

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

**IA(IBC)/1322(CHE)/2021  
in  
IBA/1364/2019**

*( Under Section 21(2) r/w Section 65 and Section 70(2) of Insolvency  
and Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 2016)*

*In the matter of **Mega Foods Products Madras Pvt Ltd.,***

**Amit Chandrakant Vaishnav,**  
Shareholder and Suspended Director of  
Mega Food Products Madras Pvt. Ltd.,  
3-C Bijayati Towers, 14/15, Halls Road,  
Kilpauk, Chennai – 600 010.

*... Applicant*

**-Vs-**

1. M/s. M.D. Overseas Limited,  
No.43, Barbar Road, Bengali Market,  
New Delhi – 110 001.

2. S. Vasudevan,  
Resolution Professional,  
M/s. Mega Foods Product Madras Pvt Ltd.,  
Plot No.5, 2<sup>nd</sup> Floor, Manasarovar Apartment,  
Bagavanty Nagar, Medavakkam Koot Road,  
Medevakkam, Chennai – 600 100.

*... Respondents*

*Order Pronounced on 01<sup>st</sup> June 2022*

**CORAM:**

**JUSTICE (Ret.,) S. RAMATHILAGAM, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant* : Mr.K. Gaurav Kumar, PCS  
*For Respondent* : Mr.R.Ramasubramaniam, Advocate  
Mr.T.K.Bhaskar, Advocate  
Mr.A.S.Aravind, Advocate  
Mr.J.Manivannan, Advocate

ORDER

**JUSTICE (Ret.,) S. RAMATHILAGAM,  
MEMBER (JUDICIAL)**

This Application is preferred by Amit Chandrakhant Vaishnav, suspended director of the Corporate Debtor under Section 21(2) r/w 70(2) of the Insolvency and Bankruptcy Code, 2016, seeking the following reliefs

- i) To dissolve the Committee of Creditors consisting of the Respondent No.1, who is a related party.*
- ii) To declare the CIRP initiate by the Respondents No.1 as void.*
- iii) To remove Respondent No.2 from the position of RP.*
- iv) To impose cost for such fraudulent and malicious on Respondent No.1 and Respondent No.2 as per the provisions of Section 65 and 70(2).*
- v) To pass such other orders deem fit.*

2. It was averred in the application that 1st Respondent is the family concern of the Bansal Group. One Ms. Deepthi Vinod Bansal is the relative of 1st Respondent's Managing Director Mr. Sathish Bansal.

3. It was further averred that the 1st Respondent had entered into various agreements with the Corporate Debtor and its promoters and shareholders through Ms. Deepthi Vinod Bansal to take control of the Corporate Debtor.



4. It was further averred that 1st Respondent had invested Rs.7.47 Crore in Corporate Debtor to close the bank dues of the Corporate Debtor. In turn, 49% of the shares of the Corporate Debtor have been transferred to Ms.Deepti Bansal for Rs.1/- only as consideration vide Shareholders Agreement dated 16.11.2016. In addition to that 1st Respondent had secured its interest by creating a charge over the assets of the company.

5. Thereafter, the Corporate Debtor was admitted into CIRP on 27.04.2021 by the application filed by the 1st Respondent herein and the 2nd Respondent herein was appointed as Interim Resolution Professional of the Corporate Debtor.

6. It was submitted by the Learned Counsel for the Applicant that the 1st Respondent is a related party to the Corporate Debtor who maliciously initiated CIRP against the Corporate Debtor. Further, contends that it was discussed in minutes of the 1st and 2nd meetings of the CoC that the Corporate Debtor could not be run without loss, which shows the intention of the 1st Respondent to push the Corporate Debtor into liquidation.

7. It was further submitted that the 2nd Respondent incorrectly relied on the promissory note dated 16.11.2016 entered between the Corporate Debtor and the 1st Respondent, and disputed that in the said promissory note the Corporate Debtor was made liable to

pay double the amount which it actually liable to pay the 1st Respondent.

8. It was further submitted that the 1st Respondent purposefully suppressed the shareholder agreement dated 16.11.2016 and projected itself as a Financial Creditor and fraudulently initiated CIRP against the Corporate Debtor. Further, contended that the 1st and 2nd Respondents acted in collusion and the 1st Respondent should be disqualified to continue as Financial Creditor.

9. In view of the above submissions the Applicant sought to dissolve CoC constituted with the relative party. In support of his submissions relied on Hon'ble NCLAT decisions in **Jayendra Banerji Vs. Shashi Agarwal** and **Bimalesh Bharadwaj and Ors. Vs. Value Infratech Private Limited.**

10. In opposition to that the Learned Counsel for the Respondent in the counter submitted that this Tribunal has already considered the documents of the 1st Respondent and initiated CIRP against the Corporate Debtor. It was further submitted that the Applicant has preferred an appeal before the NCLAT in CA(AT)(CH)(INS) No.156 of 2021 which is *pending lis.*

11. It was further submitted that in the 2nd meeting of the CoC, only after perusing the last 3 years financial statements of the

Corporate Debtor the 2nd Respondent observed that the Corporate Debtor was incurring heavy loss and they did not have any intention to liquidate the Corporate Debtor.

12. Regarding the contention on the Promissory Note dated 16.11.2016, it was submitted that the 2nd Respondent has not admitted the entire amount as principal, only admitted Rs.7.47 Crore as the principal excluding interest.

13. In reply to the counter, the Learned Counsel for the Applicant in the Rejoinder contended that the 2nd Respondent accepted the 1st Respondent into CoC, after knowing that it is a related party to the Corporate Debtor and now 1st Respondent is the sole member of CoC who is driving the CIR Process. It was further argued that the 1st Respondent and his niece holding 49% of shares in Corporate Debtor fall within the definition of the related party as per Sec.5(24) of IBC, 2016 and are ineligible to be a part of CoC, to substantiate the argument placed the Shareholders' Agreement dated 16.11.2016, on record and sought to dissolve the CoC and to remove the Resolution Professional of the Corporate Debtor.

14. We have heard learned counsel for both sides. It can be seen from the records that the CIRP has been initiated against the Corporate Debtor on 27.04.2021 and 1st Respondent herein was appointed as Interim Resolution Professional. Moreover, an appeal



against the CIRP order is *pending lis* and no stay has been granted against CIRP order. At this stage, in the absence of recall or review power available to this Adjudicating Authority the prayer (ii), sought by the Applicant to declare the CIRP initiated against the Corporate Debtor as void, is far from the hands of this Adjudicating Authority and to be rejected.

15. Next, the issues which are required to be adverted to is

- 1) whether 1st Respondent is a related party to the Corporate Debtor, and
- 2) whether the Resolution Professional has done his due diligence in constituting the CoC.

In so far as above the 1st issue is concerned, it is contended by the Applicant that the 1st Respondent and Ms. Deepthi Vinod Bansal, who is 49% shareholder of the Corporate Debtor are uncle and niece. This fact was agreed by the 2nd Respondent in para 5 of the written submission filed by the 2nd Respondent.

16. The only argument of the Respondent is the said the uncle and niece relationship between the 1st Respondent and Ms. Deepthi Vinod Bansal is not covered by the definition under Section 5(24) of IBC, 2016 and the definition of the expression 'relative' in the Explanation of Section 5(24A) of IBC, 2016 could not be applied for the expression 'relative' in 5(24)(a) &(b).

17. It can be seen that in the Shareholder's Agreement dated 16.11.2016, it is depicted as follows

**Shareholders' Agreement**

*This Shareholders' Agreement dated 16<sup>th</sup> November 2016 summarises the significant terms and conditions of the proposed investment by M.D. Overseas Limited, a Company incorporated under the Companies Act, 1956 having its registered office at 10 - A, Scindia House, Connaught Circus, New Delhi - 110 001 ("Key Investor") and Megafoods Products Madras Private Limited, a Company incorporated under the Companies Act, 1956, having its registered office at D-3, Ambattur Industrial Estate, Ambattur, Chennai 600058 ("The Company"), and its shareholders: Mr. Amit Vaishnav s/o Shri Sri C. N. Vaishnav, a resident of 3-C, Bujayati Towers, 14/15 Halls Road, Kilpauk, Chennai 600010 (address: ("Key Management I"), Mrs. Trishala Vaishnav W/o Mr. Amit Vaishnav; Ms. Rhea Vaishnav w/o Mr. Vipod Balasundaram and Ms. Farah Sheth w/o Dharam Vijay Sheth – all residing at 3-C Bujayati Towers, 14/15 Halls Road, Kilpauk, Chennai 600010. ("Key Management"). "Parties" shall jointly refer to "Key Management", "Key Investor", and the "Company" and "Party" shall refer to one of them as the case may be.*

This agreement is to record terms of agreement between Company, Key Management, and the Key Investor based on the terms set out herein. Accordingly, this agreement and its terms will be binding on the Parties.

1.	Company	Megafoods Products Madras Private Limited
2.	Key Management	1. Mr. Amit Vaishnav s/o Mr. C. N. Vaishnav, 2. Mrs. Trishala Vaishnav w/o Mr. Amit Vaishnav, 3. Ms. Rhea Vaishnav w/o Mr. Vipod Balasundaram, and 4. Ms. Farah Sheth w/o Mr. Dharam Vijay Sheth and their Affiliates
3.	Key Investor(s)	M.D. Overseas Limited and/or its Associates/Affiliates and/or bond, managed or advised, directly or indirectly, by it
4.	Investment amount and Investment Process	<p>The Key Investor and/or its Associates/Affiliates shall invest through a debt or as structured debt instrument a total of an amount not exceeding INR. 130 million. The investment shall be in three or more tranches. At all times during the investment phase, the Parties shall ensure that the foreign shareholding in the Company will be within the permissible limits prescribed under the applicable FDI Regulations, from time to time.</p> <p>Of the total amount intended to be invested, in tranche 1 an amount not exceeding INR 80 million (Rupees Eighty million only) will be made and the balance amount not exceeding INR.50 Million (Fifty million) in tranche 2 and subsequent tranches. Both / All these tranches of intended investments are subject to certain conditions and terms precedent having been fully complied with.</p> <p>Some of the main conditions precedent for these investments are:</p> <p>i) The above investment through tranche 1 will be after the key investor group completes acquisition of 49% of the paid up capital of the Company which acquisition will happen for a consideration of INR.1.00 (one Rupee only); The investment amount in Tranche 1, as well as the investment amount in tranche 2 and all the subsequent tranches shall be through a structured instruments which will carry an interest rate of 18% per annum to be compounded and paid/credited quarterly to the investors from the Company; the tenure of the instrument will not exceed five years. The interest payable will be cumulative if for any reason the Company is unable to service the interest periodically. In such a case, the interest will be serviced out of profits whenever these profits are sufficient to service the interest including cumulative interest. Interest can be partially serviced; in</p>

18. Having noticed the above position, we may now turn to the provisions of the Insolvency and Bankruptcy Code, 2016

**"Section 5: Definitions-**

...  
(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;

...  
(24A) "related party", in relation to an individual, means

...  
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:—

...  
(xiv) brother's son and daughter,

...  
**Section 21. Committee of creditors-**

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

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

here it would be relevant to refer to the decision in **Phoenix Arc Private Limited Vs. Spade Financial Services Limited & Ors**, wherein it was held as follows,

"57. ...

*The expression 'related party' is defined in Section 5(24) in relation to a corporate debtor. Section 5(24A) provides a corresponding definition in relation to an individual.*

*58. The definition describes a commutative relationship, meaning that X can be a related party of Y, if either X is related to Y, or Y is related to X. The definition of 'related*

party' under the IBC is significantly broad. The intention of the legislature in adopting such a broad definition was to capture all kinds of interrelationships between the financial creditor and the corporate debtor.

59. The term 'related party' has also been defined by Parliament in the Companies Act, 2013 for all corporations. The definition of the expression has also been expanded for listed entities by the Securities Exchange Board of India by amendment to the Equity Listing Agreement to include elements mentioned under applicable accounting standards. However, in the present case, we are assessing its definition only under the IBC, which is exhaustive. The purpose of defining the term separately under different statutes is not to avoid inconsistency but because the purpose of each of them is different. Hence, while understanding the meaning of 'related party' in the context of the IBC, it is important to keep in mind that it was defined to ensure that those entities which are related to the Corporate Debtor can be identified clearly, since their presence can often negatively affect the insolvency process."

And in **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors**, it was held as follows

"75. ...

All the categories in Section 29A(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 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.

..."

Jointly reading the above provisions in the light of the above observations of Hon'ble Apex Court and applying it to the present case we are of the considered opinion that the 1st Respondent, sole member of the CoC of the Corporate Debtor and Ms. Deepthi Vinod Bansal, who is 49% shareholder of the Corporate Debtor were uncle

and niece. Thus, 1st Respondent and sole member of the CoC of the Corporate Debtor fall under the expression of 'related party of the corporate debtor' in 1st proviso of Section 21(2) and the 1st Respondent herein is prevented to be a part of the CoC.

19. In so far as issue 2 is concerned it is useful to refer to some relevant provisions of IBC, 2016 and IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016

**"Section 18: Duties of interim resolution professional. —**  
*The interim resolution professional shall perform the following duties, namely:—*

*(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—*

*(i) business operations for the previous two years;*

*(ii) financial and operational payments for the previous two years;*

*(iii) list of assets and liabilities as on the initiation date; and*

*(iv) such other matters as may be specified;*

*(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;*

*(c) constitute a committee of creditors;*

...

**Regulation 17: Constitution of committee.**

*(1) The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under sub-regulation (1) of regulation 12.*

*(2) The interim resolution professional shall hold the first meeting of the committee within seven days of filing the report under this regulation.*

Reading the above provisions clearly shows that it is the duty of the Resolution Professional to collect and peruse the information regarding Corporate Debtor and claimants before constituting CoC.

It is also relevant to refer to Form C in the schedule of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (extracted hereunder)

**FORM C**  
**SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**  
*(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)*

...

**Declaration**

...

*6. I am / I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.*

*7. I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.*

...

Clause 6 and 7 of the declaration part of the form clearly require the declaration from the Financial Creditor who submitted the claim before RP that it is not covered under section 5 (24) and it is the due diligence of the RP to confirm the said declaration.

20. From the above observation it is clear that the CoC is constituted with the Financial Creditor who is a related party to the



Corporate Debtor and the survival of the said CoC is restricted by the express provision of the code. In addition, it appears that there is negligence on the part of Resolution Professional in identifying the related party in the CoC.

21. In view of the above discussions, the 2nd Respondent, Resolution Professional of the Corporate Debtor is hereby directed to remove the 1st Respondent herein from the Committee of Creditors (CoC) of the Corporate Debtor viz. Mega Foods Products Madras Pvt. Ltd. as the 1st Respondent is related party to the Corporate Debtor.

The Registry is directed to mark a copy of this order to IBBI for its information and records.

22. With the above said directions, the application IA/1322/2021 is **partially allowed**.

-sd-

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

-sd-

**JUSTICE (Ret.,) S. RAMATHILAGAM,**  
MEMBER (JUDICIAL)

*Gopishankar D*