IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. V, MUMBAI BENCH

Interlocutory Application No. 2243 of 2021
In
Company Petition No. 1139 of 2020

In the matter of an Application under Section 60(5) of the I&B Code, 2016

1. Sandhya Dinesh Sancheti
2. Amesh Ajitkumar Daga
3. Nemichand Balram Khinvasara
4. Shashikant Zumbarlal Katariya
5. Dinesh Trilokchand Sancheti
6. Sandesh Dinesh Sancheti
7. Arihant Medico
8. Ashish Shashikant Karariya
9. Ajitkumar Kanayalal Daga

.... Applicants

V/s

Manoj Kumar Mishra

Interim Resolution Professional
Trimurti Foodtech Private Limited
Office No. 18, 3rd Floor, 84 Dholakawala Building,
Janmabhoomi Marg, Fort, Mumbai-400001

.... Respondent

<u>In the matter of:</u>
Sandhya Dinesh Sancheti & Anr.

..... Financial Creditor

V/s

Trimurti Foodtech Private Limited

...... Corporate Debtor

Order Pronounced on: 21.01.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Mr. Shyam Kapadia, Advocate a/w. Arati Suryavanshi, Advocate

For the Respondent: Mr. Kunal Chheda, Advocate

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The Applicants are aggrieved by the order of categorisation as "related parties" by the Respondent RP.

2. The applicants were Financial Creditors to the Corporate Debtor, during July 2018, the Managing Director of the Corporate Debtor, had approached the Applicant No. 5 to 9 to assist him for an amount of Rs. 50 lakhs to which Applicant No. 5 to 9 had agreed. The applicants further claimed that the Corporate Debtor company needed more funds to settle the outstanding liabilities of Rs. 16,89,29,237/- of State Bank of India. The Managing Director of the Corporate Debtor again approached Applicant No. 5 to 9 with a request to settle the dues of the Bank. Since it was not possible for Applicant No. 5 to 9 to pay the entire dues, they roped in Applicant No. 1 to 4 along with their family members, with a proposal to invest in the Company. The applicants No. 1 to 4 executed an Investment Agreement / Memorandum of Understanding dated 28.11.2018. In pursuance of the same, the applicants were offered 60% shareholding and were appointed as Additional Directors. The Corporate Debtor company was required to issue shares before 17.11.2019. However, the shares were not issued and hence, in view of the Investment Agreement, the Applicants were entitled to seek the refund along with interest @ 18 % p.a.

3. The Applicant No. 1 to 4 pointed out that they had in fact resigned from directorship on 25.06.2019. However, the Managing Director, Mr. Atul Banginwar, did not intimate the Registrar of Companies about the resignation. The applicants themselves filed DR-11 for the Board Resolution of Applicant No. 1 to 4 on 22.10.2020 with effect from 25.06.2019 to the Registrar of Companies. The Master Data of the Corporate Debtor thus records that the Applicant No. 1 to 4 have resigned with effect from 25.06.2019.

4. The Appellant No. 1 to 4 have raised strong objection to them being treated as related parties on the basis of their partnership in Fresh Valley Foods LLP, a group concern of the Corporate Debtor.

5. The Applicants claimed that they have no interest, no association, no relationship with the Corporate Debtor and hence, sought to declare the applicants to be treated as unrelated parties and allow them to participate in the meeting of CoC with voting rights.

REPLY OF RESPONDENT IRP

6. The Interim Resolution Professional submitted that after receiving the claims from the Financial Creditors, claims of following Financial Creditors were admitted but due to the lack of documents and information, prima facie the percentage of claim were as under;

Sr No	Name	Amount	Percentage
1.	Ahmednagar Merchants Cooperative Bank	4,92,38,079/-	18.44%
2.	Amesh Ajit Kumar Daga	3,58,11,454/-	13.41%
3.	Nemichand Balram Khinvasara	5,14,92,569/-	19.29%
4.	Dinesh Trilokchand Sancheti	4,34,16,078/-	16.26%
5.	Sandesh Dinesh Sancheti	1,34,51,727/-	5.04%
6.	Sandhya Dinesh Sancheti	1,25,46,816/-	4.70%
7.	Arihant Medico Proprietor Shashikanr Zumberlal Kataria	25,67,124/-	0.96%
8.	Shashikanr Zumberlal Kataria	4,48,18,456/-	16.79%
9.	Ashish Shashikant Katariya	28,88,014/-	1.08%

10.	AjitKumar Shashikant Kanyalal Daga	1,07,73,619/-	4.04%
	Total	26,70,03,936/-	100%

However, upon verification of claim and perusing the relevant documents, the Applicants No. 2 to 10, mentioned in the table above, were declared as related parties. Hence, upon reclassification of claims, Ahmednagar Co-operative Bank was declared as 100% sole CoC member.

7. The Respondent further pointed out how the Applicant were Related parties:

a. Directors Mr. Shashikant Zumbarlal Kataria, Mrs. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga had been director and their resignation was filed sometime in 22nd October,2020 with effect from 25.06.2019.

b. The directors have been signatory to various bank account maintained by the Corporate Debtor and hence have been active in internal management of the Corporate Debtor.

c. The four directors are actively involved in the other company which are launched jointly with the Managing Directors of the Company. As an instance the Fresh Valley Foods LLP had been launched by the four partners namely Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga together with the wife of the Managing director of the Corporate Debtor namely Ms. Nilima Atul Banginwar with effect from 27.11.2019 till date and are doing business jointly.

d. Applicants are privy to various information and operation of the Corporate Debtor, which demonstrates active involvement along with vested interest in Corporate Debtor.

e. On 28.03.2019, the Applicant namely i) Sandhya Sancheti, ii) Nemichand Balaram Khinvasara, iii) Mr. Shashikant Zumbarlal Katariya and iv) Amesh Ajitkumar Daga along with Atul Banginwar had approached the Bank for loan facility

f. Ms. Sandhya Sancheti, ii) Mr. Nemichand Balaram Khinvasara, iii) Mr. Shashikant Zumbarlal Katariya, and iv) Mr. Amesh Ajitkumar Daga have given personal guarantee for the loan amount obtained by Corporate Debtor.

8. The Applicant further reiterated that pursuant to the clarification from Mr. Atul Dattatray Banginwar, it is clearly established that the Applicants were active in day to day functioning of the Corporate Debtor.
   a. Axis bank vide letter dated 03.07.2020 has confirmed that Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga, together were directors at the time of issuance of the letter.
   b. A letter dated 08.11.2021, confirming the date of the closure of bank account being 24th November,2020, and then directors at time of closure of account.
   c. A Copy of CoC meeting dated 08.02.2020, attended by Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga and CoC meeting dated 11.02.2020 attended by Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti and Mr. Amesh Ajitkumar Daga in their capacity of suspended director.
   d. Copy of email dated 22.11.2019, copied to Dinesh Sancheti who is a close relative of the Applicant Sandhya Sancheti regarding issue in day today affair.
   e. Copy of leave and license agreement executed by Applicant No. 1 in capacity of Director for a premise used for residential purpose.
9. The Respondent RP further clarified that the applicants have been acting as a related parties and close relative of related parties and sought the dismissal of the application.

<u>Rejoinder by the Petitioner: -</u>

10. In response to the reply filed by the Respondent RP, the Applicant submits that till 28.11.2018, they had infused an amount of Rs. 10 crores as follows;
    a. Nemichand Khinvasara Rs. 2.50 Crore,
    b. Amesh A Daga Rs. 2.50 Crores,
    c. Sangeeta S Katariya Rs. 1 Crore,
    d. Ashish Katariya Rs. 0.50 Crore,
    e. Sandesh Sancheti Rs. 1 Crore,
    f. Dinesh Sancheti Rs. 0.50 Crore and
    g. Sandhya D Sancheti Rs. 1.00 Crore

11. Mr. Atul Banginwar, the MD of the Corporate Debtor had confirmed that funds received from the Applicant were towards share capital money and unsecured loan from the Director. Further, it was pointed out that Mr. Atul Banginwar, MD of the Corporate Debtor sent letters to the applicant, thanking them for the investment made, to complete the one time settlement.

12. The Fourth paragraph of the letter dated 28.11.2018 of Mr. Atul Banginwar, MD of the Corporate Debtor. The letter read as:

> ***You are being an outsider, your involvement in the company shall be limited for the purpose of safety of your investment and nothing else. I can assure you that your investment shall not be affected in any manner due to your position which I may propose for you in the Company or group company of my family. Further you shall not be liable for any liability due to your position as these positions are nothing but a name sake.***

13. It is submitted, in the Rejoinder by the Petitioner, that the partnership in LLP was obtained by Mr. Atul Banginwar in a fraudulent manner by way of misrepresentations. It was stated that Applicant No. 1 to 4 were additional director of the Company for a short tenure from 28.11.2018 till 25.06.2019.

14. As the Corporate Debtor was unable to issue shares or make repayment, the Applicants and Corporate Debtor agreed to convey the properties by way of agreement of sale dated 15.11.2019 to the Applicant herein. However, such agreement was never acted upon the parties.

15. The Applicant state that they are genuine Financial Creditors who have been cheated by the management of the Corporate Debtor. The Applicants have no interest or no association or no relationship with Corporate Debtor or its manager and directors except to the extent in order to protect the interest of their investment. Therefore, the Hon'ble court may appreciate the fact that the objective of Insolvency and Bankruptcy Code shall be defeated if Applicants are treated as related parties.

16. Therefore, under these circumstances, the applicants need to be treated as Financial Creditor having no relation with Corporate Debtor. Therefore, the

prayer as sought in Interlocutory Application No. 2243 of 2021 be granted in the interest of justice.

Findings

17. The only issue which arises for consideration is whether the Applicants are “related parties” or not.

18. The applicants are aggrieved by the categorisation of the applicant 1 to 9 as “related parties” by the RP. The Applicant No. 1 to 4 are Petitioners in C.P. 1139 of 2020 who had advanced money to the Corporate Debtor. The Corporate Debtor and the applicant had executed the MoU/ Investment Agreement dated 28.11.2018 and pursuant to that Applicant no. 1 to 4 had been appointed as Additional Director, in accordance with section 161 of the Companies Act. The parties have also executed an investment agreement dated 18.05.2019 which entailed that the Corporate Debtor would issue shares in favour of the applicant on17.11.2019. The applicant further contended that they had resigned from the Directorship. However, the said resignation was not filed with the ROC.

19. The Applicant 1 to 4 further contended that they were additional directors for the period of 7 months with effect from 28.11.2018 to 25.06.2019, during which they did not exercise any control over the affairs of the Company. The applicants 1 to 4 also raised strong objections as they were treated as related parties on the basis of partnership in Fresh Valley Foods LLP, a group concern. They also claimed that their appointment in LLP were done in the fraudulent manner by Mr. Atul Banginwar and their Associates.

20. The applicant further claimed that they are not related parties as per the Provisions 5(24) of the Code. The applicant also produced the company master data of the Corporate Debtor wherein it is captured that the applicants Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasaraand Mr. Amesh Ajitkumar Daga have resigned as a director from, 25.06.2019.

21. The Respondent RP has filed reply and stated that due to lack of documents and information he was not in a position to classify the claims of the Applicants as a related party. Prima facie the percentage of claims of CoC members as follows;

Sr No	Name	Amount	Percentage
1.	Ahmednagar Merchants Cooperative Bank	4,92,38,079/-	18.44%
2.	Amesh Ajit Kumar Daga	3,58,11,454/-	13.41%
3.	Nemichand Balram Khinvasara	5,14,92,569/-	19.29%
4.	Dinesh Trilokchand Sancheti	4,34,16,078/-	16.26%
5.	Sandesh Dinesh Sancheti	1,34,51,727/-	5.04%
6.	Sandhya Dinesh Sancheti	1,25,46,816/-	4.70%
7.	Arihant Medico Proprietor Shashikanr Zumberlal Kataria	25,67,124/-	0.96%
8.	Shashikanr Zumberlal Kataria	4,48,18,456/-	16.79%
9.	Ashish Shashikant Katariya	28,88,014/-	1.08%
10.	AjitKumar Shashikant Kanyalal Daga	1,07,73,619/-	4.04%
	Total	26,70,03,936/-	100%

However, post verification of documents the applicants No. 2 to 10 were classified as related parties and Ahmednagar Co-operative Bank is declared as sole CoC Member.

22. The Resolution Applicant further narrated the events that demonstrated that the applicants as a related parties.
    a. Directors Mr. Shashikant Zumbarlal Kataria, Mrs. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga had been director and their resignation was filed sometime in 22nd October,2020 with effect from 25.06.2019.

b. The directors have been signatory to various bank account maintained by the Corporate Debtor and hence have been active in internal management of the Corporate Debtor. Herewith annexed and marked as Exhibit A is the table reflecting the bank accounts and signatories.
c. The four directors were actively involved in the other company which are launched jointly with the Managing Directors of the Company. As an instance the Fresh Valley Foods LLP had been launched by the four partners namely Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga together with the wife of the Managing director of the Corporate Debtor namely Ms. Nilima Atul Banginwar with effect from 27.11.2019 till date and are doing business jointly.
d. Applicants are privy to various information and operation of the Corporate Debtor, which demonstrates active involvement along with vested interest in Corporate Debtor.
e. On 28.03.2019, the Applicant namely i) Sandhya Sancheti, ii) Nemichand Balaram Khinvasara, iii) Mr. Shashikant Zumbarlal Katariya, and iv) Amesh Ajitkumar Daga along with Atul Banginwar had approached the Bank for loan facility. Herewith annexed and marked as Exhibit B is copy of letter and Exhibit C is the copy of English Translation.
f. i) Ms. Sandhya Sancheti, ii) Mr. Nemichand Balaram Khinvasara, iii) Mr. Shashikant Zumbarlal Katariya, and iv) Mr. Amesh Ajitkumar Daga have given personal guarantee for the loan amount obtained by Corporate Debtor. Herewith annexed and marked as Exhibit D to Exhibit E are the copies of Personal Guarantee.
g. Axis bank vide letter dated 03.07.2020 has confirmed that Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga together were directors at the time of issuance of the letter. Herewith annexed and marked as Exhibit F is a copy of the letter dated 03.07.2020.
h. A letter dated 08.11.2021 confirming the date of the closure of bank account being 24th November,2020 and then directors at time of closure of account.
i. Copy of CoC meeting dated 08.02.2020 attended by Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga and CoC meeting dated 11.02.2020 attended

by Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti and Mr. Amesh Ajitkumar Daga in capacity of suspended director. Herewith annexed and marked as Exhibit H and Exhibit **I** are the copies of Minutes of Meetings.

j. Copy of email dated 22.11.2019 copied to Mr. Dinesh Sancheti who is relative of Applicant. Ms. Sandhya Sancheti regarding issue in day to day affair.

k. Copy of leave and license agreement executed by Applicant No. 1 in capacity of Director for a premise used for residential purpose.

23. Upon perusal of the application, reply and the Written submissions filed by both the parties pursuant to the hearing, this Bench is of the considered opinion that the applicants have been involved in the day to day business of the Corporate Debtor and have been rightly categorised as related party to the said Corporate Debtor. The Resolution Professional has rightly pointed out several transactions which indicate the close proximity of the applicants in conducting the business of the Corporate Debtor during the tenure as directors and post the resignation as Directors. The factual matrix demonstrates that the Applicants/Directors were signatories to bank Account, loan application, guarantors to the borrowed funds. The Applicants have mortgaged the asset of Corporate Debtor and further the fact that Mrs. Sandhya Sancheti executed leave and license agreement in the capacity of Director.

24. It is relevant to refer to Section 5(24) and 5(24A) of the Insolvency and Bankruptcy Code, 2016 and the same is reproduced below;

Section 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 percent of its paid-up share capital;

(f) anybody 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 percent 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;

Section 5(24A)

"related party", in relation to an individual, means-

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the

trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) aprivatecompanyinwhichtheindividualisadirectorandholdsalongwithhisrelatives, more than two percent. Of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two percent of its paid-up share capital;

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

(g) alimitedliabilitypartnershiporapartnershipfirmwhosepartnersoremployeesin the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.-For the purposes of this clause,-

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:-

(i) Members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughter's daughter and son,

(xii) brother,

(xiii) sister,

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii) father's brother and sister,

(xix) mother's brother and sister; and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;]

25. A bare reading of the above facts and conjoint reading of Sec.5(24) and Sec.5 (24A) of the Code, it can be said that Applicants are related parties in the capacity of Directors of Corporate Debtors who exercised control over the management by representing the Corporate Debtor pre-resignation and post-resignation as Directors and were also on the Board of Fresh Valley Foods LLP, which is a related party to the Corporate Debtor. The applicants were joint signatory to the bank account maintained by the Corporate Debtor and have been actively involved in the internal management of the Corporate Debtor. They have also given personal guarantees to the loan given by the Corporate Debtor. The copy of the COC meeting further reveals that on 08.02.2020and 11.02.2020 the applicants namely Mr. Shashikant Zumbarlal Katariya, Ms. Sandhya Dinesh Sancheti, Mr. Nemichand Balaram Khinvasara and Mr. Amesh Ajitkumar Daga have attended the CoC meeting in the capacity of the Suspended Directors of the Corporate Debtor. The above key factors demonstrate that the applicants are related parties.

26. This court doth orders as follows;
    a. The categorisation of the applicants being related parties is upheld.
    b. The I.A. No. 2243 of 2021 is dismissed.

Sd/-	Sd/-
ANURADHA SANJAY BHATIA	SUCHITRA KANUPARTHI
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)