



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – V
DIVISION BENCH

C.A. (I.A.) No. 712/2019 & I.A. No. 6192/2023

IN

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

Under Section 33 of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions.

IN THE MATTER OF:

THE INDURE PRIVATE LIMITED.

Indure House,
Greater Kailash - 2
New Delhi – 110048.

**...OPERATIONAL
CREDITOR/PETITIONER**

VERSUS

B.K. COAL FIELDS PRIVATE LIMITED.

Through Resolution Professional,
Mr. Arun Gajwani
10, Masjid Moth, Greater Kailash – II,
New Delhi - 110048

**...CORPORATE
DEBTOR/RESPONDENT**

Order Delivered on: 04.06.2026

CORAM:

SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

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



APPEARANCES:

- For the RP** : Mr. Krishnendu Datta, Sr. Adv., Mr. Nakul Mohta, Mr. Hitesh Nagar, Ms. Saijal Arora, Mr. Harsh Gurbani, Advs.
- For the CoC** : Mr. Siddharth Yadav, Sr. Adv., Mr. Apoorv Agarwal, Ms. Vaishnavi, Advs.

ORDER

1. The present applications being C.A. (I.A.) No. 712/2019 and I.A. No. 6192/2023 in Company Petition bearing CP (IB) 227/PB/2017 have been filed by the Resolution Professional, Mr. Arun Gajwani ("**Applicant**"), wherein C.A. (I.A.) No. 712/2019 has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") and I.A. No. 6192/2023 has been filed under Section 33(2) read with Section 12 of the Code, seeking issuance of directions for the liquidation of the Corporate Debtor, B.K. Coal Fields Private Limited.
2. Since both the aforesaid applications arise out of the same Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor, the same are being disposed of by way of this common order.
3. The reliefs sought/intimation filed in C.A. (I.A.) No. 712/2019 are, in substance, as under:
 - a) Take on record the intimation filed by the Resolution Professional under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, regarding the decision of the Committee of Creditors to liquidate the Corporate Debtor;
 - b) Pass an order for liquidation of the Corporate Debtor, B.K. Coal Fields Private Limited, in terms of Section 33(2) of the Code, pursuant to the decision of the Committee of Creditors taken in its meeting dated



09.03.2019, whereby, on account of non-receipt of any detailed Expression of Interest and consequent non-receipt of any Resolution Plan despite issuance of Form G on two occasions, the Committee of Creditors recommended liquidation of the Corporate Debtor and accordingly directed the Resolution Professional to file the present intimation/application for liquidation.

4. Reliefs sought in I.A. No. 6192/2023 are as under:

- a) Allow the present Application and direct liquidation of the Corporate Debtor in view of expiry of 330 days of the CIRP period of the Corporate Debtor; and/or
- b) Pass any such other/further order(s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

5. The facts in brief stated in C.A. (I.A.) No. 712/2019 are as under:

- a) This Adjudicating Authority vide order dated 07.06.2018 admitted Company Petition bearing CP (IB)-227(PB)/2017 filed under Section 9 of the Code against B.K. Coal Fields Private Limited ("**Corporate Debtor**") and initiated CIRP of the Corporate Debtor. Mr. Devendra Singh was appointed as the Interim Resolution Professional ("IRP"). The copy of the order dated 07.06.2018 passed by this Adjudicating Authority has been placed on record vide Annexure A-1.
- b) The IRP constituted the Committee of Creditors ("**CoC**") of the Corporate Debtor and convened and conducted the first meeting of the CoC on 25.07.2018. In the said meeting, the CoC unanimously resolved to replace the erstwhile IRP, Mr. Devendra Singh. The copy of the minutes of meeting of CoC dated 25.07.2018 has been placed on record vide Annexure A-2.



- c) Pursuant thereto, an application under Section 22(3)(b) of the Code was filed before this Adjudicating Authority seeking appointment of Mr. Arun Gajwani as the Resolution Professional (“**RP**”) in place of the erstwhile IRP. The said application was allowed vide order dated 25.09.2018 and accordingly Mr. Arun Gajwani came to be appointed as the Resolution Professional of the Corporate Debtor. The copy of the order dated 25.09.2018 has been placed on record vide Annexure A-3.
- d) After his appointment, the Applicant undertook various steps in furtherance of the CIRP in accordance with the provisions of the Code and CIRP Regulations including issuance of Information Memorandum, appointment of Registered Valuers and Transaction Auditors, fixation of eligibility criteria for Prospective Resolution Applicants (“PRAs”) and issuance of Form-G inviting Expression of Interest (“EOI”) from prospective Resolution Applicants. The copies of the minutes of meetings of the CoC dated 06.10.2018, 23.10.2018 and 03.11.2018 in this regard have been placed on record vide Annexure A-4 (Colly).
- e) In the third and fourth meetings of the CoC held on 06.10.2018 and 23.10.2018 respectively, the CoC deliberated upon and approved the eligibility criteria for submission of Resolution Plans and authorized issuance of Form-G. Accordingly, Form-G was issued on 27.10.2018 inviting EOI from Investors/Consortium of Investors/ Financial Institutions/ Investment Companies/ NBFCs/ARCs. The copy of Form-G issued on 27.10.2018 inviting expression of interest has been placed on record vide Annexure A-5.
- f) In the fifth meeting of the CoC held on 03.11.2018, considering that the CIRP could not be completed within the original period of 180 days ending on 04.12.2018, the CoC unanimously resolved to seek extension of CIRP period by a further period of 90 days.



- g) Accordingly, an application seeking exclusion of the period consumed in replacing the IRP and extension of CIRP period was filed before this Adjudicating Authority. Vide order dated 13.12.2018, this Adjudicating Authority allowed the application and extended the CIRP period by 90 days excluding 62 days spent in replacing the erstwhile IRP. The copy of the order dated 13.12.2018 has been placed on record vide Annexure A-6.
- h) Pursuant to publication of Form-G dated 27.10.2018, three preliminary enquiries were received from certain parties seeking eligibility criteria for submission of detailed EOIs. However, no detailed EOI was received from any prospective applicant.
- i) Since no detailed expressions of interest were received, the CoC in its seventh meeting dated 07.01.2019 considered review/relaxation of the eligibility criteria for re-issuance of Form-G and accordingly revised Form-G was issued on 09.01.2019. The copy of seventh meeting of CoC dated 07.01.2019 has been placed on record vide Annexure A-7. The copy of revised Form-G issued on 09.01.2019 has been placed on record vide Annexure A-8.
- j) Despite issuance of revised Form-G and relaxation of eligibility criteria, no detailed expressions of interest were received within the stipulated period.
- k) In the eighth meeting of the CoC dated 16.02.2019, the CoC considered whether fresh EOI could be issued or liquidation of the Corporate Debtor be proceeded with. However, the issue was deferred till the next meeting. The copy of eighth meeting of CoC has been placed on record vide Annexure A-9.
- l) Thereafter, in the ninth meeting of the CoC dated 09.03.2019, the CoC, after considering that no detailed expressions of interest were received despite issuance of Form-G twice, resolved to apply for liquidation of the



Corporate Debtor and directed the Resolution Professional to file appropriate application before this Adjudicating Authority. The copy of the minutes of meeting of CoC dated 09.03.2019 has been placed on record vide Annexure A-10.

m) The Applicant has further stated that certain applications challenging the constitution of CoC were pending adjudication before this Adjudicating Authority.

6. The facts in brief stated in I.A. No. 6192/2023 are as under:

a) The facts and circumstances of the present application are substantially similar to the facts stated in C.A. (I.A.) No. 712/2019. Pursuant to the decision taken by the Committee of Creditors dated 09.03.2019, the Applicant/Resolution Professional had already filed C.A. (I.A.) No. 712/2019 under Section 33(2) of the Code seeking initiation of liquidation of the Corporate Debtor. However, the said application remained pending adjudication. In the meantime, the period of 330 days prescribed for completion of CIRP had expired on 04.07.2019, excluding 62 days spent in replacing the erstwhile IRP. Therefore, I.A. No. 6192/2023 was filed seeking liquidation of the Corporate Debtor on the ground that the CIRP could not be continued beyond the statutory timeline.

b) The Applicant further submitted that no Resolution Plan has been proposed till date despite publication of EOI by the Applicant/Resolution Professional.

c) The Applicant also submitted that no application under Section 12A of the Code is pending consideration before this Adjudicating Authority and, therefore, the CIRP period cannot be extended beyond the statutory timeline prescribed under the Code.



7. Resolution Professional and the CoC submitted in I.A. No. 6192/2023 that the period of 330 days prescribed under the Code had already expired long back and therefore there was no option except to pass an order for liquidation under Section 33 of the Code, as recorded in the order dated 06.01.2025. Operational Creditor, however, submitted in I.A. No. 6192/2023 that applications challenging the constitution of the CoC are pending adjudication before this Adjudicating Authority, as recorded in the order dated 12.12.2023.
8. We have heard learned counsel for the Applicant/Resolution Professional, learned counsel for the CoC and learned counsel for the Operational Creditor and have perused the material available on record.
9. We note that before analysing the facts of the instant case, it is important to understand the law on liquidation of the Corporate Debtor which is laid under Section 33 of the Code. The relevant extract of the provision for liquidation under Section 33 of the Code is reproduced hereinunder:

“Section 33 - Initiation of Liquidation

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. - For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]”



10. It is noted from C.A. (I.A.) No. 712/2019 that CIRP of the Corporate Debtor commenced on 07.06.2018. This Adjudicating Authority vide order dated 13.12.2018 extended the CIRP period by 90 days excluding 62 days spent in replacement of the erstwhile IRP. It is further noted that despite issuance of Form-G on two occasions and revision of eligibility criteria by the CoC, no Resolution Plan has been received in respect of the Corporate Debtor.
11. Further, it is noted from C.A. (I.A.) No. 712/2019 that the CoC in its ninth meeting dated 09.03.2019 resolved to liquidate the Corporate Debtor and directed the Resolution Professional to file an application before this Adjudicating Authority under Section 33(2) of the Code. The relevant extract of the minutes of meeting of the CoC dated 09.03.2019 is reproduced hereinbelow:

“Item No. 3

To discuss non receipt of Expression of Interest (EOI) against issuance of Form G and way forward

The advertisement seeking Expression of Interest under Form G was published on 27.10.2018 in respect of CIRP of BK Coal Fields Private Limited. Pursuant thereto, three preliminary inquiries were received within given time under mail to RP, seeking eligibility criteria for submitting detailed expression of interest. The same were provided to the proposed Applicants vide email on 05.11.2018 with the last date for submission of expression of interest as 11.11.2018. However, the detailed EOIs had not been received from any of the parties. Since there had been no detailed expression of interests received, thus in the interest of the Corporate Debtor, all stakeholders and to avoid liquidation of Corporate Debtor, the CoC was re-convened to substantially relax the eligibility criteria. After the approval of the revised eligibility criteria in the Seventh CoC held on 07.01.2019, the Form G



Revised-1 was re-issued on 09.01.2019 with the last date for submitting detailed EOI as 24.01.2019. However, no detailed Expressions of Interest were received in the stipulated time period. The facts were placed before CoC member in the meeting held on 16.02.2018 for further deliberation & directions on the matter. On an enquiry by the member it was informed that that there could be a possibility of inviting fresh EOI subject to within the timelines applicable. The CoC informed that the decision on the re-issuance of EOI for the third time or liquidation of CD can only be taken by CoC members after they discuss the same with their respective Management for internal approvals.

The matter was discussed in the present CoC including revised time lines which necessitates the process to complete by 26.04.2019, the last date for approval of resolution plan by AA considering T + 90 + 53 days extension provided by the Hon'ble NCLT.

After discussions on the matter, since there had been no EOI/resolution plan having come forth after twice issuance of Form G in the past, the CoC directed the RP to file for liquidation before the Hon'ble NCLT and do all such necessary acts/compliances as per law.”

12. It is further noted from I.A. No. 6192/2023 that the CIRP period including the outer timeline prescribed under Section 12 of the Code has already expired. It has also been stated that no application under Section 12A of the Code is pending consideration before this Adjudicating Authority.
13. The Applicant in C.A. (I.A.) No. 712/2019, has submitted that I.A. No. 1004/2018 and I.A. No. 1311/2018 which have been filed for challenging the constitution of Committee of Creditors (CoC) are pending. Therefore, the decision of CoC for liquidation should not be considered. However, considering



that the CIRP period including the outer timeline prescribed under Section 12 of the Code has already expired and no Resolution Plan has been received in respect of the Corporate Debtor, continuation of CIRP beyond the statutory timeline prescribed under the Code cannot be permitted. Therefore, the present applications seeking liquidation of the Corporate Debtor are liable to be considered independently in accordance with the provisions of the Code.

14. Hon'ble Supreme Court in **Civil Appeal No. 8766-67 of 2019** titled **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors.** decided on **15.11.2019** has observed as under:

“79.Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.”

15. Hon'ble National Company Law Appellate Tribunal in **Company Appeal (AT) (CH) (Ins.) No. 194/2023** titled **Dr. Palani G. Periasamy vs. CA M. Suresh Kumar Liquidator, Dharani Sugars and Chemicals Limited & Anr.** decided on **11.07.2023** has observed as under:

“9. We have heard Counsel for the Appellant and perused the record with his able assistance. We could not find any substance in the argument of Counsel for the Appellant because the CoC had time and again extended the period which was allowed by the Adjudicating Authority but two resolution plans



in respect of the Corporate Debtor were rejected with the majority of the vote of 91.92% by the CoC and at that time the CoC was aware that 330 days time period in respect of the Corporate Debtor had already been over.

Moreover, it has been categorically observed by the Adjudicating Authority that neither any plan was pending nor any application under Section 12A of the Code was pending for their consideration, therefore, the period of CIRP cannot be extended on the flimsy grounds much beyond the period of 330 days as has been held by the Hon'ble Supreme Court in the case of Essar Steels Through Authorised Signatory (Supra). Therefore, the applications filed for extension of time by the RP has rightly been dismissed and the application filed by the RP for an order of liquidation of the Corporate Debtor has rightly been passed which does not require interference by this Tribunal.”

16. In the light of the aforesaid judgments and keeping in view the fact that C.A. (I.A.) No. 712/2019 was filed pursuant to the decision of the CoC dated 09.03.2019 to liquidate the Corporate Debtor, after issuance of Form-G on two occasions, and that I.A. No. 6192/2023 was thereafter filed in view of the continued pendency of C.A. (I.A.) No. 712/2019, and further considering that the CIRP period including the outer timeline prescribed under Section 12 of the Code has expired, no Resolution Plan has been received in respect of the Corporate Debtor, and no application under Section 12A of the Code is pending consideration before this Adjudicating Authority, this Bench is satisfied and is of the considered opinion that the present applications are in consonance with Section 33 of the Code.
17. Accordingly, this Adjudicating Authority deems it appropriate to order liquidation of the Corporate Debtor in accordance with the provisions of Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.



18. In view of the above, the applications are allowed by ordering liquidation of the Corporate Debtor namely B.K. Coal Fields Private Limited with following directions:

- a) That Mr. Arun Gajwani, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional;
- b) In terms of Section 34(1) of the Insolvency and Bankruptcy Code, 2016, Mr. Arun Gajwani, holding Registration No. IBBI/IPA-002/IP-N00568/2017-18/11724, Resolution Professional of the Corporate Debtor, is appointed as the Liquidator of the Corporate Debtor;
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016;
- d) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation;
- e) Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- f) The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- g) This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- h) The Liquidator shall conduct liquidation proceedings in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy



Code, 2016 and in accordance with the relevant rules and regulations;

- i) The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code;
- j) The Liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law;
- k) The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- l) Copy of this order be sent to the financial creditors, corporate debtor, CoC members and the Liquidator for taking necessary steps.
- m) The CoC is directed to pay the remuneration and expenses of the Applicant including that of professional advisors subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016.

19. Accordingly, C.A. (I.A.) No. 712/2019 and I.A. No. 6192/2023 stand **allowed** and disposed of in accordance with the aforesaid terms. Let a copy of the order be served to the parties.

Sd/-

(ANU JAGMOHAN SINGH)

MEMBER (TECHNICAL)

Sd/-

(MAHENDRA KHANDELWAL)

MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT V, NEW DELHI

I.A No. 1311/2018

IN

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

*Under Section 74 and Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Section 425 of the
Companies Act, 2013, 2016.*

IN THE MATTER OF:

THE INDURE PRIVATE LIMITED.

.... OPERATIONAL
CREDITOR/APPLICANT

VERSUS

B.K. COAL FIELDS PVT. LTD.

.... CORPORATE DEBTOR/
RESPONDENT

Order Pronounced on: 04.06.2026

CORAM:

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

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

APPEARANCES:

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

For the RP : Mr. Krishnendu Datta, Sr. Adv., Mr. Nakul Mohta,
Adv., Ms. Riya Dhingra, Adv, Mr. Amulya Upadhyay,
Advs.

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

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IN

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ORDER

1. The present Application has been filed by M/s Indure Pvt. Ltd., (Operational Creditor on whose Petition CIRP has been initiated) under Section 74 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 425 of the Companies Act, 2013, against Corporate Debtor seeking following prayers:

It is therefore, prayed in the interest of justice that this Hon'ble Tribunal may be pleased to allow the application of the Operational Creditor thereby initiating appropriate legal action against the Corporate Debtor and its officers under Section 74 of the IBC, 2016 or any other provision for contravening the provisions of Section 14 of the IBC, 2016 in accordance with law and concerned officers of the Corporate Debtor be subjected to penal consequences as provided in the IBC for their actions;

Any other or further relief which this Hon'ble Tribunal may deem just, fit and proper be also granted in favour of the Operational Creditor.

Contentions of the Applicant as mentioned in the Application-

2. The CIRP against the Corporate Debtor initiated vide Order dated 07.06.2018 and moratorium in terms of Section 14 of the IBC commenced from the date of said Order.

3. During the moratorium, Mr. Rajan Sinha and Mr. Devendra Singh Verma have been appointed as the new directors of the Corporate Debtor on 05.11.2018 by the Corporate Debtor. Copy of DIR 12 is annexed with the Application.

4. The action of Corporate Debtor for appointment of new Director during moratorium is contravention of the moratorium as mentioned in Section 14 of the IBC. Therefore, the Corporate Debtors and its officers have contravened to the provisions of the IBC, 2016 are liable to be prosecuted under the

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provisions of Section 74 of the IBC or in alternative are liable to be prosecuted for contempt proceedings.

Contentions of the Applicant during the course of hearing and in Written Submissions –

5. In terms of Section 28 (1)(j) of IBC, any change in management of a Corporate Debtor is required to be approved by the COC with 66% majority. Mr. Vivek Kumar Gadkari resigned on 20.10.2018 and Mr. Rajesh Kumar Rana resigned on 06.11.2018 from Directorship in the CD. Mr. Vivek Kumar Gadkari and Mr. Rajesh Kumar Rana tendered their resignation after the initiation of CIRP on 07.06.2018.

6. Mr. Rajan Sinha and Mr. Devendra Singh Verma were appointed as the Director of the CD on 05.11.2018 after initiation of CIRP. These actions were approved and ratified by the COC in the 5th COC Meeting dated 03.11.2018.

7. The COC Members, namely A.P. Coal Washeries (2.13% voting share) and South West Mining (97.87% voting share) are 'Related Party' to the CD. The Applicant has already filed I.A. 1004/2018 challenging the inclusion of these entities as CoC members on the ground of 'related party'. These new Directors have been inducted by the CoC after filing of I.A. 1004/2018. The COC ought not to have and could not have approved the change in management of the COC when I.A. 1004/2018 was already sub-judice before this Adjudicating Authority.

8. This change in the management of CD was brought about at the behest of the COC to avoid the rigors of Section 5 (24) of IBC and to create an artificial opacity. This act of the COC in approving and ratifying the change in management further establishes the Related Party status of the COC Members, A.P. Coal Washeries and South West Mining.

9. Appropriate action may be taken against the CD and its officers for violation of Section 14 of IBC in terms of Section 74 of IBC. This Tribunal has the jurisdiction to adjudicate upon an application filed under Section 74 to the extent that this Tribunal may form an opinion on the violation of the

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IN

CP (IB) No. 227 of 2017

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Section 14 which can be forwarded to Insolvency Bankruptcy Board of India (“IBBI”) and Central Government. While the findings of this Tribunal will not be binding on the IBBI and Central Government, it may aid the IBBI and Central Government in deciding whether it is a fit case to initiate proceedings in terms of Section 236 of IBC. Reliance on the judgment of NCLAT in ‘**Almas Global Opportunity Fund SPC v CA Kannan Trivengadam**’ CA (AT) (Ins.) 683/2022 dated 21.10.2022 has been made.

Contentions of the Resolution Professional in their reply

10. There is no violation of moratorium as Section 14 of the Code does not put any bar on change of the directorship of the Corporate Debtor during moratorium. There no prohibition/restriction on change of directorship pending moratorium.

11. As per the IBC the powers of the Board of Directors only stands suspended during moratorium period, and Board is not dissolved during Moratorium. This is more so in view of the fact that even during the moratorium period there are statutory compliances under the Companies Act, SEBI Act etc., which a company/Corporate Debtor is required to comply with and the same can only be done through the board of directors. Thus for a company to run its affairs under the aegis of the IRP/RP there is always a board of director which is required to be in place and only the managerial powers of the board stand suspended. For a Company to function it would always require a functional Board especially for statutory compliances.

12. Since the erstwhile directors of the Corporate Debtor Mr Vivek Gadkari and Mr Rajesh Rana resigned from the company it became imperative to fill up the vacancies on the board. No wilful/intentional disobedience to the order of moratorium has been done by the RP.

13. Reliance on judgment of NCLAT in M/s. **Subasri Realty Private Limited v. Mr. N. Subramanian & Anr.** Company Appeal (AT) (Insolvency) No. 290 of 2017, **Steel Konnect (India) Pvt. Ltd. v. M/s. Hero Fin Corp Ltd.**, Company Appeal (AT) (Insolvency) No. 51 o/2017 have been made.

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Our Analysis

14. The issues which need to be considered by us are (a) whether appointment of Directors during moratorium is violation of Moratorium under Section 14 of the IBC; (b) if so whether order under Section 74 of the IBC need to be passed.

15. Section 14 of the Code provides for moratorium. It reads as under:

"Moratorium

14. (1) *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assels and Enforcement of Security Interest (SARFAESI) Act. 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corpora le debtor under section 33, the moratorium shall cease lo have effect from the date of such approval or liquidation order, as the case may be. "

16. In Section 14 there is no prohibition for appointment of any director of corporate debtor. As per Section 14(1), during moratorium, there is prohibition for-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act. 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

17. Thus, under Section 14, there is no prohibition regarding appointment of director.

18. In fact, as per Section 17(1)(a), from the date of appointment of IRP, the powers of the Board of Directors of the Corporate Debtor stand suspended and be exercised by the IRP. Further, as per Section 28(1)(j), the IRP/RP has to take prior approval of the CoC in making any changes in the management of the Corporate Debtor.



19. The Hon'ble NCLAT in its judgment **Steel Konnect (India) Pvt. Ltd. v. M/s. Hero Fincorp Ltd.**, Company Appeal (AT) (Insolvency) No. 51/2017 observed as under:

"22. At this stage, it is desirable to notice that though pursuant to Section 17, the Board of Directors of a 'Corporate Debtor' stand suspended (for a limited period of 'Corporate Resolution Process maximum 180 days or extended period of 90 days i.e. 270 days), but they continued to remain as Directors and members of the Board of Directors for all purpose in the records of Registrar of Companies under the Companies Act 2013."

20. The Hon'ble NCLAT in **M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr.** Company Appeal (AT) (Insolvency) No. 290 of 2017, observed as under:

"... we may clarify that after appointment of the Resolution Professional and declaration of moratorium, the Board of Director stands suspended, but that does not amount to suspension of Managing Director or any of the Director or officer or employee of the Corporate Debtor. To ensure that the Corporate Debtor remains on going concern, all the Director/ employees are required to function and to assist the Resolution Professional who manages the affairs of the Corporate Debtor during the period of moratorium."

21. In the Written Submissions filed by the Applicant, the Applicant has submitted that as per Section 28(1)(j), RP with the approval of CoC can make changes in the management of Corporate Debtor. In the Written Submissions, the Applicant has submitted as under:

"19. In terms of Section 28 (1) (j) of IBC, any change in management of a Corporate Debtor is required to be approved by the COC with 66% majority. Mr. Vivek Kumar Gadkari resigned on 20.10.2018 (Pg. 7 of IA 1311/2018) and Mr. Rajesh Kumar Rana resigned on 06.11.2018 (Pg. 8 of IA 1311/2018) from Directorship in the CD. It is pertinent to note that Mr. Vivek Kumar Gadkari and Mr. Rajesh Kumar Rana tendered their resignation after the initiation of CIRP on 07.06.2018."

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20. Further, Mr. Rajan Sinha and Mr. Devendra Singh Verma were appointed as the Director of the CD on 05.11.2018 after initiation of CIRP). These actions were approved and ratified by the COC in the 5th COC Meeting dated 03.11.2018. [Pl see CD Master Data @Annex A-1 Pg. 5A of IA 1311/2018 and COC MOM 05.11.2018 @Annex A-2 of RP Reply to IA 1311/2018]

21. At the cost of re-iteration, it is most humbly submitted that the COC Members, namely AP Coal Washeries 2.13% voting share) and South West Mining 97.87% voting share) are 'Related Party' to the CD. Further, the resignation of Mr. Vivek Kumar Gadkari and Mr. Rajesh Kumar Rana and appointment of Mr. Rajan Sinha and Mr. Devendra Singh Verma as the Directors of the CD was subsequent to filing of IA 1004/2018 by the OC challenging the formation of COC on 05.10.2018. Pertinently, the COC ought not to have and could not have approved the change in management of the COC when IA 1004/2018 was already sub-judice before this Hon'ble Tribunal.

22. It is most humbly submitted that this change in the management of CD was brought about at the behest of the COC to avoid the rigors of Section 5 (24) of IBC and to create an artificial opacity. This act of the COC in approving and ratifying the change in management further establishes the Related Party status of the COC Members AP Coal Washeries and South West Mining.”

22. The abovesaid submissions of the Applicant indicate that the Applicant has no grievance regarding power of CoC to make necessary changes in the Management/Board of the Corporate Debtor. However, their contention is that since the composition of the CoC has been challenged on the ground of 'related party' in I.A. No. 1004/2018 decision taken by the said CoC for appointment of Directors is violation of law.

21. We may state that as far as contentions raised in I.A. No. 1004/2018 regarding related party issue, the same is to be considered while deciding I.A. No. 1004/2018. In the present IA we are only considering issue (a) whether

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appointment of Directors during moratorium is violation of Moratorium under Section 14 of the IBC; (b) if so, whether order under Section 74 of the IBC need to be passed.

22. In the light of aforementioned provisions of the Code and the judgment of the Hon'ble NCLAT, it emerges that there is no prohibition in making any changes in the management of the Corporate Debtor during moratorium, provided it has been approved by the CoC with requisite majority. We may however make it clear that we have not considered the issue as to whether there was need to appoint new Director or not.

23. In the present case, CoC in the 5th COC Meeting dated 03.11.2018 with requisite majority has taken a decision to appoint Mr. Rajan Sinha and Mr. Devendra Singh Verma as Directors. The said decision of CoC may fall within the mandate under Section 25(1)(j) of the Code.

24. The contention of the Applicant that since their I.A. 1004/2028 questioning the composition of CoC was pending and during pendency of the said IA any decision taken by the CoC is bad in law is not a correct proposition of law in the light of provision contained in proviso in Regulation 12(3) of CIRP Regulations, 2016 and decided judgments. Regulation 12(3) reads as under:

"12. Submission of proof of claims.

(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 validity of any decision taken by the committee prior to such inclusion."

25. The Hon'ble NCLAT in **DBS Bank India Pvt. Ltd. vs Rakesh Kumar Jain & ors.**, Company Appeal (At) (Insolvency) No. 540 of 2021, in their judgment dated 15.09.2022 has considered the above proviso and stated that this Regulation clearly stipulates that if any decision is taken by the committee, prior to the reconstitution, its validity will not be affected.



26. The Hon'ble NCLAT in **Mehar Bhoomi Bhawan Pvt Ltd. vs Shashi Bhushan Prasad**, Company Appeal (AT) (Insolvency) No. 1876 of 2025 judgment dated 22.12.2025 has considered aforementioned Regulation and has stated asunder:

“We have already noticed Regulation which provides that a change in the constitution of CoC shall not affect earlier decision taken by the CoC.”

27. In view of above provision of Regulation and the law laid down, it is clear that even upon the reconstitution of CoC, validity of decisions taken by the erstwhile CoC can't be questioned on the ground of reconstitution of CoC.

28. In the light of above discussion, we are of the view that decision taken by the CoC for appointment of new Directors of Corporate Debtor during moratorium cannot be said to be in violation of moratorium imposed under Section 14 of the Code. Consequently, no order under Section 74 as sought is to be passed. Decision taken by CoC during pendency of I.A. 1004/2028 can also not be said to be faulty or illegal. The Merits of I.A. 1004/2018 shall be considered separately.

29. Accordingly, the instant application bearing **I.A. 1311/2018** in CP (IB) No. 227/2017 is **dismissed**.

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

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

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT V, NEW DELHI

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

IN

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

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

IN THE MATTER OF:

THE INDURE PRIVATE LIMITED.

.... OPERATIONAL
CREDITOR/APPLICANT

VERSUS

B.K. COAL FIELDS PVT. LTD.

.... CORPORATE
DEBTOR/ RESPONDENT

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CORAM:

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

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

APPEARANCES:

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

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

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

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ORDER

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

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

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

Contentions of the Applicant

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

Contentions of the CoC

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

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

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



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

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

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

Analysis

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

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

21. Committee of creditors

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)