approached this Tribunal on false and frivolous grounds seeking for removal of Respondents from the committee of creditors on the incorrect premises that the Respondents are related parties. It is evident that the Applicant intends to thwart the CIRP process or seeks for recovery of only its alleged dues to the detriment of the other creditors.

iii. The Respondent No.3 is not controlled by the Corporate Debtor. Board of Directors of Respondent No.3, managing director or manager do not act on the advice of the Corporate Debtor or the directors of the Corporate Debtor. Respondent No.3 does not hold shares with the Corporate Debtor or have two common directors with Corporate Debtor. Respondent No.3 does not hold shares with the Corporate Debtor or have two common directors with Corporate Debtor. Respondent No.3 does not fall within any of the criteria under Section 5 (24) of the I & B Code, 2016 qua the Corporate Debtor. Therefore, the Respondent No.3 is not a related party.

iv. It is stated that form the perusal of the application, it is evident that the Respondent No.2 is also not a related party of the Corporate Debtor. Assuming the Respondent No.2 holds 18.52% shares of the Corporate Debtor, under Section 5(24) of the Code, to be a related party one has to hold 20% of shares. The said threshold is not met by Respondent No.2. Therefore, the Respondent No.2 is not a related party of the Corporate Debtor.

v. It is stated that the Applicant has neither pleaded nor demonstrated how Respondent No.3 is controlled by Respondent No.2. Respondent No.3 is not controlled by Respondent No.2 and on this ground alone the application ought to be set aside. Respondent No.2 held merely 18.45% shares of Respondent No.3. Respondent No.2 ceased to be a shareholder of Respondent No.3 on 29.03.2021. Respondent No.2 & 3 do not have common directors. Respondent No.2 does not directly or indirectly control Respondent No.3. Apart Respondent No.5 & Respondent No.3 do not have common directors.

vi. It is stated that the Respondents No.5's shareholding to the extent of 9.91% in Respondent NO.2 does not increase the Respondent No.2's erstwhile shareholding in Respondent No.3. Therefore, at no point directly or indirectly Respondent No.2 had more than 18.45% shareholding in Respondent no.3.

vii. Since Respondent No.3 is not controlled by Respondent No.2, the only basis on which Applicant has claimed that Respondent No.3 is a related party of Corporate Debtor i.e., Respondent No.3 is controlled by an alleged related party – Respondent No.2 stands vitiated.

viii. It is stated that any alleged shareholding or common directors between two financial creditors does not render a financial creditor a related party to the Corporate Debtor. It is stated that any alleged common shareholding or common directors between the Financial creditors does not render the financial creditors a related party to the corporate Debtor. Further merely having a common shareholder with an allegedly related party of the corporate Debtor is not a ground for classifying entities as 'Related party' under Section 5 (24) of the code.

ix. It is stated that the criterion adopted by the Applicant for classification of the Financial Creditors of the Respondent No.1 as "related party" is the alleged investment by Financial Creditors in the shareholding of the other financial creditors irrespective of the percentage of the shareholding. The yardstick adopted by the applicant for identification and classification of "related party"; is fallacious and dehors the scheme of "related party" under the code. Once the code has enumerated and defined who will be classified as a "related party", the Applicant has no basis in law to apply a different yardstick to allege that financial creditors fall within the definition of 'related party' for maintaining its misplaced application. The Applicant cannot be permitted to add works or enlarge the scope of the term "related party".

x. It is further stated that the Applicant is allegedly one of the creditors of the Corporate Debtor. The Applicant has no locus standi to maintain this application. Once the committee of Creditors is constituted, any replacement of the RP can only be maintained by the COC or the Creditor at the behest of whom the CIRP had commenced. As per Section 21 of the Code, the CoC shall comprise all financial creditors of the corporate Debtor. As per the proviso to Section 21, related parties do not have the right to representation, participation or voting in a meeting of the committee of Creditors. The Applicant has sought for the RP to constitute a new CoC.

Assuming without admitting that the Respondent is a related party even then the application is not maintainable because the law does not preclude alleged related parties from being members for the Committee of Creditors.

xi. It is denied as being false that the proceedings initiated against the Respondent No.1 is collusive or fraudulent in nature. Respondent No.3 being a financial creditor of Respondent NO.1 has placed all the necessary documents before this Hon'ble Tribunal for consideration and this Tribunal after taking into consideration the documents placed on record has admitted the application of Respondent No.3, and initiated CIRP against the Respondent No.1. After admitting the application of Respondent No.3, IRP was appointed for the CIRP of Respondent No1. The Respondent No.3 after the public announcement of the IRP on 08.07.2019 submitted its claim amount of INR 51,73,979/-.

xii. The Respondent No.3 filed its objections to the Writ petition as well as an application seeking the interim order to be vacated. During the pendency of the writ petition the resolution professional passed away on 23.01.2021. ON 13.09.2022 the Hon'ble High Court was pleased to dismiss the writ petition stating that "*this petition is disposed off reserving the liberty to the petitioner to lay a challenge to the impugned order elsewhere in accordance with law*".

5. The matter was Reserved for Orders on 22.09.2023 and the Applicant and Respondents were directed to file written submissions within a week's time. In response, the Applicant has filed the Written Submission vide Dy. No.4954 dated 25.09.2023 by reiterating the facts mentioned in the application. It is stated that from the financial statements of the Corporate Debtor, it is noticed that Mr. A.K Goenka was a director of the Corporate Debtor and also Director of the Respondent No.2. Further, from the financials of Respondent No.2 it is evident that the Respondent No.2 is a shareholder of the Corporate Debtor to the tune of 1,81,800 shares of the Corporate Debtor and also a share holder of Respondent No.3, Respondent No.4 and Respondent NO.5 holding 40,66,500, 1,00,000 and

40,50,000 shares respectively. It is further stated that the Respondents No.2 to 5 have tried to create a complicated structure by being shareholders in each other and also they share common directors with each other. Mr. Jitendra Prasad was a common Director in Respondent No.2, 3,4 & 5; Mr.S.D Roy was a common director in Respondents No.2, 3 & 4 i.e., Respondent No.2 to 4 had two common directors at the same time thereby having complete control. Another, Mr. A.K Joshi was a common Director between Respondent No.2 & 5, thus, Respondent No.2 & 5 too had two common Directors at the same time. Thus, they are inextricably linked and related to each other as the common directors are in control of the company and also act on the advice, directors, or instructions of the directors of the Corporate Debtor. Further reliance was placed on the order of this Tribunal in Mr. *Shivadutt Bannanje, RP of Dnyanyogi Shri Shivkumar Swamji Sugars limited* in which it was held that related parties must be excluded from the COC and the erstwhile directors who had resigned from the Company simultaneously were debarred from becoming the members of the CoC.

6. No written submissions was filed by the Respondents in respect to the order dated 22.09.2023 within the stipulated period of time.
7. Heard the Learned Counsel for the Applicant and Respondent. We have carefully perused the pleadings of the Parties along with extant provisions of the Code and the Regulations made thereunder.
8. It is submitted by the Ld. Counsel for the applicant that the Applicant has submitted its claim and brought the DRT proceedings to the knowledge of the IRP, however, the IRP sent a letter reducing the claim. The Ld. Counsel for the Applicant has submitted that the Respondent No.2 is a common source of control over all the Respondents and Respondents No.2 to 5 are related parties of the corporate debtor; and except the Applicant, the entire CoC consists of related parties. Therefore, the present application is filed by the Applicant, requesting for reconstitution of CoC.
9. However, the Ld. Counsel for the Respondent No. 3 contended that due to the interim order issued by the Hon'ble High Court of Karnataka, the CIRP could not be conducted between September 2019 to September 2022.

Upon the writ petition being dismissed, the Applicant has approached this Tribunal with false and frivolous grounds seeking for removal of the Respondents from the COC which is incorrect. He further submitted that the Applicant is one of the creditors of the Corporate Debtor; therefore he has no locus standi to file the application.

10. It is reiterated by the Applicant in the written submission filed on 25.09.2023 that the Respondents No. 2 to 5 are related parties. The Director of the Respondent No.2 was a director of the Corporate Debtor and also shareholder of Respondent No. 3, 4 & 5 Companies. Further, the Respondent Nos. 2 & 3 are also the shareholders of the Respondent No.4. There were more than one common Directors between these companies at the same time, as discussed above. The details of cross holding of shares between the various Respondent Companies are given in the I.A and the submissions dated 25.09.2023. Therefore, the Respondent No.2 is a common source of control over the other Respondents, thus they are related parties, for which they have also produced the Annual return and Balance sheet of the Respondent Companies. A perusal of the Annual returns and Balance sheets of the Respondents No.2 to 5 show that these companies share common Directors with each other and are linked and related to each other as common Directors are in control of the company.
11. In this connection it is relevant to cite the provisions of Section 21 (2) of IBC 2016 which read as under:

Section 21 – Committee of Creditors

(1)…..
(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:

12. The objections of the Respondent No.3 filed on 14.07.2023 stating that merely having common director does not render the party to become a related party is not tenable in law. The provision of Section 5 (24) (f) as

well as 5 (24) (d) of the Code along with the facts regarding percentage and number of cross-holding of shares and more than one common Directors at the same time has been explained in the I.A, as well in the written submissions mentioned above reveals that the Applicant's arguments regarding related parties is on a firm basis. It is also pertinent to point out here, that out of a total of 5 Respondents; only Respondent No.3 has chosen to file objections to the I.A.

13. The above discussion has clearly brought out the factual position in respect of the erstwhile Director of the Corporate Debtor Shri A.K. Goenka who was also a Director of the Respondent No.2 Company and the mutual cross holding of the shares by the Respondents in each other, and common directors establishes that the Respondents No.2 to 5 are all related parties of the Corporate Debtor, under the scope and ambit of Section 5 (24) of the IBC, 2016. The argument that Shri A.K.Goenka is not currently a related party of the Corporate Debtor is immaterial, in view of the judgment of Hon'ble Apex Court in the case of *Phoenix Arc Private Limited v/s. Spade Financial Services Limited & Ors (2021) 3 SCC 475.* The Hon'ble Supreme Court has, inter alia, observed as under :

"90. Hence, we would need to consider the meaning of the proviso in the light of the context, object and purpose for which it was enacted. The purpose of excluding a related party of a Corporate Debtor from the CoC is to obviate conflicts of interest which are likely to arise in the event that a related party is allowed to become a part of the CoC. The logic underlying the exclusion has been summarized as follows: "11.9 The Committee was of the view that the disability under the first proviso to Section 21(2) is aimed at removing any conflict of interest within the CoC, to prevent erstwhile promoters and other related parties of the Corporate Debtor from gaining control of the Corporate Debtor during the CIRP by virtue of any loan that may have been provided by them.

…

…

"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."

14. The Hon'ble Apex Court in the case of Phoenix ARC (supra) has given a clear-cut finding in paras 94 and 95 of the Judgment that under Proviso to Section 21(2) not only those financial creditors that are related parties presently would be debarred from the CoC; but those former related parties who, ceased to be the related party in order to circumvent the disqualification under this Proviso would also be covered under the exclusion granted by this Proviso. The Hon'ble Apex Court held that if this interpretation is not given to the First Proviso of Section 21(2), then a related party can devise a mechanism so as to remove its categorisation as

a 'related party' before the CD undergoes CIRP; so as to enable itself to enter the CoC and influence the decision making at the cost of the other Financial Creditors. In this case, merely because, the erstwhile Director, of the Corporate Debtor Shri A.K Goenka had ceased to be the Director of the Corporate Debtor, while he was a Director of Respondent No.2, does not mean that the Respondent No.2 ceased to be a related of Corporate Debtor.

15. Therefore, having considered the above discussions including the pleadings by the respective parties and the records available and in line with the judgment of Hon'ble Apex Court, it is held that the Respondents No.2 to 5 being the related parties cannot be part of the CoC in the sense that they will not have any right, representation participation and voting in the meeting of the CoC. In view of the fact of the matter, we hereby direct for the reconstitution of the CoC and then proceed in accordance with the Code and Regulations. Thus the prayers 'A' and 'C' in this application are disposed of.

16. Secondly, it is noticed that the IRP appointed by this Adjudicating Authority has passed away on 23.01.2021 during the pendency of the proceedings. The Applicant in its prayer has proposed the name of Mr.Kenekal Chandrashekar to appoint as the Resolution Professional of the Corporate Debtor. It is noticed that the CIRP in the present case was admitted on 25.06.2019 by this Adjudicating Authority. However, the same was stayed by the Hon'ble High Court of Karnataka vide order dated 19.09.2019. The stay order was subsequently vacated by the Hon'ble High Court of Karnataka on 13.09.2022. Therefore, the CIRP was kept in abeyance for a period of almost 3 years and now this present application is filed by the Applicant Canara Bank on 21.10.2022, immediately after the vacation of the stay order by the Hon'ble High Court.

17. Subsequently I.A No.326 of 2023 is also filed on 09.05.2023 by M/s. Millers Traders Private Limited, Respondent No.3 herein, in which they have proposed the name of other RP Shri Mammohan Jhawar, to be

appointed in place of the original RP who has passed away. In this connection, we are relying on the judgment of the *Hon'ble NCLAT, Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No.786 of 2020 dated 20.07.2021* in which, the NCLT had appointed a new IRP by exercising its power under Rule 11 of the NCLT Rules 2016 in place of the erstwhile IRP. This order was challenged before the Hon'ble NCLAT by the erstwhile IRP. It was contended by the Applicant/erstwhile RP that the change or substitution of the RP can be made only under section 27 of the Code and the NCLT cannot utilize its inherent powers prescribed under Rule 11 of the NCLT Rules 2016 to bypass the provisions of Section 22 & 27 of the IBC 2016. However, the Hon'ble NCLAT decided that it was not a case when ingredients of Section 22 & 27 of the IBC were met and therefore the Adjudicating Authority rightly invoked the inherent jurisdiction under Rule 11 of the NCLT and passed the impugned order appointing the new IRP. In that case, the CIRP process was stalled on account of dispute between secured and unsecured creditors and therefore an application under Rule 11 of the NCLT Rules 2016 was filed by the Respondent No.1, Allahabad Bank.

18. Therefore, we are relying on the above referred order of the Hon'ble NCLAT Principal Bench, New Delhi, since in this case also the CIRP proceedings were stalled for three years due the stay order granted by the Hon'ble High Court of Karnataka. Since the object of the IBC is to complete the CIRP in the time bound manner, therefore, it is a fit case for exercising of inherent powers under Rule 11 of the NCLT Rules, 2016. Moreover, there is a conflict regarding the appointment of new RP between the Applicant, Canara Bank and the Respondents in this application, who have also filed separate I.A bearing I.A No.326 of 2023 for appointment of a new IRP of their choice. Accordingly, we proceed to appoint **Shri G.S Narasimha Prasad,** having Registration No. IBBI/IPA-003/00325/2020-2021/ 13459 with address at F 3, Vijay Enclave, 33/2-4, 8th Main, Malleshwaram, Bangalore, Karnataka-560003, Email id:gsnprasad@gmail.com, Contact No. 9902027031 from the panel of IPs for appointment as IRP, approved for the NCLT, Bengaluru Bench by Insolvency and Bankruptcy Board of India

from 1st July 2023 to 31st December 2023 as the IRP of the Corporate Debtor. Therefore, I**.A No.575 of 2022** in C.P (IB) No.123/BB/2019 is disposed of with the directions for reconstitution of CoC and appointment of IRP as above.

<u>I.A NO. 326/2023</u>

1. The present application is filed on 09.05.2023 by the Miller Traders Private Limited (Applicant) against the Respondents No. 1 to 11 under Section 60 (5) of the I & B Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 interalia seeking to appoint Mr. Manmohan Jhawar, registration No. IBBI/IPA-001/IP-P00334/2017-2018/10604 or any other person as this Tribunal may deem fit as the IRP/Chairperson to conduct the meeting of the CoC of Corporate Debtor for the purpose of appointing RP; permit the Applicant to prose the name Manmohan Jhawar, to act as the Resolution Professional of the corporate Debtor for the consideration of the CoC of Respondent No.1 in the said meeting; direct the cost of the meeting and the fees of the RP be met by the CoC of Respondent No.1; direct that the meeting is conducted with a period of one week from the date that this application is allowed or any other period that this Tribunal may deem fit.

2. Brief facts of the instant Application, which are relevant to the issue in question, are as follows:

a. It is stated that on 25.06.2019 the Hon'ble Tribunal admitted the Section 7 application filed by the Applicant and thus initiated CIRP against the Respondent No.1. Later, one of the creditors of the Corporate Debtor i.e., Canara Bank, the Respondent No.2 in this I.A filed writ petition bearing W.P No.42878/2019 on 11.09.2019 before the Hon'ble High Court of Karnataka and obtained stay order on 19.09.2019. During the pendency of the writ petition the IRP passed away. On 13.09.2022 the Hon'ble High Court of Karnataka dismissed the writ petition. Thereafter, the Canara Bank/Respondent No.2 has filed a false and frivolous application bearing I.A No.575/2022 seeking to declare the Respondents No.2 to 5 are related parties of the corporate debtor etc. It is further stated that the code does not recognize the appointment of RP who conducts the entire CIRP by a single creditor. Therefore to enable the CoC of the Respondent No.1 to appoint a RP and proceed with the CIRP, the Applicant prays that this Hon'ble Tribunal to appoint an IRP or a Chairperson to conduct and chair the meeting of the COC. In this meeting the COC can vote on appointment of Resolution Professional who can thereafter take forward the process of CIRP.

3. The Respondent No.2 has filed objection vide Dy. No. 2944 dated 06.06.2023 interalia contending that the subsequent to the disposal of W.P No. 42878/2019 on 13.09.2022, the Applicant could have filed the application for appointment of the RP, however, the Applicant deliberately chose not file any such application as any delay in the CIRP would benefit the Corporate Debtor and its management. Further, the application is not maintainable either in law or on facts as the Applicant is a related party to the corporate Debtor. Further the Applicant being a related party cannot recommend any Resolution Professional. Hence, the Respondent No.2 is not agreeable to the appointment of Mr. Manmohan Jhawar as the RP.

4. Heard the Learned Counsel for the Applicant and Respondent. We have carefully perused the pleadings of the party and extant provisions of the Code and Rules made thereunder.
5. In view of the decisions taken in I.A No.575 of 2022 today, by appointing a new IRP in the matter for conducting the CIRP of the Corporate Debtor, therefore, the prayer sought in present I.A has already been taken care of. We direct the IRP appointed vide order in I.A No.575 of 2022 passed today, is directed to conduct the meeting of the CoC urgently and take necessary steps to expedite the completion of the CIRP process in accordance with the Code and Regulations. Accordingly**, I.A No. 326 of 2023** is disposed of.

Sd/-	**Sd/-**
MANOJ KUMAR DUBEY	**T.KRISHNAVALLI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**