

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1259 of 2022**

(Arising out of Order dated 24.08.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi III (Special Bench) in IA-2325/2022 in IB-292(ND)/2021)

**IN THE MATTER OF:**

Revolution Infocom Private Limited  
Through its Authorised Representative  
Mr. Rajesh Katyal,  
YC CO Working Space 3<sup>rd</sup> Floor,  
Plot No.-94, Dwarka Sec-13,  
Opp. Metro Station, New Delhi-110078. .... Appellant

Vs

Sandwoods Infratech Projects (P) Limited  
Through Mr. Ravinder Kumar Goel (RP)  
Flat No.211, Platinum Tower, Peer Muchalla,  
Dhakoli, Sahibzada Ajit Singh Nagar,  
Punjab-160104. .... Respondent

**Present:**

**For Appellant:                      Mr. Abhishek Anand, Mr. Nipun Gautam,  
Advocates.**

**For Respondent:                      Mr. Saurav Kalia and Mr. Iswar Mohapatra,  
Advocates.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This Appeal has been filed challenging the order dated 24.08.2022 passed by National Company Law Tribunal, New Delhi III (Special Bench) dismissing IA No.2325 of 2022 filed by the Appellant.

2.     The brief facts of the case necessary for deciding this Appeal are:

- (i) The Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor - Sandwoods Infratech Projects (P) Limited was initiated vide order date 25.10.2021.
- (ii) In response to Public Announcement made by Interim Resolution Professional (“**IRP**”) Appellant filed its claim on 08.11.2021 as Financial Creditor.
- (iii) The first Meeting of Committee of Creditors (“**CoC**”) was held on 24.11.2021, in which meeting the Appellant was invited to participate as Member of CoC on the strength of his claim. In the Minutes of the Meeting dated 24.11.2021, an objection was raised by a Member of CoC that Appellant being ‘related party’ cannot be part of the CoC.
- (iv) On same day, i.e., 24.11.2021, an email was sent by IRP to the Appellant asking clarification, to which no reply was submitted.
- (v) On next day, i.e., 25.11.2021, IA No.5535 of 2021 was filed by IRP seeking direction to take action against the Appellant Company under Section 235A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) for making willful and false disclosure and concealment of facts in Claim Form-C.
- (vi) On 29.11.2021, an email was sent by IRP to the Appellant holding the Appellant as a ‘related party’ to the Corporate

Debtor on the basis of objection raised by Punjab National Bank in the CoC meeting.

(vii) The Resolution Plan was approved by the CoC on 04.05.2022.

On 06.05.2022, an IA was filed by the Appellant being IA No.2325 of 2022 seeking a direction to include the Appellant as CoC Member.

(viii) Both IAs came for consideration before the Adjudicating Authority, who by the impugned order rejected the IA filed by the Appellant and affirmed the communication of the IRP that the Appellant is a 'related party' of the Corporate Debtor.

(ix) Aggrieved by the order of the Adjudicating Authority dated 24.08.2022, this Appeal has been filed.

3. We have heard Shri Abhishek Anand, learned Counsel appearing for the Appellant and Shri Saurav Kalia, learned Counsel for the Respondent.

4. The learned Counsel for the Appellant submits that Appellant has no control over the Corporate Debtor nor any representation on the Board of Directors. The Appellant is also not a shareholder or Director of the Corporate Debtor. It is submitted that the Appellant is not covered by the definition of 'related party' within the meaning of Section 5(24) of the Code. It is submitted that IRP having admitted the claim of the Appellant as Financial Creditor, had no jurisdiction to review the claim by holding the Appellant as 'related party' to the Corporate Debtor.

5. The learned Counsel for the Respondent refuting the submissions of learned Counsel for the Appellant submits that the Appellant is fully

covered by the definition of ‘related party’ as contained in Section 5(24)(i) of the Code. The Appellant is an associate Company of the Corporate Debtor being the Joint Venture on the basis of Memorandum of Understanding (“**MoU**”) executed between the Appellant and the Corporate Debtor dated 26.11.2012, the terms and conditions of the MoU specially paragraphs 5, 6 and 7 indicate that Appellant has control over the Corporate Debtor. The learned Counsel for the Respondent referred to definition of ‘associate company’ under Section 2(6) of the Companies Act, 2013 and it is submitted that Appellant is covered under the said definition. It is further submitted by the learned Counsel for the Respondent that on 29.11.2021, the Appellant was communicated that he is a ‘related party’ and Appellant waited for more than six months for filing the IA and IA was filed only when Plan was approved by CoC in its meeting dated 04.05.2022. The Application filed by the Appellant is, thus, malafide and after thought.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. The only question which needs to be considered in this Appeal is as to whether the Appellant is a ‘related party’ of the Corporate Debtor? Section 5(24) defines ‘related party’. Section 5(24)(i) on which reliance has been placed is as follows:

*“**5(24)(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”.*

8. One of the entities, which is covered under sub-clause (i) is “associate company of the corporate debtor”. Associate Company has been defined in Section 2(6) of the Companies Act, 2013, which is as follows:

**“2(6)** —associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.”

9. Section 2, sub-section (6) specifically notices the Joint Venture Company, when it uses expression “includes a joint venture company”.

10. Memorandum of Understanding, which is admittedly executed between the parties on 26.11.2012, i.e., between the Appellant and the Corporate Debtor. The MoU provides “AND WHEREAS the Second Party has offered to participate in development of the said project by way of bringing in funds into the said project”. Under the MoU, the Second Party is Appellant before us. Paragraphs 5, 6, 7 and 8, which are relevant in the present case are as follows:

“5. The entire project admeasuring 6.45 Acres approximate i.e. the Annexure “A” and Annexure “B” lands will be developed by the First Party at its own cost and expenses and will also be marketed by the First Party in its own name and under its own brand. The Selling Price of the units of the said project shall be decided with the mutual consent of the parties. The First Party shall complete the development of the said project within a period of 36 months from the date of receipt of all permissions and approvals.

6. *The gross revenue of the entire project admeasuring 6.45 Acres approximate will eb shared between the First Party and Second Party in the following ratio:*

*First Party : 86.5%*

*Second Party : 13.5%*

*xxx*

*xxx*

*xxx*

7. *That the project will be marketed by the First Party. However, the brokerage will be shared between the First Party and the Second Party in the same ratio as mentioned in Clause 6 hereinabove.*
8. *That the First Party will endeavour to take additional land adjacent to the said land and in that event all the cost and expenses for acquiring the additional land will be shared equally between the First Party and Second Party and the said additional land will also be developed by the First Party as a part of the existing project on the same terms and conditions as already mentioned hereinbefore.”*

10. The above clauses of the MoU clearly indicate that the MoU was nothing but a Joint Venture between the parties. Further, the only project of the Corporate Debtor is the project referred to in MoU dated 26.11.2012.

11. The learned Counsel for the Appellant has submitted that there is no control of the Appellant over the Corporate Debtor, nor any significant influence of the Appellant on the Corporate Debtor. The expression “control” has also been defined in the Companies Act in Section 2(27), which is to the following effect:

*“2(27) —control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner”.*

12. The ‘control’ as envisaged under Section 2(27), participation in the policy decision is also indicative of control. The expression ‘control’ came to be considered by the Hon’ble Supreme Court in ***Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta and Ors. – (2019) 2 SCC 1***. In paragraph 50 of the judgment, following has been observed:

*“50. The expression “control” is therefore defined in two parts. The first part refers to de jure control, which includes the right to appoint a majority of the Directors of a company. The second part refers to de facto control. So long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be “in control”. A management decision is a decision to be taken as to how the corporate body is to be run in its day-to-day affairs. A policy decision would be a decision that would be beyond running day-to-day affairs i.e. long-term decisions. So long as management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholders agreements, voting agreements or otherwise, control can be said to exist.”*

13. The Hon'ble Supreme Court in the above judgment while discussing the policy decision observed that policy decision would be that decision that would be beyond running day-to-day decisions, i.e., long term decisions. From the clauses of the MoU as noted above, it is clear that decision pertaining to pricing has to be taken with the mutual consent. Thus, there is sufficient control of the Appellant as envisaged in provisions of law. The Appellant being Joint Venture Company of the Corporate Debtor was clearly 'related party' and no error has been committed by IRP in declaring the Appellant as 'related party'.

14. The learned Counsel for the Appellant submitted that IRP has no power to review its decisions. When we look into the facts of the case, on the basis of Form-C submitted by the Appellant, the Appellant's claim was admitted as Financial Creditor and he was invited to participate in the First Meeting of the CoC held on 24.11.2021. In the First Meeting itself, objection was raised by a Member of the CoC that Appellant is a 'related party'. The said objection was raised on the basis of documents available with the Bank pertaining to financial assistance extended by the Financial Creditors to the Corporate Debtor. After knowing about the said objection, on same day, an email was sent to the Appellant to clarify certain aspects, which email was never replied by the Appellant. By email dated 29.11.2021, following was communicated by the IRP to the Appellant:

*"Dear sir*

*During and after the meeting of 1st CoC, one of the CoC member Punjab National Bank produced documents before the IRP in which M/s Revolution Infocom Pvt Ltd*

*and CD Sandwoods Infratech Project Pvt Ltd are shown as Joint Venture partners. An email containing these facts and seeking your reply was sent to you on 24.11.2021. No reply has been received from your end; however, the CD has replied and confirmed the authenticity of the same.*

*In view of the above Revolution, Infocom Pvt Ltd is a related party to the CD Sandwoods Infratech Projects Pvt Ltd and hence not eligible for participation representation or voting in the meeting of the CoC.*

*A necessary application in this regard has also been filed with NCLT New Delhi.”*

15. The present is a case, which cannot be said to be a case where IRP has *suo-moto* changed its decision. The IRP has corrected its earlier decision of admitting the claim of Financial Creditor by changing the category of Appellant as related Financial Creditor.

16. The learned Counsel for the Appellant relied on judgment of this Tribunal in **Rajesh Jain vs. Manoj Kumar Singh-IRP & Ors – (2020) SCC OnLine NCLAT 824**, wherein in paragraph 26, 27 and 38, following has been held:

*“26. The above contention of the Resolution Professional is not acceptable. The IRP after collation of Claims and formation of ‘Committee of Creditors’ was not entitled to suo-moto review or change the status of a creditor from Financial to Operational Creditor. Updating list and review are different acts. If Resolution Professional was aggrieved, he should have moved the Adjudicating Authority. The aggrieved person can challenge either constitution of ‘Committee of Creditors’ or for any*

*grievance against rejection, incorrect acceptance or categorisation of creditors before the Adjudicating Authority. But the Resolution Professional cannot arbitrarily on its own overturn earlier decision, to change the status of a creditor from Financial Creditor to Operational Creditor.*

**27.** *Under the duties of RP ‘to maintain an updated list of Claim, he cannot change the status of an existing creditor on his own. But to maintain an updated list of claims the IRP/RP is authorised to add to existing claims or admit or reject further claims received collating them and thus update the list of creditors accordingly.*

**38.** *It is also necessary to mention that core duty of IRP is to receive, collate and verify claims which cannot be further delegated to ‘Committee of Creditors’, who in turn cannot be allowed to do the same in purported exercise of Commercial Wisdom.”*

17. The above judgment has no application in the present case. What was held by this Tribunal was that RP cannot change the status of existing creditor on his own. The RP has to maintain an updated list of claims and is entitled to correct the errors, if any, in accepting or rejecting the claim. Further, it is not a case that IRP on his own has changed the category of Appellant. Rather, it was done on the objection of the Punjab National Bank, the Member of CoC, which objection was raised in the very First Meeting of the CoC held on 24.11.2021. Thus, present is not a case where IRP has reviewed its decision. We further notice that on 25.11.2021 itself, an Application was filed by IRP being IA No.5535 of 2021 bringing into notice of the Adjudicating Authority alleging willful and false disclosure and

concealment of facts by the Appellant. The Application IA 2325 of 2022 was filed by the Appellant only when Plan was approved on 04.05.2022. We, thus, do not find any error in the decision of the IRP, changing the category of the Appellant from Financial Creditor to related Financial Creditor. The decision of the IRP has correctly been analysed by the Adjudicating Authority and has received its approval.

18. We, thus, do not find any error in the order of the Adjudicating Authority rejecting the IA No.2325 of 2022 filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed. No costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

**NEW DELHI**

**23<sup>rd</sup> November, 2022**

*Ashwani*