IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, (COURT NO.-II)
KOLKATA
I.A.(IB) 556/KB/2022
IN
C.P. (IB) No 440/KB/2018

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

Huvepharma Limited, Sea (Pune) Private Limited registered under Private the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 42, Haridwar Bunglow, S.N. 213, Road No.2 A/B, Kalyani Nagar, Pune, MH 411006 and also at 501 & 502, Green Terraces, Lane No.5, South Koregaon Park, Kawdewadi, Pune-411 001**.**

…..*Operational Creditor*

Versus

Amrit Feeds Ltd. (In Liquidation) registered under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at 158, Lenin Sarani, Kolkata 700013, West Bengal**.**

…..*Corporate Debtor*

And

IN THE MATTER OF:

Harish Bagla, S/O Shri Gouri Prasad Bagla, residing at 6, Ashoka Road, Alipore, Kolkata-700 027.

…..Applicant

Versus

Sunil Mohan Acharya, the Liquidator of M/s. Amrit Feeds Limited (In Liquidation), having his office at Intelligent IP Management Solutions Private Limited, YMCA Building, 2nd Floor, 25, Jawaharlal Nehru Road, Kolkata-700087 and also at 245/1, Bhattacharya Para, 6 No. Jheel Par Road, Ward No. 15, New Barrackpur, North 24 Parganas, Kolkata-700131.

…….*Respondents*

Date of Pronouncement:15.01.2024

Coram:
Shri Bidisha Banerjee, Member (Judicial)
Shri D. Arvind, Member (Technical)

Appearances (via Hybrid Mode):

Mr. S. Dasgupta, Adv.] For the Petitioner in IA (1.B.C)/531(KB)2022

Mr. A. Kumar Mukherjee, Adv.	]
Mr. S. Prasad, Adv.	]
Ms. Sreenita Thakker, Adv.	] For the Liquidator
Mr. Sunil Mohan Acharya,	] Liquidator-in-Person
Mr. D.N. Sharma, Adv.	] For the Applicant in IA (I.B.C)/556(KB)2022
Mr. Nirmalya Dasgupta, Adv.	]
Mr. Patrali Ganguly, Adv.	]
Mr. Aritra Basu, Adv.	] For the Applicant in IA (I.B.C)/307(KB)2022
Mr. P. Ghosh, Adv.	]
Mr. Pramit Bag, Adv.	] For the Applicant in IA (I.B.C)/796(KB)2022
Mr. Anuj Mishra, Adv.	]
Mr. Abhrajit Mitra, Sr. Adv.	] For the Applicant in IA (I.B.C)/891(KB)2021
Ms. Manju Bhuteria, Adv.	] And
Ms. Rajshree Kajaria, Adv.	] For the Respondent in IA (I.B.C)/556(KB)2022
Mr. Uttam Sharma, Adv.	]
Mr. Avishek Guha, Adv.	] For Respondent No.2 in IA (I.B.C)/1482(KB)2022
Ms. Arunika Dutta, Adv.	]
Mr. Kaustav De Sarkar, Adv.	]
Mr. Ratul Das, Adv.	] For Punjab National Bank
Ms. Urmila Chakraborty, Adv.	in]IA(1.B.C)/1482(KB)2022
Mr. Snehasish Chakraborty, Adv.	]
Mr. Debasish Chakraborty, Adv.	]
Mr. S.R. Kakrania, Adv.	] In IA (1.B.C)/891(KB)2021
Mr. K.Sharma, Adv.	]
Mr. N.Das, Adv.	]

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. This Court is congregated through hybrid mode.

2. Heard Ld. Senior Counsels/ Counsels for the Parties.

3. This Application has been preferred to seek the following reliefs inter alia:

a) *Injunction restraining the respondent no. 1/liquidator from taking any steps or further steps to confirm the sale in favour of the respondent no.2 in respect of the subject property situated in Mouza - Rangia, District: Kamrup, Assam more fully shown in serial no.3 of the Sale Notice dated March 2, 2022;*

b) *Till the disposal of the instant application, the sale notice dated March 2, 2022 in so far as it relates to the subject immovable property situated at Rangia, Kamrup, Assam mentioned in serial no.3 thereof, be stayed;*

c) *The purported sale of the subject Assam property shown by the respondent no.1 in favour of the respondent no.2 be cancelled;*

d) *The decision taken by the respondent no. 1/liquidator to declare the respondent no.2 as successful bidder in respect of Assam property mentioned in serial no.3 of Sale Notice dated March 2, 2022 be set aside and/or quashed;*

e) *Stay of the impugned decision taken by the liquidator/ respondent no. 1 declaring the respondent no.2 as successful bidder in respect of Rangia, Kamrup, Assam property of the corporate debtor, more fully mentioned in serial no.3 of the Sale Notice dated March 2, 2022;*

f) *Ad-interim orders in terms of prayers above;*

4. **Brief Background**

4.1 The corporate debtor Amrit Feeds is engaged in the business of manufacturing and marketing poultry feeds in the business of poultry. In its usual course of business, the corporate debtor availed certain credit facilities from the Respondent No. 2, and to secure the credit facilities availed of, the corporate debtor mortgaged few immovable properties which include the plant situated at Assam. A detailed description of the property being as under:

"ALL THAT a land measuring (1,390 sq.mtr. + 4,180 sq.mtr. at Dag No.350, 43. Industrial Area, IDC, Village Kendurkona, Mouza Rangia, Dist: Kamrup, Assam-781 354 with building thereon, plant and machinery and other fixed assets on a going concern basis."

4.2 By an order dated October 22, 2019, Amrit Feeds, the Corporate Debtor (CD) was admitted into CIRP pursuant to the order of admission passed by the Hon'ble Adjudicating Authority. Mr. Pankaj Kumar Tibrewal was appointed as the IRP pursuant to the order dated October 22, 2019. In the first meeting of the Committee of Creditors (CoC) held on November 19, 2019, Mr. Pamkaj Kumar Tibrewal was confirmed as the Resolution Professional (RP).

4.3 The Applicant Mr.Harish Bagla is a Director of the suspended Board of Corporate Debtor Amrit Feeds.

4.4 The Respondent No. 1 herein is the liquidator who was appointed pursuant to the order of liquidation, passed on February 19, 2021.

4.5 The Respondent no.2 is stated to be a company within the meaning of the Companies Act, 2013 having its registered office at DK 1103, DLF GALLERIA Premises No. 02-124 PLOT NO.BG/ 8, Action Area I, New Town, Parganas South, Kolkata-700 156. The Master Data of the respondent no.2, shows that it's the board of directors of consists of the following:-

Name	DIN/PAN No.
1. Navneet Kumar Ghidia	00409525
2. Priyanka Ghidia	09465301

The Memorandum of Association of the Respondent No. 2 shows that Navneet Kumar Ghidia and Priyanka Ghidia are the shareholders of the Respondent No.2 each holding 50% shareholding. The subject matter of the present application is restricted to one of the properties of the corporate debtor more fully described herein above situated in District: Kamrup (Assam), Mouza - Rangia.

4.6 A sale notice dated March 2, 2022, issued by the respondent no. 1/liquidator, demonstrates that the liquidator wants to sell off three immovable properties of the corporate debtor situated in Bihar, West Bengal and Assam. The present application is, aimed at restricting sale of immovable property of the corporate debtor situated in the Dist: Kamrup, Assam, Mouza: Rangia (herein after referred to as the 'subject property').

5. <u>The grievance of the applicant Harish Bagla</u>

5.1 The applicant has averred that on an earlier occasion when the respondent no. 1 had taken steps to sell one of the properties of the CD situated at Rampur, Uttar Pradesh in terms of an earlier sale notice dated June 28, 2021, the applicant upon receiving a query from the liquidator by email dated September 11, 2021 had, by way of email dated September 16, 2021 indicated that Mr. Vijai Kumar Ghidia was his maternal uncle being the brother of his mother Smt. Chanda Bagla and Smt. Chanda Bagla was adopted by her father's elder brother and his wife, Radha Krishna Ghidia and Bhagwati Devi Ghidia. As such the Liquidator/ Respondent no. 1 tried to ascertain and seek clarification in regard to the relationship of Vijai Kumar Ghidia and the applicant because one Eva Agro Feeds Pvt. Ltd. (hereinafter referred to as 'Eva Agro) had participated in the sale in respect of Rampur, Uttar Pradesh property.

5.2 That the applicant, however, subsequently came to know that the Hon'ble Adjudicating Authority by an order dated August 12, 2021 passed at the instance of the said Eva Agro had set aside the decision taken by the liquidator to cancel the - auction sale notice dated June 28, 2021 in respect of Rampur, Uttar Pradesh property and had directed the liquidator to take further steps to confirm the sale in favour of the said Eva Agro in respect of Rampur, Uttar Pradesh property.

5.3 The applicant preferred an appeal before the Hon'ble NCLAT in Company Appeal (AT) (Ins.) No.789 of 2021. Prior to filing of the said appeal by the applicant, Punjab National Bank (one of the financial creditors of the corporate debtor) had also preferred an appeal before the Hon’ble NCLAT against the same order dated August 12, 2021. The appeal filed by said Punjab National Bank was numbered as Company Appeal (AT) (Ins) No. 757 of 2021.

5.4 The NCLT order dated August 12, 2021 was set aside in the Appeal filed by the Punjab National Bank by the Hon'ble NCLAT by its order dated November 30, 2021. Consequently, the present applicant withdrew its appeal being Company Appeal (AT) (Ins.) No. 789 of 2021, as it had become infructuous.

5.5 The Eva Agro had thereafter filed a civil appeal before the Hon'ble Supreme Court of India, aggrieved with the order passed by the Hon'ble NCLAT being Civil Appeal No. 7906 of 2021. Hon'ble Apex Court has set aside the NCLAT order and affirmed the NCLT order.

5.6 The applicant has now in his capacity as one of the erstwhile directors of the corporate debtor has assailed the decision of the liquidator/respondent no. 1 to declare the respondent no. 2 as the purported successful bidder in respect of Rangia, Kamrup, Assam property of the corporate debtor.

6. Submissions of the Applicant

6.1 The applicant Harish Bagla has challenged the decision of the liquidator on the ground that respondent no.2 namely Aura Agrotech Pvt. Ltd. and Eva Agro Feed Pvt. Ltd. are the companies under the same management and control, alleging that the respondent no.2 is an alter ego of the said Eva Agro.

6.2 It is submitted that both the respondent no.2 and the said Eva Agro have been recently incorporated by the family members of Vijai Kumar Ghidia which includes his three sons namely Amit Kumar Ghidia, Navneet Kumar Ghidia and Vineet Kumar Ghidia. The respondent no.2 is a related party of the applicant who is erstwhile ex-director of the corporate debtor now in liquidation.

6.3 That Navneet Kumar Ghidia who is the principal shareholder and director of the respondent no.2, is the son of Vijai Kumar Ghidia, the maternal uncle of the applicant. The said Vijai Kumar Ghidia is also one of the promoter director and original subscriber to the Memorandum & Articles of Association of the corporate debtor which will appear from the copy of the Memorandum & Articles of Association of the corporate debtor.

6.4 It is urged that this is a fit case for lifting of Corporate Veil to unearth the relations

6.5 It is submitted that one Assam Industrial Infrastructure Development Corporation (AIIDCL) had filed an application in 2021 being IA (IB) No.891/KB/2021 to challenge the e-auction of the subject land situated in Assam admeasuring 5570 sq.

metres in terms of the earlier sale notice published by the respondent no. 1 dated September 15, 2021. In such application filed by AIIDCL an order was passed by this Tribunal on October 7, 2021 permitting the auction to go ahead but the respondent no.1 has been restrained from confirming the sale without the leave of the Adjudicating Authority.

7. <u>Submissions of the respondent Liquidator</u>

Per contra the liquidator would aver as under:

7.1 That the credit facilities availed by the Corporate Debtor were provided by the HDFC Bank and not the respondent No.2. In order to avail the credit facilities from HDFC Bank, the corporate debtor had mortgaged a few immovable properties including its plant situated at Assam. The applicant Harish Bagla's objections regarding sale of the Assam property is untenable and liable to be rejected.

7.2 It is contended that the sale in favour of Eva Agro Feeds Pvt. Ltd. was set aside by Hon'ble NCLAT in Company Aplleal (AT) (Ins.) No. 757 of 2021 preferred by Punjab National Bank. The present Applicant had also challenged sale of the property in favour of Eva Agro Feeds Pvt. Ltd. before the Hon'ble NCLAT in Company Appeal (AT) (Ins.) No. 789 of 2021 alleging that Eva Agro Feeds Pvt. Ltd. was a related party of the corporate debtor by reason of the relation between the promoters. As the Company Appeal (AT) (Ins.) No.757 of 2021 was allowed and the sale in favour of Eva Agro Feeds Pvt. Ltd. had been set aside, I.A. 789 of 2021 was naturally disposed of.

8. It is urged by the Applicant Mr. Harish Bagla (Son of Chandra Bagla), the promoter of Amrit Feeds that:

8.1 Vijay Kumar Ghidia being the promoter of Eva Agro cannot participate in the auction as Vijay Ghidia is the brother of Chandra Bagla and his maternal uncle and thus "related" to Harish Bagla.

8.2 Navneet Kumar Ghidia and his wife Priyanka being the promoters of Aura, and Navneet being his cousin (son of his maternal uncle Vijay), Auura too cannot participate in the bid, as its promoters are "related" to Harish Bagla.

9. In view of the rival contention noted above it has become necessary to consider whether Chanda or Harish are related to Vijay and his family members. For this purpose, the implication of **Section 12 of The Hindu Adoptions and Maintenance Act, 1956** has to be considered:

> ***Effects of adoption***. —*An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family: Provided that—*
>
> > *(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;*
> >
> > *(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;*
> >
> > *(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.*

It is noted that Chanda Ghidia is the biological daughter of Nauratanlal Ghidia the brother of his Adoptive Father Radhakrishna Ghidia.. On being adopted by Nauratanlal's brother Radhakrishna Ghidia (which adoption is not challenged), the ramification of adoption of Chanda would be that:

- She is no more related to Nauratanlal Ghidia (and hence not to his son Vijay Ghidia and grandson) and the traditional preoccupation with the blood ties is now on the wane.
- The Recognition of continuing ties of inheritance with natural family ceases.
- She should be deemed to have severed her ties with her putative father Nauratanlal Ghidia and his family members;
- She is not a member of the same HUF as that of Nauratanlal Ghidia or his sons or grandsons and for the same reason her son Harish cannot be termed as related to Nauratanlal Ghidia or his son Vijay Ghidia or his grandson Navneet Ghidia.
- No legal right to inherit from biological parents' estate continues.
- No legal right of biological parents over the child given in adoption, exists.

10. The adoption statutes are replete with statements which make it clear that a primary focus is the well being of the adopted child. The adoptive family treats the adoptee in all respects, including matters of succession as though it had been born into the adoptive family. The legislative intent is that the legal effect of adoption would be substitution of the adoption in place of the natural family and severance of all ties with the child's natural family, i.e., a total transplantation of the child into his adoptive family. Hence, Chanda Bagla after her adoption legally ceases to be a daughter of Nauratanlal Ghidia bar under Section 5(24A) (a) of the IBC, 2016 does not get attracted in any manner. Under Section 5(24A) (a) of IBC she is neither a member of HUF under (i) nor a daughter of Nauratanlal Ghidia under (vii). Thus, her son Harish cannot be termed as daughter's son in respect to Nauratanlal Ghidia nor sister's son in respect of Vijay Ghidia.

11. It is also discernible that Hon'ble Apex Court has elaborated in its judgment that Vijay Ghidia is not a related party of Harish. The Appeal was preferred by Eva Agro Feeds, the Company belonging to Vijay Ghidia group where an order passed by Hon'ble NCLAT, setting aside an NCLT order confirming sale in favour of Eva Agro, of land belonging to CD Amrit Feeds, was set aside. Hon'ble Apex Court affirmed the order of NCLT Mr. Harish Bagla, the present applicant was the intervenor therein.

12. The relevant extract of the judgment of the Hon'ble Supreme Court in Civil Appeal 7906 of 2021, as relevant and germane to the present lis is extracted verbatim hereinbelow with supplied emphasis for clarity. It goes thus:

> *"8. As noticed above, <u>one Mr. Harsh Bagla has filed an application seeking intervention which we have allowed</u>.*
>
> *9. In addition to narrating the facts and commenting thereupon, <u>the intervenor has averred that the principal person in control of the appellant is one Mr. Vijay Kumar Ghidia who is a director and principal shareholder of the appellant</u>. Mr. <u>Vijay Kumar Ghidia was also one of the promoter directors and principal shareholders of the corporate debtor</u>. Sale <u>of any asset of the corporate debtor could not have been conducted in favour of a related party of the corporate debtor in view of the specific bar under Section 29A, of the Code</u>. As a matter of fact, **<u>Mr. Viiay Kumar Ghidia is also the maternal uncle of the intervenor</u>** <u>who is the ex managing director of the corporate debtor</u>. **<u>Mr. Vijay Kumar Ghidia</u>***

therefore comes within the meaning of related party" *as defined* ***under Sections 5(24) and 5(24A) of the Code****. Therefore, the auction sale in favour of the appellant is bad in law and cannot be sustained.*

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10. We have heard Mr. Neeraj Kishan Kaul, learned senior counsel for the appellant; Mr. Rajesh Kumar Gautam, learned counsel for Respondent No. 1; Mr. Krishnaraj Thakker, learned counsel for Respondent No.2; and Mr. Siddharth Bhatnagar, learned senior counsel for the intervenor - Mr. Harish Bagla

11. Mr. Neeraj Kishan Kaul, learned senior counsel for the appellant at the outset submits that Appellate Tribunal fell in complete error in setting aside the order of the Tribunal and restoring the order of the Liquidator.

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He has also pointed out that at the time of auction, Mr. Vijay Kumar Ghidia was no longer connected with the corporate debtor having retired from the said company way back in the year 2011. Therefore, he cannot come within the ambit of the expression related party' as defined under the Code. He submits that the present is a fit case for setting aside the order of the Appellate Tribunal and restoring the order of the Tribunal which as a matter of fact has been complied with by the Liquidator.

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13. Mr. Krishnaraj Thakker, learned counsel for Respondent No.2 has also adopted and reiterated the above submissions made by learned counsel for Respondent No. 1. Additionally, he submits that Liquidator had received an e-mail dated 10.09.2021 from one Mr. Amit Ghidia informing him that the promoter of the appellant was also the founder promoter of the corporate debtor. Mr. Vijay Kumar Ghidia who is one of the directors of the appellant was also a director and principal shareholder of the corporate debtor. Recent incorporation of the appellant in the month of July 2021 also raised suspicion about the nature of the appellant and its intentions.

14. Mr. Siddharth Bhatnagar, learned senior counsel appearing for the intervenor highlighted the issue of 'related party'. According to him, ***appellant should have been disqualified from participating in the E-auction*** *by reason of* *being a 'related party'. Promoter director of the appellant, **Mr. Vijay Kumar Ghidia, is the maternal uncle of Mr. Harsh Bagla, the intervener.** Mr. Vijay Kumar Ghidia is one of the directors of the appellant. He was also one of the promoter directors and original subscribers to the Memorandum and Articles of Association of the corporate debtor. Elaborating further, he submits **that mother of the intervenor Smt. Chanda Bagla is the sister of Mr. Vijay Kumar Ghidia**. Intervenor has a significant stake in the corporate debtor having held about fifty-three per cent of the paid-up share-capital of the corporate debtor. Liquidator, therefore, should have cancelled the auction sale notice only on the ground that appelant is a 'related party' to the corporate debtor. Referring to the e-mail dated 10.09.2021, he submits that Mr. Amit Ghidia, son of Mr. Vijay Kumar Ghidia had brought to the notice of the Liquidator that Mr. Vijay Kumar Ghidia is the maternal uncle of the intervenor. By virtue of such relationship, appellant would attract disqualification under Section 29A read with Section 5(24) and Section 5(24A) of the Code.*

*15. Referring to the above contentions, Mr. Neeraj Kishan Kaul, learned senior counsel for the appellant submits that it was because of the activities of persons like the intervenor that the corporate debtor has landed in the present situation. Therefore, it is not open to such persons to talk about getting proper valuation of the auctioned assets of the corporate debtor. In so far allegation of related party' is concerned, he submits that the same is no bar at all and cannot be held as a disqualification for the appellant inasmuch as Mr. Vijay Kumar Ghidia had ceased to be a director of the corporate debtor way back in the year 2011. To attract disqualification under Section 29A, the relationship has to be proximate. In this connection, he has placed reliance on the decision of this Court in the case of **Swiss Ribbons Private Limited and Another versus Union of India and Others**.*

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25. While we are on the powers and duties of the Liquidator, it would be apposite to refer to certain provisions of the Regulations framed in exercise of the powers conferred by Section 5 and other sections of the Code read with Section 240 of *the Code as per which the Insolvency and Bankruptcy Board of India may make regulations to carry out provisions of the Code.*

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34.1. A conjoint reading of the aforesaid provisions would make it clear that while the highest bidder has no indefeasible right to demand acceptance of his bid, the Liquidator if he does not want to accept the bid of the highest bidder has to apply his mind to the relevant factors. Such application of mind must be visible or manifest in the rejection order itself. As this Court has emphasized the importance and necessity of furnishing reasons while taking a decision affecting the rights of parties, it is incomprehensible that an administrative authority can take a decision without disclosing the reasons

for taking such a decision.

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43. Learned senior counsel for the intervenor argued that Shri Vijay Kumar Ghidia who is the director and principal shareholder of the appellant was also one of the promotor director and principal shareholder of the corporate debtor. Therefore, he is a 'related party' of the corporate debtor and as such is not eligible; rather debarred from participating in the auction of the subject property of the corporate debtor. However, it was pointed out by learned senior counsel for the appellant that Shri Vijay Kumar Ghidia is no longer connected with the corporate debtor having retired from the said company way back in the year 2011.

44. At this stage, we may advert to Section 5(24) of the Code which defines the expression 'related party' in relation to a corporate debtor. Section 5(24) reads as follows:-

5. Definitions - In this part, unless the context other requires, -

(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) 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 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;

44.1 Clause (a) of Section 5(24) says that a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor would be a related party. Likewise, as per Clause (e) of Section 5(24), 'related party' in relation to a corporate debtor would mean a private or 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 share capital or paid-up share capital, as the case may be.

45. Similarly, Section 5(24A) defines 'related party' in relation to an individual which is as follows: -

5. Definitions – In this Part, unless the context otherwise requires,-

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

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. 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) a limited liability partnership or a partnership firm whose partners or employees in 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) <u>"relative", with reference to any person, means anyone who is related to another</u>, 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) <u>son's daughter and son</u>,

(ix) <u>daughter's daughter and son</u>,

(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;]

45.1. From the above, it is evident that a person who is a relative of the individual or a relative of the spouse of the individual would be a 'related party' in relation to that individual. That apart, a private company or a public company in which the individual is a director and holds along with relatives more than two percent of its share capital or paid up share capital, as the case may be, would be a 'related party' in relation to an individual. Further, as per the explanation, both maternal and paternal uncles would be covered within the definition of 'related party'.

46. Section 29A of the Code mentions persons not eligible to be a resolution applicant. Section 29A reads as follows: -

***29-A. Persons not eligible to be resolution applicant**.—A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person,—*

46.1. Thus, as per Section 29A(g), a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with such person has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the adjudicating authority. Clause (j) says that a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with such person has a connected person not eligible under Clauses (a) to (i). As per Explanation (i), the expression 'connected person' means-(i) any person who is the promoter or in the management or control of the resolution applicant; or (ii) any person who shall be the promoter or in the management or control of the business of the corporate debtor during the implementation of the resolution plan; etc.

47. The expression 'related party' appearing in Sections 5(24) and (24A) suffering ineligibility under Section 29A has received considerable attention of this Court. ***In Swiss Ribbons Private Limited and Another Versus Union of India and Others****, a constitutional challenge was made to Section 29A(j) of the Code read with the definition of 'related party' as defined under Sections 5(24) and 5(24A). While repelling the challenge, this Court held as follows:-*

109. We are of the view that <u>persons who act jointly or in concert with others are connected with the business activity of the resolution applicant.</u> Similarly, all the categories of persons mentioned in Section 5(24-A) show that <u>such persons must be "connected" with the resolution applicant within the meaning of Section 29-A(j)</u>. This being the case, the said categories of persons who are collectively mentioned under the caption <u>"relative" obviously need to have a connection with the business activity of the resolution applicant. In the absence of showing that such person is "connected" with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29-A(j)</u>. All the categories in Section 29-A(j) deal with persons, natural as well as artificial, who are connected with the business activity of the resolution applicant. The expression "related party", therefore, and "relative" contained in the definition sections <u>must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant.</u>

110. An argument was also made that the expression "connected person" in Explanation I, clause (ii) to Section 29-A(j) cannot possibly refer to a person who may be in management or control of the business of the corporate debtor in future. This would be arbitrary as the explanation would then apply to an indeterminate person. This contention also needs to be repelled as Explanation I seeks to make it clear that if a person is otherwise covered as a "connected person", this <u>provision would also cover a person who is in management or control of the business of the corporate debtor during the implementation of a resolution plan</u>. Therefore, any such person is not indeterminate at all, but is a person who is in the saddle of the business of the corporate debtor either at an *anterior point of time or even during implementation of the resolution plan. This disposes of all the contentions raising questions as to the constitutional validity of Section 29- A(j).*

47.1. After a careful analysis, this Court opined that the expressions 'related party' and 'relative' contained in the definition sections must be read noscitur a sociis with the categories of person mentioned in Explanation I. ***So read, it would include only persons who are connected with the business activity of the resolution applicant****. This Court further clarified that the expression 'connected person' would also cover a person who is in management or control of the business of the corporate debtor during the implementation of a resolution plan.*

XXXX

48. In ***Phoenix ARC Private Limited versus Spade Financial Services Limited****, this Court noted that the expression 'related party' is defined in Section 5(24) in relation to a corporate debtor and Section 5(24A) provides a corresponding definition in relation to an individual. Thereafter, it has been observed as under:-*

88. An issue of interpretation in relation to the first proviso of Section 21(2) is whether the disqualification under the proviso 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.

48.1. Referring to its earlier decision in ***Arcelor Mittal (India) (P) Ltd. V. Satish Kumar Gupta****, where the issue was whether ineligibility of the resolution applicant under Section 29 A(c) of the Code is attached to an applicant at the date of commencement of the corporate insolvency resolution process or at the time when the resolution plan is submitted by the resolution applicant. It was clarified that the opening words of Section 29(A) stating "a person shall not be eligible to submit a resolution plan….." clearly indicates that the stage of ineligibility attaches when the resolution plan is submitted by the resolution applicant; thus the disqualification applies in praesenti. This Court referred to Section 21(2) of the Code, more particularly to the second proviso thereto which* *deals with the Committee of Creditors and the ineligibility of a related party in the consideration and voting on a resolution plan by the said committee and held as follows:*

101. However, if such an interpretation is given to the first proviso of Section 21(2), all financial creditors would stand excluded if they were a "related party" of the corporate debtor at the time when the financial debt was created. This may arguably lead to absurd conclusions for entities which have legitimately taken over the debt of related parties, or where the related party entity had stopped being a "related party" long ago.

*49. **Arun Kumar Jagatramka Versus Jindal Steel and Power Limited and Another**, also deals with Section 29A of the Code. In that case, this Court observed that <u>the fundamental postulate of the Code is that a corporate debtor has to be protected from its management and corporate debt</u>. Hence it would be anomalous if a compromise or arrangement can be entertained from a person who is responsible for the state of affairs of the corporate debtor. Referring to **Arcelor Mittal (India) (P) Ltd**. (supra), this Court observed that the said decision adverted to Section 29A of the Code as 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. It was thereafter that this Court held that <u>Section 29A is a crucial link in ensuring that the objects of the Code are not defeated by allowing 'ineligible persons' responsible for running a company (corporate debtor) aground, to return in the new avatar of a resolution applicant</u>.*

*50. From the above, it is clearly manifest that the <u>disqualification sought to be attached to the appellant is without any substance as the **related party** had ceased to be in the helm of affairs of the corporate debtor more than a decade ago</u>. He was not in charge of the company or an influential member of the company i.e., the corporate debtor when the appellant had made its bid pursuant to the auction sale notice.*

51. Thus having regard to the aforesaid discussion, we have no hesitation in coming to the conclusion that Appellate Tribunal was not justified in setting aside *the order of the Tribunal dated 12.08.2021. Consequently, we set aside the order dated 30.11.2021 passed by the Appellate Tribunal and restore the order dated 12.08.2021. The appeal is accordingly allowed. However, there shall be no order as to costs."*

13. From the extract supra it is clearly evident that Hon'ble Apex Court has considered the **relation of Mr. Harish Bagla with Mr. Vijay Ghidia** as under:

a. *"Mr. Vijay Ghidia is the maternal uncle of Mr. Harish Bagla, the intervenor" (also the present Applicant)*
b. *"Vijay Ghidia was one of the promoter and Principal Shareholder of the Corporate Debtor." (Amrit* Feeds)
c. *"Mother of the intervenor Smt. Chanda Bagla is the sister of Mr. Vijay Kumar Ghidia."*
d. Harish Bagla the intervenor (and the applicant herein) *"has a significant stake in the Corporate Debtor."*

Hon'ble Apex Court considered the implication of Section 5(24) and 5(24A) and Section 29A of the Code as under:

a. Section 5(24) of the code "***defines the expression related party in relation to a corporate debtor.***"
b. "***Clause (a) of Section 5(24) says that a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor would be a related party.***"
c. *" as per Clause (e) of Section 5(24), '**related party' in relation to a corporate debtor would mean a private or 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 share capital or paid-up share capital, as the case may be.**"*
d. "*Section **5(24A)** defines '**related party'** in relation to an **individual**"* as:
   i. "***a person who is a relative of the individual or a relative of the spouse of the individual would be a 'related party' in relation to that individual.***"
   ii. ***"a private company or a public company in which the individual is a director and holds along with relatives more than two percent of its share***

capital or paid up share capital, as the case may be, would be a 'related party' in relation to an individual."

and observed that "***as per the explanation, both maternal and paternal uncles would be covered within the definition of 'related party'***."

e. Section 29A *of the Code* **mentions persons not eligible to be a resolution applicant***."* and held that "*as per Section 29A(g), a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with such person has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the adjudicating authority."*

f. Hon'ble Apex Court referred to **Swiss Ribbons**, **Phoenix ARC** and other decisions and observed that, "*The expression "**related party**", therefore, and "**relative" contained in the definition sections must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant**."*

g. Further, "*that the expressions '**related party**' and '**relative'** contained in the definition sections must be read noscitur a sociis with the categories of person mentioned in Explanation I. So read, it would include only persons who are connected with the business activity of the resolution applicant."*

h. Hon'ble Court also considered "*whether the disqualification under the proviso 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."*

i. The Hon'ble Apex Court held "*disqualification sought to be attached to the appellant is without any substance as the* ***related party*** *had ceased to be in the helm of affairs of the corporate debtor more than a decade ago"* and set aside the order passed by Hon'ble NCLAT. Thus, there is no gain saying that the setting aside is only on the ground that Mr. Vijay Ghidia had ceased to be a Director in Amrit Feeds, but also on the ground that "the related party" had ceased to be in the helm of affairs of the corporate debtor.

14. We have noted that before the Hon'ble Apex Court, it was urged that Vijay Ghidia, the maternal uncle was a related party as he was a Maternal uncle of Mr. Harish Bagla as well as in the Board of Corporate Debtor for some time. However, there is no Board Commonality between Amrit Feeds (the Corporate Debtor) and Auura the prospective auction purchaser. In the aforesaid context we fail to comprehend or countenance how an objection of the nature as raised by Mr. Harish Bagla in regard to participation of Auura in the Liquidation Sale of Amrit Feeds, would sustain.

15. Respondent No. 1 in his reply affidavit has averred that

1. *"Mr. Vijay Kumar Ghidia is neither in the management nor the shareholder of Respondent No.2. Mr. Vijay Kumar Ghidia was the shareholder and director of the Corporate Debtor till 2008. I was advised that the respondent no.2 cannot be classified as a related party of the Corporate Debtor and is eligible to acquire the assets of the corporate debtor."*
2. *"I was advised that after the adoption of the applicant's mother Mrs. Chanda Bagla, her biological brother Mr. Vijay Kumar Ghidia ceased to be maternal uncle of the Applicant by reason of Section 12 of the Hindu Adoption and Maintenance Act, 1956."*

16. The applicant by way of his rejoinder has tried to contradict the stand and assert that

16.1 *"that even after adoption there is no severance because even after adoption of Chanda Bagla by her father's elder brother (that is Radhakrishna Ghidia) the same will not affect the relationship between the applicant and Vijay Kumar Ghidia because the mother of the applicant even after adoption remains in the same family of the two brothers namely, Radhakrishna Ghidia and Nauratmal Ghidia. Therefore, the relationship between the applicant and Vijay Kumar Ghidia does not change by reason of the adoption of the mother of the applicant to the family of the brother of the father of Vijay Kumar Ghidia."*

16.2 *"that the present sale notice which relates to the Kamrup property and wherein the respondent no.2 is the successful bidder should be kept in abeyance till the outcome of the pending Civil Appeal being no.7906 of 2021 which also concerns the respondent no.2 herein which is a sister concern of the appellant before the Hon'ble Supreme Court i.e Eva Agro Feeds Private Limited."*

17. As extracted above the said Civil Appeal had been allowed by the Hon'ble Apex Court confirming the sale of Amrit Feeds' land in Punjab in favour of Eva Agro, discarding the objections raised by Mr. Harish Bagla about his relation with Mr. Vijay Ghidia the promoter of Eva Agro. For the same reason, the objection of Mr. Harish Bagla in regard to sale of Kamrup property of Amrit Feeds (the CD) in favour of Auura Agrotech is not tenable.

18. In the aforesaid backdrop it is also noted that the Applicant does not contend that the liquidator has discarded a better bid to favour respondent no. 2.

19. Thus, we hold that:

19.1 That the sale in question is in favour of Respondent No. 2 (Auura) is not barred under the provisions of Section 29A of the Code.

19.2 As such liquidator has not acted contrary to the proviso in Section 35(1)(f) of IBC, 2016.

20. Application thus fails and is dismissed.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order Signed on the 15th Day of January 2024

A.J.S LRA