

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-II, CHENNAI**

IA/345/2020 in IBA/967/2019 filed  
under *Section 60(5)* of the Insolvency  
and Bankruptcy Code, 2016

In the matter of *M/s. Bhadreshwar Vidyut Private Limited*

**Shoka Tradelink Private Limited**

Rep. by its Authorised Signatory Mr. Anil Kumar Saraff  
Shop No. 1, No. 32, General Muthiah Mudhali Street  
Sowcarpet, Chennai-600079.

... Applicant

Vs.

**Ms. Jayashree S Iyer**

Interim Resolution Professional for  
Bhadreshwar Vidyut Private Limited  
New No. 10, Old No. 41, Kirubansankari Street  
West Mambalam, Chennai-600033

...Respondent/IRP

**CORAM:**

**R. SUCHARITHA, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For Applicant : *Shri. Nithyaesh Natraj, Advocate*

For Respondent : *Shri. N. P Vijay Kumar, Advocate*  
*For MS. Jayashree S Iyer, IRP*

**ORDER**

**Per: R. SUCHARITHA, MEMBER (JUDICIAL)**

**Order Pronounced on: 24.07.2020**

The instant Application has been filed by one M/s. Shoka Tradelink Private Limited (hereinafter referred to as the



“Applicant”) against the Respondent/IRP of Corporate Debtor under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) with a prayer to:

*“1). Set aside the decision to exclude the applicant from the CoC as recorded in the Minutes of the meeting of the Committee of Creditors dated 26.02.2020 and further direct the Respondent/IRP to include the Applicant herein in the Committee of Creditors;*

*2). All resolutions taken at the meeting of the CoC held on 26.02.2020 and any other CoC meeting till such time as the Applicant is once again included in the CoC, be quashed;*

*3). INTERIM STAY of operation and functioning of the Committee of Creditors pending disposal of the main application and/or till such time the applicant is included in the CoC”.*

2. The counsel for the Applicant submits that the Corporate Debtor was sanctioned a loan to the tune of Rs.100 Crores from M/s. Gita Power & Infrastructure Private Limited (“**Gita Power**”) through a working capital facility agreement dated 30.03.2016 (“**WC Agreement**”). The Corporate Debtor availed a loan to the tune of Rs.95,70,50,029/- Thereafter, this Applicant by a Deed of Assignment dated 09.05.2019 took over the loan from “**Gita Power**”.

3. The counsel for the Applicant stated that vide order of this Tribunal dated 27.01.2020, CIRP of the Corporate Debtor

commenced, the IRP made a public announcement on 30.01.2020. Based on this, the Applicant submitted the claim application to the IRP/Respondent.

4. The Respondent/IRP had accepted the claim and vide notice dated 22.01.2020, had invited the Applicant to participate in the first meeting of the CoC. The meeting was held on 26.02.2020. The Applicant participated in the CoC meeting held on 26.02.2020.

5. There were totally 10 Financial Creditors, out of which five Public Sector Banks were Financial Creditors, one (REC Limited) is a public sector Infrastructure Finance Company and other four are Financial Creditors and the details are as under:

S. No.	Name of the Financial Creditor	Amount Claimed	Amount Admitted	Voting %
1	REC Ltd	12,77,29,97,091.00	12,77,29,97,091.00	53.39
2	Punjab National Bank	3,73,03,08,082.00	3,37,97,94,238.00	14.13
3	State Bank of India	3,11,28,96,180.00	3,02,28,96,180.00	12.63
4	Indian Bank	92,68,00,742.00	73,15,99,853.00	3.06
5	Syndicate Bank	34,23,34,826.00	34,23,34,826.00	1.43
6	Bank of Baroda	15,99,49,686.00	6,99,49,686.00	0.29
7	Garg Iron and Energy Pvt Ltd	73,24,88,381.00	73,24,88,381.00	3.06
8	OPG Power Generation P Ltd	1,65,69,95,921.00	1,65,69,95,921.00	6.93
9	Shoka Tradelink Pvt Ltd.	1,06,47,18,157.00	1,06,47,18,157.00	4.45
10	Radha Industries Pvt Ltd.	15,14,20,126.00	15,14,20,126.00	0.63
	TOTAL	24,65,09,09,192.00	23,92,51,94,459.00	100.00

6. The Minutes of the Meeting it was recorded as follows:-

*“During the course of the meeting, the Respondent/IRP informed that she carried out preliminary verification of claims including status of relationship of Creditors with Corporate Debtor based on information furnished to her by the Creditors along with claim form and the documents available with Corporate Debtor and in public domain. All four Financial Creditors listed in serial no. 7 to 10 have furnished affidavits declaring that they are not related to Corporate Debtor, M/s.Bhadreshwar Vidyut Private Limited, which was confirmed by the Corporate Debtor as well.*

*However, to the surprise of the IRP, at the start of the first agenda item itself, all the Creditors listed in serial no. 1 to 6 have raised objection to the inclusion of Creditors listed in serial no.7 to 10 claiming that as per information furnished to them at the time of availing credit facility and subsequent renewal, OPG Power Generation Private Limited (“OPGPG”) and Gita Power & Infrastructure Private Limited (“GPIPL”) are related parties of the Corporate Debtor and the assignment transactions made by them in favour of Financial Creditors listed in serial no.7, 9 and 10 during the past one year required detailed due diligence. Banks informed that they have enough documents to prove that OPGPG and GPIPL are Related Parties. IRP requested the Bankers to provide documentary evidence available with them in this regard. The CoC requested the IRP to carry out detailed due diligence of the claim filed by Financial Creditors at serial no.7 to 10 and their inclusion in the Committee of Creditors be kept in abeyance till it is established that they are not related parties. When the objections were raised by the Financial Creditors 1 to 6, the four Financial Creditors listed in 7 to 10 could not defy the objections or provide any evidence to disprove the above statement made by Financial Creditors during the Meeting.*

*In view of the above facts brought to the notice of the IRP by Financial Creditors listed in 1 to 6 who stated that as per records of the Consortium Bankers they are related parties and considering that the assignment transactions were recent, effected in April – May*

2019, the IRP declared that the claims of four Financial Creditors listed in serial no. 7 to 10 will be kept in abeyance and they will not form part of Committee of Creditors till verification is completed.

The above four Creditors requested the IRP that they be allowed to attend the proceedings of First CoC pending due diligence to be carried out by the IRP. However, CoC Members objected to this. IRP informed them that their claims were not declined but only kept in abeyance for consideration on merits of facts.

Financial Creditors listed in serial no. 7 to 10 vacated the Meeting room. After ensuring that only authorized persons were inside the meeting room, the IRP proceeded with other agenda items."

7. The counsel for the Applicant states that the Applicant has challenged the order of admission of this Tribunal dated 27.01.2020 before the Hon'ble High Court of Judicature of Madras vide CRP No.1123 of 2020 pending on the file of Hon'ble High Court of Judicature at Madras. According to the Applicant, CRP is pending on the file till date.

8. The Applicant in support of his claim, quotes the following citations:

"a). Edelweiss Asset Reconstruction Company Limited Vs. Synergies Dooray Automotive Limited and Ors. in NCLAT;

b). Swiss Ribbons Private Limited and Anr. Vs. Union of India and Ors. W.P. Civil No.99 of 2018 in Hon'ble Supreme Court of India."

9. The counsel for the Applicant states that the Respondent/IRP acted in violation of the well established principles of the judicial process. It is wrong on the part of the Respondent/IRP to have kept this Applicant out of the CoC based on the allegations submitted by the Financial Creditors who are Public Sector Banks.

10. The counsel for the Applicant further states that there was a communication from the Respondent/IRP dated 02.03.2020 calling upon this Applicant to produce necessary particulars and documents in respect of the claim and also to the fact to prove that the Applicant is not a "Related Party" to the Corporate Debtor.

11. The Respondent/IRP has also filed her counter and supporting documents in relation to the claim.

12. The counsel for the Respondent states that members of the CoC of the Banks pointed out that they have enough evidence to show that this Applicant is a "Related Party".

13. The counsel for the Respondent further states that based on the information provided by the Financial Creditors pending investigation of the same, it is important to keep the Applicant out



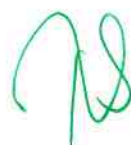
of the CoC meeting. It was also due to the failure by the Applicant to provide true and complete information of the account, needed to ensure proper assessment based on such information that warranted the suspension of the Applicant during the proceedings of the CoC meeting held on 26.02.2020.

14. The Respondent/IRP had sent various e-mails dated 02.03.2020, 12.03.2020 and 24.03.2020 and also received reply on 01.04.2020 from the Applicant.

15. The Respondent/IRP states that the Applicant obtained this loan under the Deed of Assignment Cum Novation dated 09.05.2019 from **"Gita Power"** and **"Gita Power"** holds 51% of the shareholding of the Corporate Debtor.

16. By letter dated 27.04.2020, the Respondent/IRP has held that this Applicant is a "Related Party" to the Corporate Debtor.

17. Further the counsel for the Respondent/IRP states that clarification was sought from the Applicant, the Applicant did not submit the clarifications/documents sought for and the Applicant



has also not challenged the decisions of the IRP holding the Applicant as a "Related Party".

18. We have heard both the counsels and gone through the typed set of documents and written submissions made by both the parties.

19. The Original Application IBA/967/2019 was filed by the Syndicate Bank on 30.07.2019 against the Corporate Debtor for initiation of Corporate Insolvency and Resolution Process (CIRP). The Syndicate Bank in the Application stated that the loan account of the Corporate Debtor was declared as an NPA on 30.06.2018 when the company has already been declared as an "NPA" and the Corporate Debtor was in a deep financial crisis, it is surprising as to why the Deed of Assignment was signed between the Corporate Debtor and the Applicant.

20. Thereafter, CIRP was commenced against the Corporate Debtor vide Order dated 27.01.2020.

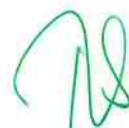
21. From the counter filed by the Respondent/IRP, it is clear that the Respondent did not pass any quasi-judicial order on 26.02.2020. However, the Financial Creditors based on the documents

submitted by the Corporate Debtor strongly opposed the participation of the Applicant on the ground that it is clearly a "Related Party". After the meeting, the Respondent/IRP sent e-mails dated 02.03.2020, 12.03.2020 and 24.03.2020 and reasonable opportunity was given to the Applicant to produce document to negate the fact that the Applicant is not a "Related Party". However, the Applicant had replied to the Respondent/IRP dated 01.04.2020.

22. Based on all these documents and the submissions, the IRP vide letter dated 27.04.2020 has conveyed the findings that the Applicant is a "Related Party" and hence it is debarred from participating in any of the CoC meeting of the Corporate Debtor.

23. Surprisingly, this entire fact has been suppressed by the Applicant. The application dated 15.05.2020 was filed before this Tribunal vide e-mail dated 17.05.2020.

24. The Applicant has also not brought to our notice the subsequent findings of the IRP vide correspondence between them and the letter dated 27.04.2020. However, the Applicant is harping on the point that the stand of the IRP to suspend this Applicant



during the course of the meeting is unwarranted and beyond the powers of the IRP.

25. The IRP has not passed any orders beyond the powers nor has the IRP arrived at any conclusion in the meeting dated 26.02.2020. Hence the IRP only sought time to verify the same after giving an opportunity to the Applicant, thereafter has concluded, that Applicant is a "Related Party".

26. The Applicant has not challenged the letter dated 27.04.2020 and has also not questioned the conclusion of the IRP that it is a "Related Party". No arguments or documents were filed by the Applicant to satisfy that he is not a "Related Party" to the Corporate Debtor.

27. The Application dated 15.05.2020 was sent by an e-mail dated 17.05.2020 with an urgent application to hear the matter during the lock down period. Immediately the matter was listed for hearing on 22.05.2020. However, this matter was listed before Court-I of NCLT, Chennai. The Hon'ble Judicial member recused from hearing this matter. Hence the matter was placed before Hon'ble President for

transfer. By order dated 01.06.2020, the matter was transferred to this Bench.

28. In the meanwhile, the Applicant has initiated Civil Revision Petition (CRP) No.1123/2020 before the Hon'ble High Court of Judicature at Madras. We do not have the details of the CRP proceedings, neither any orders nor the status of the CRP proceedings, were placed before us.

29. The Corporate Debtor was already under severe financial crisis. Hence, one of the Financial Creditor namely Syndicate Bank has initiated proceedings by filing an application 30.07.2019 u/s 7 of IBC, 2016.

30. This Applicant by a Deed of Assignment dated 09.05.2019 has taken over the debt. The Applicant is neither a Stressed Asset Company nor a Debt Collector. The reason for the Applicant ought to take this bad loan of the Corporate Debtor and become a "Debt Collector" of OPG Power Generation Limited is not clear, but rather surprising.



31. It is surprising by the very reading of the Balance Sheet of the Company that the Applicant would have known the status of the Corporate Debtor, as the Banks have declared the loan account of the company as "NPA" on 30.06.2018.

32. Therefore, the question arises that whether this Deed of Assignment was entered to keep bunch of their men in the CoC? The Corporate Debtor was already a sinking ship in a very deep financial crisis. At that point of time, the loan was assigned to the Applicant may be with a foresight to put their men in the CoC Meeting. However, the decision of the Respondent/IRP that Applicant is a "Related Party" is not challenged in this application.

33. The Applicant states that during the meeting of committee of creditors a biased opinion was formed by the Financial Creditors and the creditors alleged that Gita Power is a "Related Party" of the Corporate Debtor. Therefore, the Applicant being an assignee of Gita Power is Financial Creditor under the IBC, 2016.

34. At this juncture, it is significant to refer to the decision of the Hon'ble NCLAT in the matter of **Pankaj Yadav & Anr. -Vs- State**

**Bank of India & Anr. in Company Appeal (AT)(Insolvency) No.28**  
of 2018, wherein at para 7 and 8 it has held as follows;

*"7. It is not in dispute that the assignor Mr. Sudhakar Mulay was the Director/promoter of the 'Corporate Debtor'. Therefore, he is 'related party' within the meaning of Section 5(24). A legal transfer of 'debt' account from a 'creditor' (assignor) to a third party (assignee) provides the rightful ownership to the assignee. The 'debt assignment' is a transfer of debt with all the rights and obligations associated with it from a creditor to a third party, who is 'assignee'. The 'debt' is in the form of loan from a 'financial institution', the debtor is referred as a 'borrower' and if the debt is in the form of securities, such as bonds, the debtor is referred to as an 'issuer'. Undisputedly, the assignment is the transfer of one's right to recover the debt of another person as a contractual right. Rights of an 'assignee' are no better than those of the 'assignor'. It can be, therefore, held that 'assignor' assigns its debt in favour of the 'assignee' and 'assignee' steps in the shoes of the 'assignor'. The 'assignee' thereby takes over the right as it actually did and also takes over all the disadvantages by virtue of such assignment.*

*8. What cannot be achieved directly by Mr. Sudhakar Mulay, he did it indirectly assigning his debt in favour of the 1st appellant. Mr. Sudhakar Mulay being the 'related party', with the assignment of 'debt', the disadvantage also goes to the 1st appellant. For the reasons aforesaid, we hold that the issue has been rightly decided by*



*the Adjudicating Authority and no ground has been made out to interfere with the impugned order. In absence of any merit, the appeal is dismissed. No cost”.*

35. As to the present case, it is seen that the Applicant was the Assignee of a loan from the Related Party of the Corporate Debtor and by following the principles laid down in the Judgment of the Hon'ble NCLAT, in **Pankaj Yadav & Anr.** (supra) as enumerated in para 7, the rights of the 'Assignee' are no better than those of the 'Assignor', the Applicant is stepping into the shoes of the Assignor and thereby takes over the right of the Assignor with the onerous crown, which also includes the disadvantage as found in the Assignment Agreement. Thus, if the Assignor of a debt is a Related Party of the Corporate Debtor, as per the ratio laid down by the Hon'ble NCLAT, the Assignee, who is a third party, is also liable to be held as a Related Party of the Corporate Debtor.

36. Interestingly, this Tribunal was confronted with the decision of the Hon'ble NCLAT in the matter of **Edelweiss Asset Reconstruction Company Ltd. -Vs- Synergies Dooray Automotive**



**Ltd. & Ors.** in Company Appeal (AT)(Insolvency) No. 169 of 2017, wherein the Hon'ble NCLAT, seems to have taken a different view from its earlier decision rendered in **Pankaj Yadav (supra)**. However, the view taken by the Hon'ble NCLAT in the matter of **Edelweiss Asset Reconstruction (supra)** is justified on the basis of the specific facts arising in that particular case. The facts of the case in **Edelweiss Asset Reconstruction (supra)** can be discerned from that on the **Pankaj Yadav (supra)**, so as to say, that in the former case, the Loan was originally granted by a Bank which was later on assigned to a Related Party, however in the latter case, the original loan itself was granted by the Related party of the Corporate Debtor. It is a settled law, that that whatever the rights the original assignor got from the original lender will automatically accrues to subsequent assignees based on executing appropriate legal documents in accordance with law. Thus, as to the case of Assignment of debt to a Related / Non – Related Party, there can be no straight-jacket formula which can be applied to ascertain whether an assignee of a debt owed to a related party financial



creditor of the corporate debtor, be subject to same disqualifications that the related party assignor would be subject to.

37. It is also worthwhile to refer to the decision of the Hon'ble Supreme Court in the matter of **Arcelormittal India Private Limited -Vs- Satish Kumar Gupta & Ors.; (2019) 2 SCC 1**, wherein the Hon'ble Apex Court while dealing with the Related party issue in relation to the submission of a Resolution Plan, has held that provisions of Related Party in IBC, 2016 is a typical instance of a see through provision and stated as follows;

*"29. The opening lines of Section 29A of the Amendment Act refer to a de facto as opposed to a de jure position of the persons mentioned therein. This is a typical instance of a "see through provision", so that one is able to arrive at persons who are actually in "control", whether jointly, or in concert, with other persons. A wooden, literal, interpretation would obviously not permit a tearing of the corporate veil when it comes to the "person" whose eligibility is to be gone into. However, a purposeful and contextual interpretation, such as is the felt necessity of interpretation of such a provision as Section 29A, alone governs. For example, it is well settled that a shareholder is a separate legal entity from the company in which he holds shares. This may be true generally speaking, but when it comes to a corporate vehicle that is set up for the purpose of submission of a resolution plan, it is not only permissible but imperative for the competent authority to find out*



as to who are the constituent elements that make up such a company. In such cases, the principle laid down in *Salomon v. A Salomon and Co. Ltd.* [1897] AC 22 will not apply. For it is important to discover in such cases as to who are the real individuals or entities who are acting jointly or in concert, and who have set up such a corporate vehicle for the purpose of submission of a resolution plan.

Further, it has held as follows;

57. It is important for the competent authority to see that persons, who are otherwise ineligible and hit by sub-clause (c), do not wriggle out of the proviso to sub-clause (c) by other means, so as to avoid the consequences of the proviso. For this purpose, despite the fact that the relevant time for the ineligibility under subclause (c) to attach is the time of submission of the resolution plan, antecedent facts reasonably proximate to this point of time can always be seen, to determine whether the persons referred to in Section 29A are, in substance, seeking to avoid the consequences of the proviso to sub-clause (c) before submitting a resolution plan. If it is shown, on facts, that, at a reasonably proximate point of time before the submission of the resolution plan, the affairs of the persons referred to in Section 29A are so arranged, as to avoid paying off the debts of the non-performing asset concerned, such persons must be held to be ineligible to submit a resolution plan, or otherwise both the purpose of the first proviso to sub-section (c) of Section 29A, as well as the larger objective sought to be achieved by the said sub-clause in public interest, will be defeated”.

38. However, as to the facts of the present case, the same is squarely covered by the decision of the Hon'ble NCLAT in the

matter of **Pankaj Yadav (supra)**. Thus, in view of the dispositive reasoning that have been set out supra, this Tribunal is of the considered view that the Applicant being Assignee of the Loan from the Assignor, is also a Related Party of the Corporate Debtor and as such the Application as filed by the Applicant is liable to the **dismissed**. However, the findings of the IRP dated 27.04.2020, this prayer of the Applicant has become infructuous and we are not inclined to go into the merits of the letter dated 27.04.2020 since it is not challenged before Tribunal. Accordingly, this **IA/345/2020** stands **dismissed** without costs.

-sd-

**[S. VIJAYARAGHAVAN]**  
**Member (Technical)**

-sd-

**[R. SUCHARITHA]**  
**Member (Judicial)**

TJS