



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**DIVISION BENCH, COURT NO.I**

**KOLKATA**

**I.A (IB) NO. 1583/KB/2024**

**IN**

**C.P (IB) NO. 309/KB/2022**

***An Application under Section 65 and Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 11 of the National Company Law  
Tribunal Rules, 2016***

**IN THE MATTER OF:**

**Eastern Housing Udyog Finance Limited**

**... Financial Creditor**

**Versus**

**Arcuttipore Tea Co. Ltd**

**... Corporate Debtor**

**IN THE MATTER OF:**

**Pramila Bajoria & Ors.**

**... Applicants**

**Versus**

**Eastern Housing Udyog Finance Limited & Ors.**

**... Respondents**

**Date of Pronouncement of order: 7<sup>th</sup> January, 2026**



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C.P (IB) NO. 309/KB/2022**

**Coram**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Cmdr Siddharth Mishra, Member (Technical)**

**Appearance:**

**For the Applicant:** Mr. Rishav Banerjee, Adv.  
Mr. Rahul Sharma, Adv.

**For the Respondent No.5:** Mr. Nirmalya Dasgupta, Adv.  
**For the Respondent No.7:** Ms. Swati Dalmia, Adv.  
Mr. Orijit Chatterjee, Adv.  
Mr. Shubham Raj, Adv.  
Ms. Safura Ahmed, Adv.

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. This Court congregated through a hybrid mode.
2. Ld. Counsels of both the parties were heard *in extenso*.
3. The present application has been preferred by Smt. Pramila Bajoria & Ors., the Members of the Suspended Board, hereinafter referred to as the '**Applicants**' to seek the following reliefs:-

*a) An appropriate Order(s) dismissing the said company petition being C.P.(IB) No. 309/KB/2022, wherein aforesaid admission Order dated 15.12.2023 has been pronounced/passed, that has been filed by the respondent No. 1/Financial Creditor under*



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*section 7 of the IBC against corporate Debtor and releasing the Corporate Debtor from the rigour of CIRP.*

*b) An appropriate order(s) imposing the maximum fine of Rs. 1,00,00,000/-(Rupees One Crore only) on the Respondent No. 1/Financial Creditor and/or Respondent No.4/O.P. Saxena in terms of section 65 of the IBC for fraudulent initiation of CIRP and/or initiation of CIRP against the Corporate Debtor with malicious intent for a purpose other than resolution of insolvency;*

*c) An appropriate order(s) quashing/setting aside/recalling the aforesaid admission Order dated 15.12.2023 passed by this Hon'ble Tribunal in C.P.(IB) No. 309/KB/2022;*

*d) An appropriate order(s) setting aside/quashing all decisions and actions taken by the Respondent No. 2/resolution professional and/or Respondent No. 3/interim resolution professional, and/or the purported CoC i.e. Respondent Nos. 1 and 7 as a consequence of and pursuant to the aforesaid admission Order dated 15.12.2023 which is non est, null and void;*

*e) An appropriate be passed declaring the constitution of Committee of Creditors of the Corporate Debtor bad in law and the constitution of COC comprising of Respondent No. 1 and Respondent no. 7 be declared null and void and be set aside as respondent no. 1 and respondent no. 7 are related parties of the Corporate Debtor,*



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*f) Pass such other and further order(s) and/or direction(s) as this Hon'ble Tribunal may deem fit and proper, in the facts and circumstances of the present case and in the interest of justice;*

*g) An ad-interim order of stay on the CIRP of the Corporate Debtor RP Oaining the Respondent No. 2/resolution professional and the CoC Respondent Nos. 1 and 7 from taking any action/decision involving invitation and/or consideration and/or approval of any expression of YAN PANDEY interest and/or resolution plan and/or resolution applicant in respect of the Corporate Debtor and also restraining them from alienating and/or transferring and/or encumbering any asset/property of the Corporate Debtor till the completion of the adjudication of the instant application;*

*h) An appropriate order be passed staying the CIRP of the Corporate Debtor and/or stay on any COC meeting of the Corporate Debtor and/or finalization of any resolution plan in respect of the Corporate Debtor till adjudication of this instant application;*

*i) Ad-interim orders in terms of prayers/reliefs a) to e) above;*

*j) Costs of and/or incidental to the present application, including advocates' fees incurred by the Applicant/Liquidator, be borne by the respective Respondents/Contemnors;*



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*k) Such further order and/or orders be passed and/or direction and/or directions be given as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice*

Therefore, essentially by way of this application, the recall of the admission order dated 15.12.2023, in a C.P filed in 2022 has been sought for long after admission order was passed.

#### **4. Brief Background**

**4.1.** The Respondent No. 1 Eastern Housing Udyog Finance Ltd., is the original Financial Creditor, in short 'FC' at whose instance a section 7 application was filed for initiating Corporate Insolvency Resolution Process ("CIRP") of the Arcuttipore Tea Co. Ltd, the Corporate Debtor. The Company Petition was admitted by this Tribunal vide its order dated 15.12.2023

**4.2.** The Respondent No. 2, Mr. Jai Narayan Gupta, was initially appointed as the Resolution Professional by an order dated 21.02.2024 of the Hon'ble NCLT, Kolkata Bench after replacing the Mr. Pranab Kumar Chakraborty, who was again replaced by Mr. Hansraj Jaria by an order of this Tribunal dated 18.12.2024.

**4.3.** The Applicants being ex-directors and promoters of CD have filed the instant application, inter alia, to



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- a. Challenge the initiation of CIRP by an order dated 15th December, 2024 on the alleged grounds of fraud and collusion; and
- b. Seek Quashing all decisions and actions taken by the Respondent No. 2 and the purported COC
- c. Stay of the CIRP proceedings of the CD and CoC meetings and/or finalization of any Resolution Plan with respect to the CD till final adjudication.

**The Parties to the Lis**

**The Applicants**

**4.4** The Applicant No.1 in the present matter is Ms. Pramila Bajoria, a shareholder of the Corporate Debtor holding at least 21.74% of the equity shares of the Corporate in terms of the last Annual Audited Financial Statement of the Corporate Debtor for F.Y. 2017-2018. She is the wife of applicant no. 2 and usually resides at 125, S.P. Mukherjee Road, Police Station-Tollygunje, Post office Kalighat, Kolkata-700026.

**4.5.** The Applicant No.2 is Mr. Harsh Kumar Bajoria, a shareholder of the Corporate Debtor entitled to hold 13.93 % of the equity shares of the Corporate Debtor in terms of the last Annual Audited Financial Statement of the Corporate Debtor for F.Y. 2017-2018.

**4.6.** The Applicant No.3 is Mr. Shalakya Kumar Bajoria, son of Mr. Harsh Kumar Bajoria and he is a shareholder of the Corporate Debtor entitled to hold 6.78% of the equity shares of the Corporate Debtor.

**4.7.** The Applicant No. 4, namely Devesh Trade Credit Private Limited, is, a shareholder of the Corporate Debtor entitled to hold 16.59 % of the equity shares.



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**The Respondents**

**4.8.** The Respondent No. 1 is Eastern Housing Udyog Finance Limited [CIN: U65999WB1992PLC056095), the Financial Creditor

**4.9.** The Respondent No. 2 is Jai Narayan Gupta, the erstwhile Resolution Professional of Arcuttipore Tea Co Ltd.

**4.10.** The Respondent No. 3 is Pranab Kumar Chakrabarty, Erstwhile Interim Resolution Professional of Arcuttipore Tea Co Ltd

**4.11.** The Respondent No. 4 is Om Prakash Saxena, who holds 2.74% of the equity shares of the Respondent No. 1 / Financial Creditor and is also a Director thereof.

**4.12.** The Respondent No. 5 is Mr. Asim Kumar Dey, a Director of the Corporate Debtor since 02/12/2021.

**4.13.** The Respondent No. 6 Is Mr. Sudip Kusarye, said to be a Director of the Corporate Debtor since 02/12/2021

**4.14.** The Respondent No. 7 Is Mr. Abhishek Bose

**5. Submissions of the Ld. Counsel on behalf of the Applicant:**

**5.1.** The Corporate Debtor was incorporated around 19.01.1900, being in existence for more than a century. It is presently a public listed company engaged in the tea industry primarily as a tea garden.

**5.2.** The Applicants are part of the promoters/ promoter group of the Corporate Debtor and collectively held around 59.03% of the equity shares of the Corporate Debtor as on 31.03.2018 as per available Annual Report for F.Y 2017-18.

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**5.3.** The Corporate Debtor has its primary tea garden in Silchar, Cachar district of Assam state. This tea garden at Silchar also encompasses valuable trees/wood plants and tea shrubs, including hundreds of teak wood plants and sirish wood plants.

**5.4.** The said tea garden has been conducting sizeable operations and business for several years. The optimum green teal leaf production level in this tea garden is around 30,000 metric ton (30 Lac Kg) which was achieved in the year 1998.

**5.5.** The Corporate Debtor and Respondent No. 7 had entered into a loan agreement around 21.01.2017 (Annexure 8) for a principal sum of Rs. 2 crore, that was to be paid on or before 31.03.2020. A total of 2962472 equity shares i.e. 59.06% of the equity shares of the Corporate Debtor, that were collectively held by the Applicants i.e, promoters of the Corporate Debtor, were pledged as collateral/security in pursuance of this loan transaction. According to the Applicant only Rs 1 crore was disbursed by Respondent No. 7 to the Corporate.

**5.6.** It is alleged that the Respondent No.1/Financial Creditor had never disbursed any amount whatsoever to the Corporate Debtor after they executed a **“Agreement of Business/Demand Loan”** this loan provided by Respondent No.1 was not reflected in the audited balance sheet thereof as a secured loan dated 28.06.2019. (Annexure A-10)

**5.7.** The the connected hypothecation agreement ("Deed of the hypothecation" dated 28.06.2019) executed between the CD and Respondent No. 1 was inchoate and unregistered.

**5.8.** The dematerialised shares of the Corporate Debtor had been frozen by the Securities and Exchange Board of India (“SEBI”).

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**5.9.** Despite that the Respondent No. 7 (Abhishek Bose) purportedly invoked the aforesaid shares held by the Applicants around April, 2020.

**5.10.** It is submitted that, the Respondent No. 7 had not disbursed the entirety of the loan of Rs 2 crore that had been sanctioned pursuant to the loan agreement dated 21.01.2017 and the attendant share pledge agreement but had disbursed only around Rs. 1 crore, with repayment terms of Rs 0.97 Cr till December, 2020. That around Rs. 48 Lacs was repaid by the Corporate Debtor to Respondent No. 7. In such circumstances, there was no just cause and/or reason and/or lawful pathway for Respondent No. 7 to invoke the pledged shares that stood frozen by SEBI and these shares remain in the ownership of the case, Applicant Applicants/promoters of the Corporate Debtor.

**5.11.** The Applicant No. I holds 2.57 % of the equity shares of the Corporate Debtor that were not pledged to Respondent No. 7, hence the status of Applicant No.1 as a shareholder is indisputable.

**5.12.** It is submitted that the creditor being Respondent No. 1 vide a letter dated 22.06.2020 during the Covid19 pandemic calling upon the Corporate Debtor to provide it a list of insurance receipts, book debts, stock statements as well as a list of liabilities of the Corporate Debtor in relation to purported security cover for the alleged loan amount. The aforesaid letter dated 22.06.2020 issued by Respondent No. I stated the following:

*"In case the security is insufficient we shall call upon to repay our loan forthwith. You are therefore requested to send these details and meet our Director Mr OP Saxena for further clarification and action in the matter"*

The said letter dated 22.06.2020 is marked as "Annexure A-11".



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**5.13.** Thus, the Respondent No. I vide a letter dated 10.09.2020 issued during the Covid-19 pandemic and during the period barred under section 10A of the IBC purported to recall the loan given by it to the Corporate Debtor and demanded that the same has to be paid within a fortnight therefrom i.e, 24.09.2020. The said letter /loan recall notice dated 10.09.2020 is marked as **“Annexure A-12”**.

**5.14.** The Respondent No. 1 thereafter filed a suit being C.S./104/2021 in the Hon'ble High Court at Calcutta ("Calcutta HC") against the Corporate Debtor on 27.04.2021 for money decree and for sale of hypothecated assets and sought for , for appointment of a Receiver for making inventory and taking possession of the hypothecated assets under the aforesaid loan agreement dated 28.06.2019. The Hon'ble Calcutta HC vide orders dated 28.06.2021, 29.06.2021 and Order dated 06.07.2021 appointed a Receiver to take inventory of green tea leaves in the warehouse/gardens of the Corporate Debtor at Silchar, Assam and to sell the stock of such green tea leaves at prevailing market rate to the extent of Rs. 1.80 crores and invest the amount in an interest-bearing fixed deposit.

**5.15.** It is submitted that Respondent No. 4 (O.P. Saxena) used to be a close family friend of the Applicants for many years. Shalakya Bajoria (Applicant No. 3) was a director in a company owned and controlled by OP. Saxena, namely Duckback Waterproof Works Private Limited ("DWWPL").

**5.16.** The payment liabilities of the Financial Creditor towards third parties were paid/satisfied/partly paid by the Corporate Debtor on the advice, instruction and direction of the Financial Creditor which is controlled by O.P. Saxena.

**5.17.** Thus the members of the Board of Directors of the Corporate Debtor was accustomed to act on the advice, instructions and directions of the Saxena group

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and/or companies controlled by the Saxena groupie by O.P. Saxena, including the Financial Creditor.

**5.18.** A sum of Rs. 32.580/- payable by the Financial Creditor to the Corporate Debtor for supply of green tea leaves was paid by a sister concern of the Financial Creditor called Vidhata Exports Private Limited ["Vidhata"] around 04.04.2016, which is also controlled by the Saxena group. The Corporate Debtor has paid a sum of Rs. 57,57,695/- from time to time to Vidhaata. Transters were made interchangeably to the Financial Creditor, Vidhata and to O.P. Saxena as part of the Saxena group by the Bajoria group. The Applicant No. I and Applicant No. 2 i.e, the promoter group of the Corporate Debtor have, from time to time, transferred a sum of Rs. 25.00.000/-and Rs. 31,00,000/- at the request of O.P. Saxena Transactions between Applicant No.1 (Pramila Bajoriaj, Applicant No. 2 (Harsh Bajoria), O.P. Saxena, the Financial Creditor, Vidhata and the Corporate Debtor were all inextricably linked.

**5.19.** The appointment of the Receiver over the green tea leaves produced by the pursuant to the said Orders dated 28.06.2021 and 29.06.2021 read with the said order dated 06.07.2021 put at risk the entire business model followed by the Corporate Debtor since it essentially prohibited the Corporate Debtor from processing the green tea leaves into CTC tea which is commercially more profitable/rewarding to sell. The Corporate debtor had customers like Tata Tea. Hindustan Level, Wagh Bakri and Girnar to whom it regularly supplied CTC. The Corporate Debtor was producing around 2,00,000 Kg of green tea leaves in a month that could be processed into around 50,000 Kg of CTC that would have fetched in excess of Rs. 1 crore from its usual customers of CTC. But the orders dated 28.06.2019, 29.06.2019 and 6.7.2019 allowed the Corporate Debtor to only sell the green tea leaves in the open market, thereby earning only Rs. 40-45 Lakh



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per month, and not process the same into CTC. This reduced revenue was barely enough to meet the wages and other expenditures of the Corporate Debtor for operating the tea garden. The tea roasting plant of the Corporate Debtor was already shut down in/since March, 2021, on account of failure of the Financial Creditor to disburse loan funds as per the loan agreement dated 28.06.2019. An appeal was preferred by the Corporate Debtor.

**5.20.** Abhishek Bose, the Respondent No. 7 issued a special notice on 01.08.2021 claiming himself to be the holder of 28,33,595 shares of the Corporate Debtor and requisitioning an Extraordinary General Meeting to appoint four directors of his choice to the Board of Directors of the Corporate Debtor. Sudip Kusarye was one of them.

**5.21.** That Assam Electricity Grid Corporation Limited (AEGCL) had purchased 10 bighas of land belonging to the Corporate Debtor for a consideration of around Rs. 75,00,000/- which was still receivable by the Corporate Debtor as on 19.08.2021.

**5.22.** The Applicants, being responsible business persons concerned about the commercial future of the Corporate Debtor agreed to the following:

- i. That the Corporate Debtor shall induct nominees of the Financial Creditor in its Board;
- ii. That all alleged dues of the Corporate Debtor to the Financial Creditor on all purported accounts whatsoever shall stand settled and they shall not have any claims against each other on any account whatsoever.
- iii. That the money, if and, ultimately found actually payable by the Corporate Debtor to Abhishek Bose after negotiation and reconciliation would be deductible



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from the consideration money payable by the Financial Creditor to the promoters of the Corporate Debtor,

iv. That the Financial Creditor shall ultimately pay valuation/consideration amount to the promoters of the Corporate Debtor for their shares in the Corporate Debtor. All the liabilities of the Corporate Debtor would be reduced and adjusted from the valuation/consideration amount of around Rs. 7.75 Crores so agreed to be paid by the Financial Creditor, and any surplus therefrom would be payable by the Financial Creditor to the promoters for their shares which would be transferred oniv on their receipt of the agreed consideration.

**5.23.** The Applicant No. 1 (Pramila Bajorial issued a letter dated 27.08.2021 to the Respondent No.1/Financial Creditor stating that she would forfeit her claim of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) against the Corporate Debtor should the management of the Corporate Debtor go to the Respondent No.1/Financial Creditor. Similarly the Applicant No. 2 (Harsh Kumar Bajoria) agreed to forfeit his claim of Rs. 31.00.000/- (Rupees Thirty One Lakh only).

**5.24.** Respondent No. 4 (O.P. Saxena) on 03.09.2021, as the Corporate head of the management of the Corporate Debtor, attended a meeting between members of the tea garden union, panchayat body and the garden management of the Corporate Debtor Respondent No 4 is also the Director of the Respondent No. 1/ Financial Creditor and holds 2.54% of the shares thereof .Such participation establishes the fact that the Director of Respondent No. 1/Financial Creditor is actively involved in the management of the affairs/operations of the Corporate Debtor.

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**5.25.** The promoter group through Applicant No. 3 (Shalakya Bajoria) handed over two files containing original land documents relating land of the Corporate Debtor at the tea estate in Silchar.

**5.26.** A Board Resolution was passed by the Corporate Debtor on 05.10.2021 resolving that the registered office of the Corporate Debtor would be shifted to 4A Council House Street, Kolkata-700001, i.e, essentially same premises/address where the registered office of the Financial Creditor/Respondent No. 1 is located.

**5.27.** The applicant alleges that since the Corporate Debtor and the FC have the same registered office/premises/building on the advice, instruction and direction of the Financial Creditor which is controlled by O.P. Saxena, it is evident that the Financial Creditor and/or O.P. Saxena are associated with the Corporate Debtor on account of participation in policy making processes of the Corporate Debtor and as such is a related party of the Corporate Debtor.

**5.28.** It is submitted that the Applicant No. 3 Mr. Shalakya Bajorial handed over all documents of the Corporate Debtor relating to assignment of debt of Asrec (India) Limited to the Financial Creditor on 25.10.2021. which was received by Mr. Ashim Kumar Dey/Respondent No. 5 on behalf of the Financial Creditor/Respondent No.1. It was Mr. Ashim Kr. Dey who received original land patta related documents of the Corporate Debtor to the FC/ Respondent No.1 on 26.10.2022. Applicant No. 3 also handed over original PAN Card of the Corporate Debtor for the FC, files of the Corporate Debtor, pertaining to stock exchange/shareholding matters, bank book and master ledger (2015-16), cash book (2015-16), ledger account (2017), Sale File (2020-2021), Purchase File(s) (2019-20, 2020-2021), Income Tax Files for 2012-2013 till 2018-2019, Audit File 2017-2018, Agricultural Income Tax file upto 2018 etc. to the Respondent No. 1 on 29.10.2021. Hence Ashim Kr. Dey is a related party of the Corporate Debtor.



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**5.29.** That the Applicant No. 3 (Shalakya Baioria) resigned from the Board of Directors of the Corporate Debtor on 03.12.2021. Mr. Ashim Kumar Dey/Respondent No. 4 almost simultaneously joined the Board of Directors of the Corporate Debtor as Director thereof on 02/12/2021, as an appointee of the Financial Creditor or Respondent No.1 No. 1 i.e. the O.P. Saxena group. Thus on account of interchange of managerial personnel between the CD and the Respondent No.1/the FC is the related party of the CD.

**5.30.** Further that after Bajorias handed over control of CD to Bose/Saxena, Bajorias had no involvement in the CD. All records of CD handed over to Saxena from Sept/Oct 2021@ Pg. 408-415 of Application. From September, 2021 Saxena was in control of CD and attends meetings on behalf of CD.

**5.31.** Bajorias remain shareholders holding about 59%.

**5.32.** It is submitted that following sequence of events will show the fraud in initiation of CIRP

**September- October 2021-** Control of CD was taken by Saxena

**5th October 2021-** Registered office shifted from CD's office to building of OP Saxena

**29th November 2021:** CP filed by FC O.P Saxena. CD controlled by Saxena, Later discovered that CP would be dismissed due to black out period.

**2nd December, 2021:** Nominee Director of Saxena/Bose inducted into Board of CD constituting all the directors.

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**5.33.** On 3rd December, 2021, S. Bajoria resigns and on 13<sup>th</sup> April, 2022 a Settlement agreement between FC and CD executed for payment by Instalments only to have fresh date of default beyond blackout period (if date of default was within the period between 25th March, 2020 to 25th March, 2021 when in view of section 10A IBC, 2016, no petition would lie). Agreement executed by AK Dey on behalf of CD and Adesh Singh on behalf of FC . C.P No. 361 of 2021 is based on recall notice dated 10<sup>th</sup> September, 2020 (Pg-239 of Application).

**5.34.** On 25th April 2022- C.P. No. 361 of 2021 was withdrawn in view of settlement agreement @ Pg-576 of application. In between April to September no payment made by corporate debtor to FC. The settlement agreement was clearly an eye wash to shift back the date of default to beyond the black out period.

**5.35.** In September 2022 Petition being **C.P. No. 309 of 2022** was filed. CD did not effectively contest. CD issued a cheque dated 13th April 2022 for Rs.10 Lakhs but later requested that the same should not be presented in view of lack of funds . (recorded in para 6.11 to 6.14 of the order dated December 15, 2023) Whereas CD had requisite funds in its bank account.

**5.36.** On 15<sup>th</sup> December, 2023, the order of admission passed and it became clear that

- i. Saxena/Bose wanted to take over CD from Bajorias and entered into an agreement dated 19th August 2021 in terms of which they obtained control over the business and affairs of CD as well as its board of directors.
- ii. Saxena/Bose subsequently filed the first company petition through FC which was controlled by them against CD which by then had come to be controlled by them.



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iii. The first petition was not maintainable since the alleged date of default was within the black out period and would be surely dismissed by the court, for which the FC withdrew the petition and created a fresh date of default by an eye wash of an settlement agreement dated 13th April 2022 which was executed by nominee of Saxena/Bose on behalf of FC and on behalf of CD.

iv. The first petition was withdrawn and the second petition filed and admitted without any contest, despite the CD having requisite funds in its bank accounts and despite the CD being in a position to honour the cheque made over to FC. Order of court proceeds on the basis that CD did not have necessary funds.

v. The petitioner (FC) is controlled by Saxena/Bose, CD was also controlled by Saxena/Bose. Order of admission is in a collusive proceeding.

vi. All the aforementioned facts were concealed from the Hon'ble Court and are therefore initiation of CIRP is fraudulent.

**II. Fraud in continuation of CIRP-**

i. RP Is Jai Narayan Gupta who is nominated by COC. Evident from order dated 21" February 2024 when appointment of RP Is confirmed.

ii. COC constitutes FC (78.38%) and Bose (21.62%)



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iii. Therefore Saxena/Bose controls 100% COC and the RP is their nominee.

iv. FC is a related party of CD and could not have been part of COC. RP could not have allowed the same under section 5 (24) (m) (iii) and 5 (24) (m) (i) of I&B Code which relates to 'related party'. FC is a related party of the CD because of participation in policy making process of CD and interchange of managerial personnel. The participation In policy making process is evidenced by continuous payments by entities controlled by Saxena (Marigold Estates Private Limited, Vidhata Exports Pvt. Ltd. Duckback (India) Limited, Ritika Saxena), to CD Bank statement of CD.

**5.37.** The Hon'ble National Company Law Appellate Tribunal in ***Ashmeet Singh Bhatia-vs- Pragati Impex India Ltd. & Ors. (Company Appeal (AT) (Insolvency) No. 1413/23*** in paragraph 18 has held that even if the application has been filed belatedly at the stage when the resolution of the Corporate Debtor is under consideration, the fact that the application has been filed at the time when the plan under consideration does not take away the jurisdiction of the Adjudicating Authority to consider the allegations and find out the truth, if any, and that it is well settled that when proceedings have been fraudulently initiated, appropriate orders can be passed by a court.

**SUBMISSIONS OF THE RESPONDENTS**

**6. Submissions of the Ld. Counsel on behalf of the Respondent No.1 and 4**

**6.1.** The applicants have filed the application with malicious and fraudulent intent to stall the CIRP. The applicants were aware about the filing of the



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petition and CD was represented and a reply was also filed by the CD. The applicants were aware about the CIRP initiation order dated 15th December, 2023 and the reliance was placed on the order dated 15th December, 2023 by the applicants in criminal proceedings pending against the applicants and CD.

**6.2** The instant application has been filed in July, 2024 and the applicants have falsely mentioned that applicants became aware about the CIRP initiation order dated 15th December, 2023 in June, 2024. The Applicants are liable for perjury.

**6.3** The CD has admitted its liability in the balance sheets for the Financial Year 2019-2020 and 2020-2021 and such balance sheets have been signed by Shalakya Bajoria, the applicant no. 3 herein.

**6.4** Further it is submitted that it would be evident from the balance sheets that the respondent no. 1 and 4. are not the related parties of CD. It is an admitted fact that none of the directors or Key-Managerial persons of FC are either shareholders of CD or directors of CD or in any manner control the policy decision or management of CD.

**6.5** That on one hand, the applicants have sought dismissal of C.P. (I.B.) No. 309/KB of 2022 and setting aside of the Admission Order dated 15.12.2023, and on the other hand, sought a declaration that the constitution of the CoC is invalid on the ground that R1 and R7 are related parties to the Corporate Debtor. It is apparent from the above that the order of CIRP is valid and the application has been filed with ulterior motive and mala fide intention to stall the CIRP and to deter the resolution applicants.



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**6.6** It is submitted that the existence of liability of the CD to the FC is undisputed and the applicants have failed to make out any case under Section 65 of IBC. It can be derived from the following circumstances

- i. Loan Agreement and Deed of hypothecation both dated 28th June, 2019 have been signed by the AI on behalf of the CD.
- ii. FC filed a Civil Suit being CS. No. 104 of 2021 before the Hon'ble High Court at Calcutta. By an order dated 28th June, 2021/29th June, 2021, the Hon'ble High Court has duly recorded the facts and appointed a receiver.
- iii. In the Settlement Agreement dated 19th August, 2021, wherein the applicants were also parties, liability of the CD has been duly admitted and acknowledged
- iv. During the course of hearing before this Hon'ble Tribunal and also in the written notes of submissions, the applicants have duly admitted that loan amount was due and payable.
- v. The CD has admitted its liability in the balance sheets for the Financial Year 2019-2020 and 2020-2021 and such balance sheets have been signed by Shalakyia Bajoria, the applicant no. 3 herein.
- vi. There was a clear case of debt and default of more than 1 crores and as such, the CIRP of the CD was initiated by order dated 15.12.2023. No appeal was preferred by the applicants before the Hon'ble NCLAT
- vii. in order to establish a case under Section 65 of IBC, the applicants are required to prove that the FC has initiated the insolvency



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resolution process fraudulently or with malicious intent for any purpose other than for the resolution of insolvency. The applicants have failed to make out any case under Section 65.

viii. Evidently the CD had a liability of more than Rs. 23,96,23,785/- as on date of CIRP order and the CD was not in a position to repay the same. The same would be evident from the fact that the RP has admitted claims of Rs. 23,96,23,785/-.

## **7. Submissions of Respondent No. 2, the Resolution Professional**

The Respondent No. 2, Mr. Jai Narayan Gupta, was initially appointed the Resolution Professional by an order dated 21.02.2024 of this Bench after replacing Mr. Pranab Kumar Chakraborty, who was again replaced by Mr. Hansraj Jaria.

### **7.1 The Applicants have no locus standi**

- i. The applicants have no locus standi to file the instant application. They are neither the shareholders nor the directors of the CD.
- ii. The Applicants were erstwhile directors of the company-A1 was director from 13.03.2015 to 01.02.2020, A-2 was a director from 03.10.1994 to 09.08.2021, A3 was a director from 15.10.2008 to 03.12. 2021
- iii. The applicants had abandoned the CD during its financial difficulties and are responsible for its admission of CD into CIRP. As such the applicants do not have locus to now challenged the initiation of CIRP of the CD.



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iv. the applicants have themselves alleged that only Applicant no. 1 holds 2.57% shares in CD.

**7.2 The applications has been filed at a belated stage**

- i. Order for initiation of CIRP of CD was passed on 15.12.2023.
- ii. The applicants have alleged that they did not have knowledge of the CIRP order.
- ii. The applicants were all along aware of the CIRP order The present application has been filed only around 24th July, 2024, after a lapse of 8 months
- iii. It is evident that the application has been filed as an afterthought and with the ulterior motive of deriving undue benefit from the compensation awarded to the CD.

**7.3 The Application has been filed to circumvent the PUF E Application (L.A. 1976/KB/2024) filed by the Respondent No. 2 against the ex-directors of the company.**

- i. Encroachment & undervalued land transfer 53.13 bighas illegally occupied by Mr. Tapash Roy (R8) for Rs. 36.08 lakhs instead of Rs. 6.5 crores, causing Rs. 6.13 crore loss. Illegal brick kiln operation led to a show cause notice (23.12.2022)
- ii. Unauthorized sale of mortgaged machinery- Factory machinery sold (2019-2021), impacting operations, the replacement cost of which is Rs. 1



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crore. Additionally, the machinery has been mortgaged to the financial creditor ie. Eastern Housing Udyog Finance Limited under a deed of hypothecation dated 28.06.2019.

iii. Illegal issuance of NOC's and land transfer- Mr. Harsh Kumar Bajoria (Former MD) through Mr. Satya Narayan Singh (Former Manager) issued NOC's for 250.88 bighas of the estate land to 123 workers/ex-workers, collecting 2.32 crores unlawfully. Perpetual possessory rights granted, endangering estate viability.

iv. Mismanagement and production decline - Green leaf production fell from 30 Lakhs kgs (1998) to 8 Lakhs Kgs (2023) due to neglect and mismanagement. The cumulative loss of 22 lakhs kgs over 25 years due to illegal land transfers led to Rs. 50 crores loss over 25 years.

v. Fictitious receivables and inventory- Fictitious receivables and inventory in the audited accounts of FY 2020-21 were found amounting to Rs. 1.32 crores which remain in the books and were left behind by the ex-management and that these amounts are non-existent, necessitating their contribution to the CD's assets.

**8. Submissions of the Ld. Counsel on behalf of Mr. Asim Kumar Dey, Respondent No. 5**

**8.1.** No case made out on behalf of the Respondent no.5. Apart from the allegation that the Respondent no. 5 used to receive documents both on behalf of the Financial Creditor and the Corporate Debtor, there are no other allegations as against the Respondent no. 5.



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**8.2.** the Respondent no. 5 was entrusted and accustomed to receive documents, which was served to the said address relating to various companies in respect of the said MMS Chambers situated on the first floor of 4A, Council House Street, Kolkata 700 001, which is used as a Business Centre by several other companies and/or business entities.

**8.3.** Respondent no. 5 had been receiving the documents pertaining to the Corporate Debtor from time to time in his email since all employees at the Kolkata Office of the Corporate Debtor had quit in 2020.

**8.4.** As against the allegation that Respondent no. 5 is the close aid of the said O.P. Saxena group and the said Respondent no. 54 is acting at the behest of the said group. It is submitted that Respondent no. 5 was appointed as a director in the board of the said Corporate Debtor by the Applicant no. 3 and by a board resolution dated December 2, 2021, the said Corporate Debtor had authorised Shalakya Bajoria being the director of the said Corporate Debtor to appoint the Respondent no. 5 herein.

**8.5.** The said Shalakya Bajoria being the Applicant no. 3 herein had also digitally signed in the form DIR 12 wherein the said Respondent no. 5 had been shown to be appointed Director of the Corporate Debtor. The said form DIR 12 appointing Respondent no.5, it has been digitally signed by the Applicant no.3 and it has also been digitally signed by Atish Kumar Shaw who is the power of attorney holder of the Applicant no.3



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**8.6.** Atish Kumar Shaw is also the power of attorney holder of the said Applicant to represent the Bajorias before all Courts of law including National Company Law Tribunal and National Company Law Appellate Tribunal.

**8.7.** The Applicants allege that they had come across the passing of the CIRP admission order only in July 16, 2024. Applicants were aware of such fact of passing of admission order in respect of the Corporate Debtor on January 18, 2024 as will be evident from an order dated January 18, 2024 passed by the Metropolitan Magistrate, 13th Court, Calcutta in Complaint Case No. 106345 of 2022, wherein, it has been specifically recorded by the Learned Metropolitan Magistrate that the Corporate Debtor who was the accused no.1 had been admitted into process of liquidation by the Hon'ble National Company Law Tribunal. he said Applicant no. 3 appeared virtually before the Learned Metropolitan Magistrate and his virtual appearance was accepted and restored. Further the bail application filed by Shalakyia Bajoria, Applicant no. 3 was allowed by the Learned Metropolitan Magistrate by the same order dated January 18, 2024. Therefore the purported date of knowledge pleaded by the Applicants in the Application is wholly untrue, false and devoid of any merit.

**8.8.** A bare perusal of the said chart, given by Applicants will show that the Respondent no. 5 namely Ashim Kumar Dey was a director only in respect of the Corporate Debtor and is not a director in any other company and/or the companies in any manner whatsoever.

**8.9.** The Respondent no. 5 was neither a shareholder, nor a bank signatory on behalf of the Corporate Debtor he was only appointed as an independent non-executive additional director that too at the behest of the Applicant no. 3 as



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evidenced from the record to form the quorum at the Board Meetings of the Corporate Debtor.

**8.10.** The Applicants basically abandoned the Corporate Debtor on their own choice. As the said Corporate Debtor was passing through a bad phase, demand notices were being received by the Corporate Debtor at regular interval, all the demand notices including demand notices from the provident fund authorities and/or several other demand notices were being received by the Corporate Debtor and/or the Applicants during the directorship tenure of the Applicants. Several criminal cases were also lodged and being proceeded with as against the Applicants before the concerned criminal courts and bail applications were also moved by the Applicants from time to time along with the Applicants, the Respondent no. 5 was also roped in as accused person in one of the Complaint Case being CS No. 113965 of 2022 before the Learned Chief Metropolitan Magistrate at Calcutta.

**8.11.** The Applicants now intend to have control of the Corporate Debtor illegally although they were aware of the admission order on January 18, 2024.

**8.12.** The contention of the Applicants that the Corporate Debtor has sufficient fund is also devoid of merits, a bare perusal of the said bank statement annexed by the Applicants to the rejoinder that will show from closing balance, that the CD did not have a balance in excess of Rs. 2.50 crores in any manner whatsoever.

**8.13.** The application is not maintainable as against the respondent no.5.

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**9. Submissions of Sudip Kusarye, Respondent No. 6 in I.A (IB) NO. 1583/KB/2024**

**9.1** L.A. (1.B.) No.1583 of 2024 filed by the applicants, who are the former directors of the CD, under Section 65 of IBC, inter alia, against R6. The said application is not maintainable against R6 for the following reasons:

(a) R6 is a member of the suspended board of director of CD. R6 is neither a shareholder nor a signatory to the bank account of CD. Section 65 is not maintainable against R6 as it can only be filed against a person who initiates CIRP proceeding against CD.

(b) No relief has been sought for against R6 and, as such, the name of R6 should be expunged from the array of parties.

(c) R6 is neither a necessary nor a proper party in the present application. As per the Master Data of CD (page 24 of reply reply of R6), there are 2 other directors of CD at the time of CIRP commencement, They are not made parties in the present application. Naresh Shah and Monoranjan Pal who were the nominee directors of the applicants in the board of CD were also not made parties in 2 the application. Only R6 and R5, who are ex-directors of CD, are unnecessarily dragged into the present proceeding.

(d) The applicants have **no locus** to file the present application. The applicants are former directors of CD, who have voluntarily resigned from the board of directors of the CD. Such voluntary resignation/ exit from management is admitted. In fact, on 18.01.2024, when bail application was moved by some of the applicants before the Learned Metropolitan Magistrate, XIIIth Court, Calcutta, it was submitted and also recorded in the Order that CD was admitted into CIRP by the Order dated 15.12.2023



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passed by this Hon'ble Tribunal (page 90 of reply of R6). As such, it is evident that the applicants were all along aware of the Order of Admission and that they chose not to file any appeal against the said Order of Admission and now in July, 2024. they have belatedly filed the said application.

(e) In a single application, the applicants have clubbed different purported causes of action and prayed for orders, which are legally unsustainable against each other.

(f) The applicants are erstwhile management of CD.

A1 was director from 13.03.2015 to 01.02.2020.

A2 was a director from 03.10.1994 to 09.08.2021

A3 was a director from 15.10.2008 to 03.12.2021.

It is material to note that the DIN and DSC of A2 and A3 were disqualified under Section 164(2) of the Companies Act, 2013, and, as such, they controlled the company as CEO and CFO, respectively, with effect from 03.06.2019. The applicants are shareholders holding 59.06% shares in the company

(g) R6 was appointed as an additional director (independent category) (non-executive) on 02.12.2021 for the purpose of compliance and to constitute a quorum, the appointment was made by the applicant No.3 himself.

(h) The applicant No.3 voluntarily resigned from the board of CD on 03.12.2021 (Form - DIR-12 page 416 of IA)



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(i) R6 was acting as independent, non-executive additional director. R6 was not entrusted to look after the day-to-day affairs of CD or the tea garden. R6 has never drawn any directorial remuneration nor was he in-charge of the bank account operation or a signatory thereof.

(j) As R6 was appointed by applicant No.3 himself, the contention of the applicants that R6 is an employee of R7 or that R6 acted at the behest or instruction or dictate of R7, is completely misconceived and malafide.

(k) The debt and default both occurred during the tenure and management of the applicants. FC and CD entered into a loan agreement on 28.06.2019 (page 273, Vol. III of IA). The said Agreement was signed by A1, Pramila Bajoria along with Naresh Shah, who were the directors of CD as on that date pursuant to board resolution of 28.06.2019. This is much prior to appointment of R6 in the board of CD.

(l) Under the said Loan Agreement, cheques were issued by the applicants on behalf of the CD, which were dishonored. Loan was recalled on 10.09.2020. Demand Notices were issued on repeated occasions by FC, which were received by CD under the management of the applicants. None of those Demand Notices were replied to by the applicants. As such, default occurred also during the tenure of the applicants while the applicants were in management.

(m) Pursuant to the same, R1/FC filed a suit being C.S. No.104 of 2021 on 27.04.2021 before the Hon'ble High Court at Calcutta during the tenure of the applicants in the management and orders dated 28.06.2021 and 29.06.2021 were passed.



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(n) The Hon'ble High Court was pleased to appoint a Receiver with a direction to sell the stock of green tea leaves at the prevailing market rate to the extent of Rs.1.80 crore and invest the said amount in an interest-bearing fixed deposit.

(o) CD filed an appeal before the Hon'ble Division Bench of the High Court at Calcutta, wherein, an Order dated 14.07.2021 was passed wherein, the direction for appointment of Receiver was not interfered with and it was directed that running of the garden and sale of the tea leaves shall be carried out under the Receiver. All these happened during the management and tenure of the applicants, thus default has occurred vis-à-vis the FC during the management of the applicants, themselves.

(p) The FC filed its first Section 7 petition on 24.11.2021, which is before the appointment of the R6. When the company was in doldrums. there was non-payment of statutory dues in the form of gratuity and PF and dishonor of cheques, leading to various Section 138 proceedings under the Negotiable Instruments Act, 1881 and criminal proceedings being instituted against the applicants, the applicants abandoned the company to save their skin and left such a listed company having a tea garden with its workers, at lurch.

(q) The debt and default occurred prior to the appointment of R6, both vis-à-vis the FC as well as R7 with whom the loan agreement (page 179 of IA) dated 21.01.2017 with a pledge agreement (page 209 of IA) were executed by and between the applicants and the R7 wherein also, the default occurred during the tenure of the erstwhile management, i.e. the applicants.

(r) Criminal proceedings were instituted against R6 for past default committed by the applicants.



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(s) In the second Section 7 petition, the reply affidavit was filed, affirmed by Atish Kumar Shaw, who was the Power of Attorney holder appointed by applicant No.3. As such, the applicants were all along aware of the order of Admission and prior thereto, the Settlement Agreement of 13.04.2022, Order of Withdrawal dated 25.04.2022 of the first petition.

(t) The real reason for the applicants to now come and file the application is at paragraphs 30 and 31 of IA, which shows that when there is a silver lining of the CD getting some compensation from the land acquisition process, the applicants, who are nothing but opportunists, have suddenly become very interested in the affairs of the CD.

It has been held by the Hon'ble Supreme Court in ***Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308 paragraphs 47 to 52*** that fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in Section 61. There is no explanation as to why appeal not filed and now at such belated stage, this IA is filed.

**10. Submissions made on behalf of Respondent No. 7, Abhishek Bose**

**10.1** R7 first came in contact with Bajoria family when they came to R7 for seeking financial assistance in 2016. Loan Agreement entered in between CD and R7. On 21.01.2017. Bajoria family created pledge of 56.49% shares of CD in favour of R7. On account of failure on the part of the CD to repay loan and/or interest in a timely manner, and several breaches committed under the aforesaid Loan Agreement, R7 issued a loan recall notice.



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**10.2** CD responded to the aforesaid letter assuring payment of dues. Only meagre pay-outs received from CD on account of outstanding interest, therefore, having left with no alternative R7 invoked the pledge on 56.49% shares of CD, and shares were subsequently transferred into the DMAT account of R7. Only a meagre payout of 5 lakhs had been received by R7 from CD.

**10.3** R7 issued Requisition-cum-Special Notice for convening an EGM of CD wherein four individuals including R7 Sudip Kusarye / R6 were proposed to be appointed as Directors of CD.

**10.4** On 20.09.2021, Another letter issued by CD through A3, turning down the request made by R7 contending that R7 is not a shareholder of CD and that the 28.33 lakhs shares held by R7 is a security against money advanced to CD. It is an admitted position that R7 was not involved in the management and/or the affairs of the CD. Moreso, at that juncture R7 had already invested an amount in excess of 1 crore, and was seeing no visibility of repayment of same. It is also an admitted position that R7 has not filed the Section 7 application. R7 is also not connected to R1.

**10.5** From August 2021 to December, 2021 the affairs of the CD went from bad to worse, and a few instances in this regard are as follows:

- a. Factory of CD had stopped operating;
- b. Power disconnected;
- c. GST registration cancelled [ @ 32 of Reply of R7 to Supplementary Aff];
- d. Labour unrest at the tea garden;
- e. Several civil and criminal proceedings initiated against A3 by statutory authorities including PF authorities.



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**10.6** A3 appointed two individuals on the Board of CD. The individuals appointed by A3 were the nominees of the largest shareholder of CD, i.e., Bajoria family. The Kumar Dey (R5) were appointed as Independent / individuals, namely Sudip Kusarye (R6) and Ashim Directors [not as a nominee of lender, i.e., R7]. The eform filed with the Registrar of Companies has been digitally signed by A3 and the extract of the resolution confirming appointment of the aforesaid two individuals had been certified by the other Director of CD, Naresh Shah.

**10.7** The aforesaid appointment of two individuals as Directors of CD was made without any prior notice and/or consultation with R7. R7 had no role to play in relation to the aforesaid appointment. The only intention to appoint the aforesaid two individuals were to create a situation whereby A3 and the other directors could step down from the Directorship of CD. The appointments were made to comply and make a roadway for the Applicants to resign, evidencing that R6 was appointed in consultation with R7. False statement has been made on affidavit, contrary to the records including Form DIR-12 digitally signed by A3.

**10.8** Immediately, on the next date A3 and the other director namely, Naresh Shah resigned from the office of Directorship of CD. In the meantime, the Bajoria family, and esp. A2 and A3 once again reached out to R7 seeking for further working capital assistance on the pretext of reviving the operations of CD.

**10.9** R7 and CD entered into a Toll Conversion Agreement whereby CD agreed to convert 'green leaf' supplied by R7 into "made tea" which R7 thereafter sold in open market. The said agreement also permitted R7 usership of the mark 'Arcuttipore' for marketing and selling bulk tea and packet tea throughout India.



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The aforesaid arrangement was purely contractual and made with the intention of making CD profitable. The Bajoria family represented by A2 and A3. represented that he was unable to exploit the factory infrastructure of CD, since CD was not able to sell 'made tea' on account of cancellation of GST registration. To overcome the same, R7 agreed to supply green leaf to CD, which after conversion and payment of conversion charges by R7, CD would return the same to R7, to be sold in open market.

**10.10** In lieu of the aforesaid, CD had been benefitted with immediate payment of security deposit of Rs. 25 lakhs (receipts acknowledged by CD @p. 21-29 of the Reply to 2nd Suppl Aff) and receipt of conversion charges of Rs. 6.58 lakhs for the year 2023 (invoice raised by CD @ p. 30 of Reply to 2nd Suppl Aff), and 3.27 lakhs for the year 2024. The security deposit of 25 lakhs is continuing to be retained by CD, till date.

**10.11** CIRP commenced on a section 7 petition filed by R1. R7 had no role to play. R7 was not involved in any transaction between CD, R1, R4 and/or Bajoria family. R7 is not privy to any agreement signed in September, 2021.No document has been placed to show any allegation levelled by Applicants on account of collusion. The same is misplaced.

**10.12** Further it is submitted that no document has been placed on record to show that Sudip Kusraye is an employee/affiliate of R7 or has been acting on the advice or directions or instruction of R7.

**10.13** That no case has been made out, apart from making mere allegations based on surmise and conjecture that the director of CD acted on advice, direction or instruction of R7 or R7 participated in policy making process of CD.



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There was no handover of CD to R7. infact when R7 attempted to take control of CD, i.e., August, 2021, the Bajoria family stopped him from doing so.

**10.14** It is submitted that funds were infused into CD on account of the loan arrangement entered in December, 2021. It was a complete commercial transaction of lending and borrowing. Funds were infused by R7's personal account, or through the company belonging to R7, i.e., Duckback Information Systems, or through the joint account held by R7 and his mother, where R7's mother, Tapati Bose is the first holder.

**10.15** That the aforesaid transaction is a loan, prevalent in all business houses, and certainly does not make the transaction illegal and/or attract the provisions of 5(24)(h) and 5(24)(m) of I&B Code. Considering an aggregate amount of 4.45 crores payable by CD as on the commencement of CIRP. On giving acute pressure on Bajoria family, R7 also received some repayment of around 36.42 lakhs.

**10.16** It is submitted that the transaction which has been questioned was undertaken after commencement of CIRP. Firstly, the green leaf was not of the CD, it was of several other tea estate sent to CD for processing. There was a break-down of machinery at the factory premises of CD, and the green leaf being a perishable item could not be converted/processed into 'made tea." To mitigate the mounting losses being suffered by CD, R7 came to its rescue and bought the green leaf at prevailing market prices from CD . Reference is made to invoice dt. 24.6.24 issued by CD @p. 22 of Sur-Rejoinder] and thereafter sold in open market [ invoice dt. 22.6.24 issued by R7 @ p. 153 of Rejoinder] to salvage the potential loss at that instance only.



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**10.17** It is submitted that only an amount of Rs. 5 Lakhs and Rs. 25 lakhs from the funds received by CD had been remitted to R7, on account of repayment of loan.

**11.** We have heard the Ld. Counsel and perused the documents on record.

**Analysis and Findings**

**12. Issues for consideration**

**I. Whether the Applicants have the requisite *locus standi* to maintain the present application**

**II. Whether the initiation of CIRP in C.P. (IB) No. 309/KB/2022 was fraudulent, malicious or a collusive proceeding**

**III. Whether the Financial Creditor (Respondent No.1 and Respondent No. 4) was a “related party” of the CD within the meaning of Section 5(24) of the Code at the time of filing the Section 7 application.**

**I. Whether the Applicants have the requisite *locus standi* to maintain the present Application.**

i. It is an admitted position that Applicant Nos. 2 and 3 resigned from the Board in 2020–2021, and Applicant No.1, though continuing as a shareholder, presently holds only about 2.57% of the shareholding.



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ii. I&B Code does not expressly define who may invoke Section 65, but jurisprudence establishes that the applicant must be an “affected person” whose rights or obligations under the Code are directly impacted by the alleged fraudulent initiation. It is therefore necessary to examine whether the Applicants retain a legally cognizable interest in the affairs of the Corporate Debtor that empowers them to seek relief under Section 65.

iii. Promoter status, by itself, does not automatically confer locus once the person has resigned, lost control, or ceased to participate in management. The Applicants have not demonstrated that they had any involvement in or knowledge of the second Section 7 petition (C.P. 309/2022) at the time of its filing, nor did they hold any position within the Corporate Debtor during the relevant period.

iv. We find from the order passed by the Metropolitan Magistrate, on 18.01.2024, that the Applicants had duly participated in the proceedings and were thus fully aware of the initiation of CIRP against the Corporate Debtor, Arcuttipore Tea Co. Ltd.. Despite this knowledge, the Applicants waited over eight months almost as a fence sitter before filing the present I.A. (IB) 1583/2024. The Applicants have not furnished any reasonable explanation for such delay. Such inaction casts doubt on the bona fide of the Applicants .

v. Further the Applicants contend that they remain interested parties because they would face potential exposure to avoidance/PUFE proceedings (IA 1976/2024) launched by the RP. However, the pendency of such proceedings does not, by itself, confer locus to challenge the very initiation of CIRP, nor can Section 65 be used as a defensive mechanism to thwart statutory actions against erstwhile management.



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vi. Section 60(5)(c) of the I&B Code permits “any person aggrieved” to approach this Tribunal, but the phrase has been judicially interpreted to require that the applicant’s rights or liabilities arise under the IBC and not from collateral grievances. Here, the Applicants have not shown how the initiation of CIRP affects any present legal right vested in them, nor have they attempted to participate in CIRP as potential resolution applicants.

vii. The Applicants not having filed any appeal within limitation further debilitates their claim of locus. A person who opts not to avail the statutory appellate remedy cannot ordinarily invoke Section 65 later as an indirect means to assail the admission order. Applicants cannot be allowed to reap benefits of their own inaction.

**II. Whether the initiation of CIRP in C.P. (IB) No. 309/KB/2022 was fraudulent, malicious or a collusive proceeding**

i. The Applicants invoked Section 65(1) of the IBC, which provides that

*“if any person initiates the insolvency resolution process fraudulently or with malicious intent for any purpose other than the resolution of the insolvency of the corporate debtor, the Adjudicating Authority may impose such penalty as may be specified.”*

The provision is penal in nature and therefore requires strict proof.

ii. The Applicants alleged that Respondent No.1, along with Respondent No.4 (O.P. Saxena), took control of the Corporate Debtor in 2021 and engineered a



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fresh date of default through a “collusive settlement agreement” dated 13.04.2022, after the first Section 7 petition (C.P. 361/2021) became untenable due to the Section 10A bar. They contend that the second petition (C.P. 309/2022) was a product of such collusion. In the instant case the burden of proof lies entirely on the Applicants to establish, through cogent and verifiable evidence, that the Financial Creditor (FC) and the Corporate Debtor (CD) acted “*in concert*” to manufacture a default or to maliciously trigger CIRP. We refer to the decision of the Hon’ble Supreme Court in ***Union of India v. Chaturbhai M Patel & Co.***, reported in **(1976) 1 SCC** at Page 747, wherein, it is observed that

***“Fraud, must be established beyond reasonable doubt and the mere suspicion, however may be the circumstances however strange the coincidences, and however grave the doubt, suspicion alone can never take place of proof.”***

iii. We find that the loan agreement of 2019 was executed during the Applicants’ own tenure as management. The recall notice dated 10.09.2020, which the Applicants themselves relied on in earlier proceedings, was issued before alleged takeover by Respondent No.4. There is nothing on record to say or suggest that the Company was not reeling in dire distress and was not in requirement of funds.

iv. The Applicants also do not dispute that serious financial distress, labour unrest, supply disruption, non-operational factory conditions, and GST/PF proceedings existed prior to any alleged interference by Respondent No.4.

v. It is undisputed that C.P. 361/2021 was withdrawn on 25.04.2022 after a settlement agreement was executed. The withdrawal was undertaken before the Tribunal in a transparent manner. No objection was recorded by the Applicants



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at the time of withdrawal, though they were admittedly aware of the proceedings. A creditor withdrawing one petition and filing another after settlement breach does not, by itself, constitute fraud.

vi. The second Section 7 petition (C.P. 309/KB/2022) was admitted after the Tribunal considered the the loan agreement, the settlement agreement, the default under the settlement terms, and the Corporate Debtor's failure to contest or demonstrate repayment. The admission order (15.12.2023) does not record any irregularity in service or in the Corporate Debtor's representation.

vii. Further a settlement agreement entered after a default is a commercial restructuring. Breach of such agreement gives rise to a fresh cause of action and is a recognised basis for a Section 7 petition. Reference is made to the decision of ***Laxmi Pat Surana v. Union Bank of India*, reported in (2021) 8 SCC 481**).

viii. The Applicants have not shown the settlement to be fictitious, forged, or devoid of commercial substance. Thus, the mere existence of a settlement that resets timelines does not constitute fraud. At this juncture, we would refer to **Order VI Rule 4 of the Code of Civil Procedure, 1908**, which mandates specific pleading of fraud. The provision states:

***“In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”***



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This Rule makes it clear that allegations of fraud must be pleaded with full particulars, including specific acts, dates, circumstances, and the nature of the alleged deception. Mere assertions or generalized allegations are insufficient. Therefore, unless the Applicants provide detailed and specific pleadings that satisfy the strict requirements of Order VI Rule 4 CPC, a plea of fraud cannot be sustained.

ix. Disputes relating to admission of CIRP on grounds of fraud or collusion must be raised in a Section 61 appeal, not through a collateral proceeding under Section 65 filed months later. The Applicants did not file any appeal, they instead seek to indirectly invalidate the admission order by invoking Section 65 belatedly. Such use of Section 65 is legally impermissible.

x. No material is produced to show that the FC initiated or continued CIRP for a collateral purpose. The record demonstrates a genuine and long-standing financial default, arising from the Applicants' own period of management. The Corporate Debtor's financial deterioration preceded any alleged misconduct by Respondents.

xi. In ***Ashmeet Singh Bhatia v. Pragati Impex (NCLAT, 2023)***, relied upon by the Applicants, the Appellate Tribunal held that collusion may vitiate CIRP. However, in that case the creditor and debtor had common directors, the transaction was sham, no real financial debt existed. None of these circumstances exist in the present matter. The Loan agreement was executed in 2019 by the erstwhile management and not by any other person who held the reign of the company later.



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Having weighed the pleadings, evidence, and statutory framework, this Tribunal finds that the Applicants have not produced any material that satisfies the strict standard of proof required under Section 65.

**III. Whether the Financial Creditor (Respondent No.1 and Respondent No. 4) was a “related party” of the CD within the meaning of Section 5(24) of the Code at the time of filing the Section 7 application.**

i. The Applicants invoked Section 5(24)(m) of the I&B Code, which refers to “participation in policy-making processes.” Section 5(24) of the I&B Code defines “related party” in relation to the Corporate Debtor which is reproduced below:

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

(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;

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ii. The Applicants allege R1 and R4 is a related party because Corporate Debtor's registered office was shifted from Bajoria residence to MMS Chambers, 4A Council House Streets the instance of R1 and R4 pursuant to the settlement agreement, whereas R1 is having its registered office at "MMS Chambers, 4A, Council House Street, Kolkata-700001. CD was also having a separate office as its registered office at MMS chambers since 2011. However, during the COVID-19 period, CD had changed the registered office from MMS chambers to Bajoria residence at 125, S.P. Mukherjee Road, Kolkata and once the lockdown was lifted the CD once again changed its registered office from Bajoria residence to MMS Chambers. MMS chambers is not owned by R4. The shifting of registered office of CD was not at the instance of R1 and R4. MMS chamber is a building space and has many offices of different entities.

iii. The FC and CD do not have any shareholders or directors in common. There is no nexus or connection between the FC and CD apart from creditor-debtor relationship. Audited financial statements of the CD for the financial year 2019-2020 and 2020-2021 which has been signed by the Applicant no. 3 shows that the under the heading "List of Related Parties", neither the name of the financial creditor or the respondent no. 4 is reflected. Reference is made to **Annexure HH** of convenience compilation.

iv. Moreover Financial Statements for 2019-2020 and 2020-2021 was handed over to FC by the applicants only as a part of due diligence. The CD has admitted its liability in the balance sheets for the Financial Year 2019-2020 and 2020-2021 and such balance sheets have been signed by Shalakyia Bajoria, the applicant no. 3 herein. Reference is made to **Annexure GG** of convenience compilation.



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v. The FC and all its sister companies have only business relationships with CD. Neither FC nor its sister companies either have any shareholding or control in the CD. Hence the same are not related parties under Section 5(24) of the I&B Code.

vi. At this juncture we would refer to the decision of the Hon'ble Supreme Court in ***Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd.*** reported in **(2021) 3 SCC 475**, and ***Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta*** reported in **(2018) 13 SCC 94** wherein it was held that related party status must exist at the time of filing the Section 7 petition and at the time of constitution of CoC.

In the present case R1 and R4 have no shareholding in the CD, there are no common directors, there No managerial interchange, No control, participation, or influence. This is corroborated by the audited financial statements for FY 2019–20 and 2020–21, which were signed by Applicant No. 3 himself and list *no related parties* corresponding to the FC or R4. (Annexure HH). This directly contradicts the Applicants' present allegations and strengthens the inference that the FC is not a related party

Thus, to bring a financial creditor (“FC”) within the definition of “related party,” there must be credible and concrete evidence establishing that the FC *participated in policy-making* of the CD at the relevant time. However, mere allegations are insufficient. The Applicants rely solely on the allegation that the Corporate Debtor’s registered office was shifted “at the instance” of R1 and R4. This allegation fails and does not meet the statutory threshold under Section 5(24)(m).

**13.** Further in the Settlement Agreement dated 19<sup>th</sup> August, 2021, wherein the Applicants were also parties, liability of the CD has been duly admitted and



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acknowledged. Reference is made to para 1 to 7 at pg.89 of the reply of R1 and R4. Hence, we could discern that in the absence of any debt or default, such settlement agreement would not have been entered by the applicants.

**14.** It is evident that the CIRP was initiated by an order dated 15.12.2023 and no appeal was preferred by the applicant before the Hon'ble NCLAT.

**15.** We find that on one hand, the applicants have sought dismissal of C.P. (I.B.) No. 309/KB of 2022 and setting aside of the Admission Order dated 15.12.2023, and on the other hand, sought a declaration that the constitution of the CoC is invalid on the ground that R1 and R7 are related parties to the Corporate Debtor.

**16.** In view of the foregoing discussions, we find no substance in the allegations made by the Applicant, hence the **I.A (IB) NO. 1583/KB/2024** stands **dismissed** and **disposed of** accordingly.

**17.** Certified copy of this order be supplied to upon compliance with all requisite formalities.

**Cmde Siddharth Mishra  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on this, the 7<sup>th</sup> Day of January, 2026**

Oindrila, K. (LRA)