

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/239/2024

09 August 2024

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/C/2022/00696/774/868 dated 31.07.2023 issued to Mr. S Vasudevan, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-002/IP-N00573/2017-2018/11740 and a Professional Member of Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP).

1. Developments in relation to resolution/liquidation of the CDs

1.1. The Hon'ble NCLT, Chennai Bench-II (AA) *vide* order dated 27.04.2021 admitted the application filed by M/s M D Overseas Limited (MDOL) under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Mega Foods Products Madras Private Limited (CD). Mr. S Vasudevan was appointed as the Interim Resolution professional (IRP) who was later confirmed as Resolution Professional.

2. Issuance of Show Cause Notice (SCN) and hearing before DC

2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations), appointed an Investigating Authority (IA) to conduct the investigation of Mr. S Vasudevan. The IA served investigation notice under regulation 8(1) of the Investigation Regulations to Mr. S Vasudevan on 14.07.2022. Mr. S Vasudevan submitted his reply to investigation notice *vide* email dated 21.07.2023. Thereafter, the IA submitted the investigation report to the Board.

2.2. On perusal of the investigation report, IBBI formed a *prima facie* opinion that Mr. S Vasudevan has contravened provisions of the Code and Regulations made thereunder and issued the SCN to Mr. S Vasudevan on 31.07.2023. The SCN alleged contravention of provisions of the Code and its underlying regulations. Mr. S Vasudevan replied to the SCN *vide* email dated 12.08.2023.

2.3. The Board referred the SCN, reply to SCN by Mr. S Vasudevan to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. S Vasudevan availed an opportunity of personal hearing before DC on 23.11.2023 through virtual mode where he appeared along with advocate Mr. Arvind

A. S. Mr. S Vasudevan submitted further written submissions and additional documents on 01.12.2023 and 05.08.2024 respectively.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. S Vasudevan's submissions thereof are summarized below:

3.1. Contravention

Issue regarding constituting the CoC with related party.

3.1.1. It was observed that MDOL submitted its claim to Mr. S Vasudevan as a financial creditor (FC). Mr. S Vasudevan admitted the said claim and assigned a voting share of 100 percent to MDOL in CoC. It was further noted that Mr. Amit Chandrakant Vaishnav, director of the suspended board of the CD, informed Mr. S Vasudevan *vide* email dated 16.06.2021 that the MDOL i.e., the sole member of Committee of Creditors (CoC), had entered into various agreements with CD through which the shares of CD were transferred to one Ms. Deepti Bansal, who is the niece of Mr. Satish Bansal, Managing Director of MDOL. The said email further stated that by virtue of being a related party, MDOL cannot be a part of the CoC and thereby any action taken on account of it shall be a nullity. It was further observed that subsequently *vide* letter dated 20.06.2021, a day prior to the second CoC meeting held on 21.06.2021, the director of the suspended board again requested Mr. S Vasudevan that "*the alleged financial creditor u/s 21(2) should not be permitted any voting rights, if at all you permit them to participate in the COC.*"

3.1.2. It was, however, observed that Mr. S Vasudevan continued with CoC meetings with voting shares to MDOL, the sole FC. It was decided to liquidate the CD in the 5th CoC meeting. Aggrieved with the decision of Mr. S Vasudevan to continue with the CoC meeting with voting share to related FC, the director of the suspended board filed an interlocutory application before AA with one of the remedies sought was to dissolve the CoC consisting of MDOL. The AA *vide* its order dated 01.06.2022 passed the following direction in the said interlocutory application:

"...we are of the considered opinion that the first respondent sole member of the COC of the corporate debtor and Miss Deepthi Vinod Bansal who is 49% shareholder of the corporate debtor were uncle and niece. Thus, first respondent and sole member of the COC of the corporate debtor fall under the expression of related party of the corporate debtor in first provision of section 21(2) and the first respondent here in his prevented to be part of the COC".

“reading the above provisions clearly shows that it is duty of the resolution professional to collect and peruse the information regarding corporate debtor and claimants before constituting COC”

“Clause 6 and 7 of declaration part of the form clearly required the declaration from the financial creditor who submitted the claim before RP that it is not covered under section 5(24) and it is the due diligence of the RP to confirm the said declaration”.

“from the above observation it is clear that the COC constituted with the financial creditor who is a related party to the corporate debtor and the survival of the set COC is restricted by the express provision of the court. In addition, it appears that there is negligence on the part of Resolution Professional in identifying the related party in the COC.

“in view of the above discussions the second respondent, Resolution Professional of the corporate debtor is hereby directed to remove the first respondent from the Committee of Creditors of the corporate debtor viz Mega Foods products Madras Pvt limited as the first respondent is related party.”

3.1.3. It was further observed that as per shareholder agreement dated 16.11.2016 signed between CD and FC, 49 percent shareholding of CD vested in MDOL. In the shareholder agreement MDOL and/or its Associates/Affiliates and/or funds managed or advised, directly or indirectly, by it, was defined as Key investor. Further some relevant clauses of the agreement provide as under:

“9. Co-invest Right: The Key Investor would have the right to bring in its Affiliates as co-investors. In such a case, the terms of this agreement that are applicable to the Key Investor would also be applicable vis-à-vis such Co-investor.

12. Board Composition: The Key Investor shall have a right to appoint majority of the directors on the Board of the Company. The Chairman of the Board will be a nominee of the Key Investors and will have a casting vote where needed.

This board right shall be non-transferrable.”

3.1.4. It was, thus, noted that as per the shareholder agreement dated 16.11.2016, FC held 49% shareholding in the CD. The said agreement was relied by the AA in its order dated 01.06.2022. Further, this agreement was of date later to the agreement dated 16.09.2016 mentioned in the AA's admission order. As per shareholder agreement dated 16.11.2016, the FC was not only having 49% shareholding in the CD but also had the right to appoint majority of the directors on the board of the CD and also to nominate the chairman of the

board of the CD. As per section 5(24)(l) of the Code, any person who can control the composition of the board of directors or corresponding governing board of the CD would be a related party to the CD. By virtue of having 49% shareholding in the CD, FC was in a position to control the composition of the Board of Directors as stated above and hence was a related party to CD.

3.1.5. It was further noted that as per the shareholding pattern of CD as on 01.09.2017 accessed from company data available on MCA website, Ms. Deepti Bansal, niece of Mr. Satish Bansal, Director of FC is shown having 49 percent shareholding of CD. It seems that shareholding pattern on MCA website was not updated as per agreement dated 16.11.2016. Relationship between Ms. Deepti Bansal and Managing Director of FC was well within knowledge of Mr. S Vasudevan as he himself had admitted before AA that *“the uncle and niece relationship between the 1st Respondent and Ms. Deepthi Vinod Bansal is not covered by the definition under section 5(24) of IBC, 2016 and the definition of the expression ‘relative’ in the explanation of section 5(24A) of IBC, 2016 could not be applied for the expression ‘relative’ in 5(24)(a) &(b).”*

Relevant provision of Explanation of section 5(24A) provides as under:

(24A) *“related party”, in relation to an individual, means:*

...

Explanation. —For the purposes of this clause, - (a) “relative”, with reference to any person, means anyone who is related to another, in the following manner, namely: —

...

(xiv) brother's son and daughter,

3.1.6. In view of the above, the Board held the *prima facie* view that Mr. S Vasudevan contravened Sections 21(2), 208(2)(a) & (e) of the Code, Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), Regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 3, 12 and 14 of the Code of Conduct for IPs under First Schedule to IP Regulations (Code of Conduct).

3.2. Submissions made by the IP

3.2.1. Mr. S Vasudevan submitted that the SCN was issued against him based on the observations in the order of the AA in IA(IBC) 1322 of 2022. He submitted that he filed an appeal against the AA's order before the Hon'ble NCLAT and the same is pending. The MDOL also filed an appeal Company Appeal (AT)(CH)(INS) 291 of 2022. Since, the appeal is *sub judice* no order must be passed based upon order of the AA in IA(IBC) 1322 of 2022. Therefore, till the said appeal is decided, the SCN has to be closed.

3.2.2. He submitted that Section 21(2) of the Code imposes a restriction of related party of CD from being part in CoC. The AA without taking note of the difference in definition of related party of the CD and related party of an individual, passed an order. Section 5(24) of the Code defines related party of the CD and only entries that fall under section 5(24) determine whether a person is a related party to the CD. The related party definition in section 5(24) is an exhaustive list, the definition uses "means" so as to make the definition exhaustive. The Hon'ble Supreme Court in *Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd.*, reported in (2021) 3 SCC 475 held that:

"61. The definition of the expression "related party" in Section 5(24) is exhaustive, since the expression is defined to "mean" what is set out in sub-clauses (a) to (m). The expression "related party" is defined in Section 5(24) as follows:

*(24) "related party", in relation to a corporate debtor, means -
The expression "related party" is defined in Section 5(24) in relation to a corporate debtor. Section 5(24-A) provides a corresponding definition in relation to an individual.*

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

3.2.3. Mr. Vasudevan submitted that for a person to be a related party it has to fall within the definition of section 5(24) of the Code, which is an exhaustive definition. He examined whether MDOL fell within the definition of related party under section 5(24) of the Code. Based on the available records of the CD, the MDOL did not fall within the definition of related party under section 5(24) of the Code. The table setting out non-applicability to any of the clauses of section 5(24) of the Code is extracted hereunder:

Section	Why it is no applicable
S.5(24)(a)	1. Deepti Bansal is not a director of the CD 2. MDOL does not fall within the definition of relative of Deepti Bansal
S.5(24)(b)	1. MDOL is not key managerial person

	2. MDOL does not fall within the definition of relative of Deepti Bansal
S.5(24)(c)	There is no limited liability partnership or a partnership firm involved in this case.
S.5(24)(d) and (e)	Neither is MDOL a director, partner or manager of MDOL nor Deepti Bansal director, partner or manager of MDOL
S.5(24)(f)	MDOL does not act on the advice, directions or instructions of a director, partner or manager of the CD
S.5(24)(g)	There is no limited liability partnership or a partnership firm involved in this case
S.5(24)(h)	Neither the Corporate Debtor nor its director partner or manager act on the instruction or direction of MDOL.
S.5(24)(i)	There is no relationship of holding and subsidiary company
S.5(24)(j)	MDOL does have any voting rights in the CD.
S.5(24)(k)	The CD does not have voting rights in MDOL.
S.5(24)(l)	MDOL does have any control on the composition of board of directors or corresponding governing body of the corporate debtor;
S.5(24)(m)	1. MDOL does not participate in the policy making process of the CD. 2. None of the Directors are common between the Corporate Debtor and MDOLs 3. There has been no interchange of managerial personnel between the CD and such person; or 4. There is no provision of essential technical information to or from the CD.

He submitted that all these are based on the information available with him and the public records. The contention of Mr. Amit Vaishnav Chandrakant is not supported by any of the records of the CD or the details available in the MCA website. Therefore, based on the public data, MDOL is not a related party of the CD.

3.2.4. He submitted that director of the suspended board Mr. Amit Vaishnav Chandrakant was not cooperating with him and he filed an application MA 110 of 2023 against Mr. Amit Vaishnav Chandrakant under section 19 of the Code for non-cooperation and direction to provide all the necessary books of accounts and necessary records of the CD.

3.2.5. Mr. Vasudevan submitted that the AA, without even noticing the fact that the MDOL is a Company, held that MDOL and Deepti Bansal have an uncle niece relationship. It is submitted that a company cannot have an uncle niece relationship with one Deepti Bansal. The AA wrongly relied on explanation to section 5(24A) of the Code which defines related party of an individual. The said section explicitly states that definition of relative in explanation to section 5(24A) of the Code only applies to section 5(24A) of the Code.

Despite the same, the AA relied on explanation to section 5(24A) of the Code. The explanation to S. 5(24A) of the Code cannot be applied to S. 5(24) of the Code as explanation to section 5(24A) itself categorically states that explanation applies only to section 5(24A). The relevant part of the Section is extracted hereunder:-

“(24A) “related party”, in relation to an individual, means

...

Explanation. - For the purposes of this clause

(a) relative....”

Therefore, the definition of relative in the explanation cannot be used for interpretation of S 5(24) of the Code. The word relative in section 5(24) of Code is not defined. Under section 3(37) of the Code, words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts. Under the section 2(77) of Companies Act, 2013, the term relative means the following:

"(77) relative ", with reference to any person, means anyone who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed;"

Under Rule 4 of Companies (Specification of Definitions Details) Rules, 2014 defines who is a relative. Rule 4 of Companies (Specification of Definitions Details) Rules, 2014 is extracted hereunder: -

"4. List of relatives in terms of Clause 77 of Section 2. — A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely—

(1) Father:

Provided that the term "Father" includes step-father.

(2) Mother:

Provided that the term "Mother" includes the step-mother.

(3) Son:

Provided that the term "Son" includes the step-son.

(4) Son's wife.

(5) Daughter.

(6) Daughter's husband.

(7) Brother:

Provided that the term "Brother" includes the step-brother;

(8) Sister:

Provided that the term "Sister" includes the step-sister."

He submitted that all these contentions were raised before the AA in the abovementioned case. But none of the submissions were taken into account by the AA. In the appeal filed against the order before the Hon'ble NCLAT, Chennai Bench, one of the grounds of the appeal is that none of the submissions were taken into account in the order.

3.2.6. The Code distinguishes between the related party of the CD and related party of an individual. For instance, under section 29A of the Code itself, the legislature has used words distinctively. i.e., section 29A is used both in relation to CD and in relation to individuals. The relevant provision in section 29A of the Code, where both the words are used distinctively is extracted hereunder:-

<i>Section 29A (c)</i>	<i>Section 29A (j)</i>
<p><i>(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:</i></p> <p><i>Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:</i></p> <p><i>Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and <u>is not a related party to the corporate debtor.</u></i></p>	<p><i>(j) has a connected person not eligible under clauses (a) to (i).</i></p> <p><i>Explanation I - For the purposes of this clause, the expression "connected person" means -</i></p> <p><i>(i) any person who is the promoter or in the management or control of the resolution applicant; or</i></p> <p><i>(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or</i></p> <p><i>(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):</i></p>

3.2.7. Mr. Vasudevan submitted that section 29A of the Code which was also introduced in 2018 along with which section 5(24A) of the Code and section 21(2) of the Code was amended, makes a distinction between the section 5(24) and section 5(24A) of the Code. Section 29A was introduced to disqualify certain persons from submitting resolution plan. Proviso to section 29A (c) of the Code refers to the term related party to the CD, i.e., the definition under section 5(24) of the Code, whereas Explanation to section 29A (j) of the Code refers to the term related party of a person i.e., the definition under section 5(24A) of the Code. The report of the Insolvency Law Committee based on which S.5(24A) was introduced, states that :-

"1.27 With respect to persons considered as related party in the context of an individual, the Committee noted that the Code does not expressly define the same. The Committee observed that the term related party was generally used in the context of a corporate debtor or other company under the Code. However, sections 28 and 29A of the Code and regulation 33 of the Liquidation Regulations use the term 'related party' in a manner which may also include related party in the context of individuals such as a promoters or directors or the liquidator. Accordingly, the Committee felt that the term related party in relation to an individual must be defined in the Code."

Therefore, there is a clear distinction between related party of the CD [section 5(24)] of the Code and related party in relation to an individual [section 5(24A)] of the Code.

3.2.8. Similarly, there are other sections in the Code which make a clear distinction by the use of words in the statute. For instance section 32A of the Code which deals with liability of a CD for offence committed prior to the commencement of CIRP, makes a reference to individual. The relevant extracts is as follows:

"32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not -

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or. ””

3.2.9. He submitted that section 5(24) of the Code is the only provision that deals with definition of related party in relation to a CD whereas section 5(24A) of the Code only deals with related party in relation to an individual. The AA wrongly relied on section 5 (24A) of the Code, to state that the MDOL is a related party, that too based on explanation to the section definition. Therefore, only the definition under Section 5(24) of IBC is interpreting Section 21(2) of the Code.

3.2.10. He submitted that the order of the AA is a non-reasoned order. All these are few amongst the several grounds raised in the appeal against the order of the AA in IA 1322 of 2022 in Company Appeal (AT)(INS) 286 of 2022. Also, the issue whether section 5(24A) applies to section 21(2) is a substantial question of law that is to be clarified by the appropriate authority. He cannot be said to be negligent when such complicated substantial question of law issues is involved.

3.2.11. Mr. S Vasudevan submitted that the role of RP is to merely vet and verify the claims. The RP is only given administrative power and he does not have adjudicatory power or quasi-judicial powers. The same is evident from the order of the Hon'ble Supreme Court in Swiss Ribbon Pvt. Ltd & Anr v. Union of India & ors,

59. Under the CIRP Regulations, the resolution professional has to vet and verify claims made, and ultimately, determine the amount of each claim as follows

"10. Substantiation of claims. - The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim."

XXX XXX XXX

"12. Submission of proof of claims. - (1) Subject to sub-regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Where the creditor in sub-regulation (2) is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

13. Verification of claims. - (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be -

- a) Available for inspection by the persons who submitted proofs of claim;*
- b) available for inspection by members, partners, directors and guarantors of the corporate debtor;*
- c) displayed on the website, if any, of the corporate debtor;*
- d) filed with the Adjudicating Authority; and (e) presented at the first meeting of the committee.*

14. Determination of amount of claim. - (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him. (2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision."

It is clear from a reading of these Regulations that the resolution professional is given administrative as opposed to quasi-judicial powers.

In fact, even when the resolution professional is to make a -determination under Regulation 35A, he is only to apply to the Adjudicating Authority for appropriate relief based on the determination made as follows:

35A. Preferential and other transactions. - (1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under section 43,45,50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been . subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board. (3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date."

Therefore, the RP cannot adjudicate whether the FC is a related party or not. In the form submitted by the MDOL, they have given a declaration that they are not related party.

3.2.12. Mr. Vasudevan submitted that the issue of related party was already decided by the AA during the admission of CIRP itself. He submitted that the contention of Amit Chandrakant Vaishnav informing him regarding MDOL entering in various agreement with the CD through which the shares of the CD were transferred to Deepti Bansal, who is the niece of Mr. Satish Bansal, the Managing Director of MDOL is not backed by any documentary proof. Further, the CD had already raised the contention before the AA in the application under section 7 in IBA 1364 of 2019, that the MDOL had the transaction with the CD, is not loan transaction but consideration for transfer of 49% equity shares held by the promoters. The AA had dismissed the contention of the CD and admitted the section 7 application. The relevant paragraphs are extracted hereunder: -

"3. In the Counter filed on 17.02.2020, the Corporate Debtor alleged that the Financial Creditor has suppressed existence of a MoU dated 14th September 2016 (Page.6) with Ms. Deepti Bansal, a related party to the petitioner herein whereby the said Deepti Bansal arranged funds for settlement of the loans payable to the ICICI Bank, Dena Bank and ISARC. It is averred that the respondent has not borrowed any money as claimed by the petitioner herein and there is a pre-existing dispute with respect to the fulfillment of the obligations by the said investor. Further, whatever monies received are only towards consideration for transfer of 49% equity shares held by the promoters of the Respondent Company but not as a loan. As such, the matter has to be settled before an Arbitrator but not through this Adjudicating Authority."

"4. It is submitted that the financial creditor has not advanced any amount pursuant to the lender's MoU Agreement dated 30.09.2016 but the said amounts were paid to the banks by virtue of shareholders agreement dated 16th September 2016 and shares were transferred in favour of Deepti Bansal in lieu and consideration of the settlement amounts received by Dena Bank and ISARC. As per the shareholders agreement a sum of Rs.13 crore was receivable by the Company whereas Rs.7,94,70,630/- was paid and that too directly to the two banks as stated above. Since the payment towards the settlement of two banks were made as per the instructions of Deepti Bansal and not given to the respondent Company and as such the claim for repayment of amount or interest thereon should have against Deepti Bansal and not against respondent company."

After considering the contention of the CD, the AA has dismissed the contention as frivolous. The relevant paragraph is extracted hereunder: -

"8. The defence raised by the Corporate Debtor is frivolous and it is evident that the Respondent is refusing to repay the amounts due to the Applicant. Hence, CIRP ought to be initiated against the Corporate Debtor under the provision of IBC."

Therefore, the contention regarding MDOL entering in various agreement with the CD through which the shares of the CD were transferred to Deepti Bansal has already been

decided by the AA and it is not for the RP to adjudicate on this after it has been decided by the AA.

3.2.13. He submitted that there are two shareholders agreement that are relevant for the present proceedings. One is the shareholders agreement dated 16.09.2016 with Deepti Bansal wherein 49% of the shares were transferred to Deepti Bansal. There is another purported shareholder agreement with the MDOL dated 16.11.2016 wherein 49% of the shares were transferred to the MDOL. The authenticity and credibility of the same is in question as the shareholders agreement dated 16.11.2016 is neither reflected in the books of accounts, MCA website, MOA and AOA of the CD.

He submitted that on 16.09.2016, 49% shares were s already transferred to Deepti Bansal through shareholders agreement dated 16.09.2016. However purported shareholders agreement dated 16.11.2016 stated that 100% entire shares held by the promoter group out of which 49% transferred to M/s. M.D. Overseas Limited. If 49% was already transferred on 16.09.2016, how can the promoter group held 100% shareholding on 16.11.2016. In the purported shareholders agreement dated 16.11.2016, there is no mention of shares that were already transferred to Deepti Bansal through shareholders agreement 16.09.2016. The CD or Mr. Amit Vaishnav Chandrakant never disputed the shareholders agreement with Deepti Bansal dated 16.09.2016. In fact, records of MCA as on 01.09.2017, i.e., much after the purported shareholders agreement dated 16.11.2016, do not show that the MDOL is a shareholder of the CD.

3.2.14. With respect to the contention that MDOL had right to appoint majority of directors of the board of the CD and also nominate the Chairman of the board, no such provisions have been made in the MOA and AOA. Further the said shareholders agreement dated 16.11.2016 contains certain pre-condition, one of which is to amend the MOA and AOA of the CD. From the records available, no amendment to MOA and AOA of the CD has been carried out. It is well settled that when the shareholders agreement is contrary to the MOA or the AOA, then shareholders agreement is unenforceable and they are void. The said view is supported by the decision of the Hon'ble Supreme Court in *Vodafone International Holdings BV v. Union of India & Another* in Civil appeal No. 733 of 2012

3.2.15. Therefore, the authenticity and genuineness of the shareholders agreement dated 16.11.2016 itself is in question. The RP who has only administrative power and not adjudicatory power cannot have conducted a mini trial to find the authenticity of the document.

3.2.16. Mr. Vasudevan submitted that the shareholders agreement dated 16.11.2016 signed between the CD and MDOL was never shared with him. He came across this document for the first time only in the rejoinder filed by Mr. Amit Chandrakant Vaishnav in

Interlocutory Application 1322 of 2022. From the records available with the CD, no share seems to have been transferred to MDOL.

3.2.17. Mr. Vasudevan submitted that the emails dated 16.06.2021 and 20.06.2021 are allegations without any documentary proof enclosed with the email. Mr. Amit Chandrakant Vaishnav did not mention what were the agreements entered into between MDOL and the CD. There were no records available with the CD to substantiate the allegations of Mr. Amit Chandrakant Vaishnav. He also did not mention the loan transaction between MDOL and the CD as related party transaction. Therefore, he examined the records of the CD that were available to examine the allegations of Mr. Amit Chandrakant Vaishnav and based on which it was found that the contentions were false.

3.3. Analysis and Findings.

3.3.1. The DC notes that the allegation made in the SCN which referred to the shareholder agreement dated 16.11.2016 signed between CD and MDOL and stated that 49% shareholding of CD was vested in MDOL and MDOL has right to appoint majority of the directors of the CD. The SCN stated that shareholder agreement dated 16.11.2016 was later to agreement dated 16.09.2016. It alleged Mr. S Vasudevan for contravening section 5(24)(l) of the Code which provides that any person who controls the composition of the board of directors of the CD would be a related party to the CD. The SCN concluded that since MDOL held 49% of the shareholding of the CD, they were in position to control the composition of board of directors of the CD. It further stated that as per MCA records, Ms Deepti Bansal is having 49% of the shareholding of the CD and seems that MCA records have not been updated as per agreement dated 16.11.2016.

3.3.2. To further understand, the evidentiary value of different documents and their implications, the chronology of agreements along with remarks is given below:

Date	Events	Remarks
14.09.2016	MoU between Ms. Deepti Bansal and CD for arranging funds/loan by Ms. Deepti Bansal from bank/financial companies/any other body corporate/any other party upto Rs. 13 million to fulfil the requirements of repayments of existing loans and for the current working capital requirements of the CD in lieu of 49% (90297 equity shares of the 184279 equity shares) of	The CD referred the said MoU in his submissions before the AA during admission proceedings and submitted that MDOL has suppressed its existence. He submitted that he has not borrowed any money but it was received towards consideration for transfer of 49% equity shares held by the promoters of the CD.

	the current paid up capital of the CD for a consideration of Re. 1.	
18.09.2016	42809 shares of the CD were transferred to Ms. Deepti Bansal	Transferred by Trishala Vaishnav, a shareholder and director of the suspended board of CD.
30.09.2016	MoU between MDOL and CD for lending Rs. 130 million to CD and entire 100% paid up equity share capital of the CD shall be pledged with the lender so long as the Loan amount under clause 4 above including accrued interest remain outstanding	The MDOL relied upon the MoU to prove that it has lent Rs.13 crore in tranches with an interest at 18% per annum to the CD.
16.11.2016	47488 of the CD shares were transferred to Ms. Deepti Bansal	Transferred by Amit C Vaishnav, a shareholder and director of the suspended board of the CD.
16.11.2016	<p>Shareholder's Agreement between MDOL and CD where MDOL shall invest into CD through a debt or as structured debt instrument a total of an amount not exceeding INR. 130 million where investment through first tranche will be after the Key Investor Group completes acquisition of 49% of the paid up capital of the CD for a consideration of Re. 1.</p> <p>Under Pre-Investment Capital Structure, the agreement states that <i>"The entire equity shares are currently held by the existing promoters of the Company."</i></p> <p>Under Post-Investment Capital Structure attached in Annexure 1, the agreement provides 49% shareholding of the CD in name of MDOL.</p>	<p>This agreement was not relied upon by the CD at the time of admission of CD to the CIRP and was first produced with IA(IBC)/1322(CHE)/2021 in IBA/1364/2019.</p> <p>This agreement mentions that entire equity shares are currently held by existing promoters of the CD. However, as can be seen from above the chronology of various events given in this table that at this point of time, 49% shareholding of the CD has already been transferred to Ms. Deepti Bansal. Further, MCA records show shareholding in the name of Ms. Deepti Bansal.</p>
25.01.2017	Definitive Lender's Agreement between MDOL and CD executed in furtherance to the MoU dated 30.09.2016 for	Pursuant to Definitive Lender's Agreement, the 1 st tranche of Rs.7,47,10,630/- was utilized to

	lending a total of Rs. 130 million and entire 100% paid up equity share capital of the CD shall be pledged with the lender so long as the Loan amount under clause 4 above including accrued interest remain outstanding.	settle the dues of the CD towards banks.
25.01.2017	Shareholders' Agreement executed in furtherance to the MoU dated 14.09.2016 between Ms. Deepti Bansal and CD. Ms Deepti Bansal arranged funds/loan from a body corporate to repay bank/financial institutions loans and fulfil the current working capital requirements of the CD in tranches not exceeding in total Rs 13 Million and in lieu of her efforts, 49% of the current paid up capital of the CD were transferred to her on 16.11.2016 for a consideration of Re. 1.	The director to the suspended board of the CD stated that amounts were paid to the banks by virtue of shareholders agreement dated 16.09.2016 and shares were transferred in favour of Ms. Deepti Bansal in lieu and consideration of the settlement amounts received by Dena Bank and ISARC.

3.3.3. The events reflect to the fact that shares were transferred to Ms. Deepti Bansal as per MoU dated 14.09.2016 and later on 16.11.2016 another shareholder agreement was signed. In the sequence shareholding agreement on 25.01.2017 was signed which has reference to the first MoU without any mention about annulment of the second agreement signed on 16.11.2016. The impact of existence of three agreements needs further legal scrutiny.

3.3.4. The DC also notes the submission of Mr. S Vasudevan that if 49% was already transferred, how can the promoter group hold 100% shareholding on 16.11.2016 as mentioned in the shareholders agreement dated 16.11.2016. The shareholders agreement dated 16.11.2016 does not mention about shares that has already been transferred to Deepti Bansal.

3.3.5. The DC observes that the order of the AA has been challenged before the Hon'ble NCLAT by Mr. S Vasudevan and MDOL and is *sub judice*. The admission order dated 27.04.2021 has also been challenged by the director of the suspended board before the Hon'ble NCLAT. All three appeals have been tagged together and are pending for final adjudication by the Hon'ble NCLAT which will bring clarity on the issue. Therefore, the Board may re-look into the issues surrounding the contravention after disposal of appeal by the Hon'ble NCLAT.

3.3.6. In any case the contravention in respect of related party has been alleged in the SCN based on clause (l) of the section 5(24) and not as per clauses (a) and (b) of section 5(24) as

appear to have been invoked by the AA. Further, as has been brought out above, the allegation of related party as per clause (l) of section 5(24) proceeds on the basis that MDOL holds 49% shareholding in CD which will be possible if agreement dated 16.22.2016 is given effect and other agreements are ignored. As has been stated above, the existence of three shareholding agreements needs further legal scrutiny

Order

- 4.1. In view of the submission made by Mr. S Vasudevan, and materials available on record, the DC notes dispose of the SCN with direction to the Mr. S Vasudevan to inform the final judgement pronounced in Company Appeal (AT)(CH)(INS) 286 of 2022 pending before Hon'ble NCLAT, Chennai Bench. The Board may re-look into the issues surrounding the contravention after disposal of appeal by Hon'ble NCLAT.
- 4.2. This Order shall come into force immediately.
- 4.3. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. S Vasudevan is enrolled as a member.
- 4.4. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 4.5. Accordingly, the show cause notice is disposed of.

Sd/-
(Sandip Garg)
Whole-time Member, IBBI

Sd-
(Sudhaker Shukla)
Whole-time Member, IBBI

Date: 09 August 2024
Place: New Delhi