



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-II)**

IA(IB) No. 822/(KB)/2022

In CP(IB) No. 302/(KB)/2021

*An Application under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read  
with Rule 11 of the NCLT, Rules, 2016;*

**In the matter of:**

**Yes Bank Limited**

**... Financial Creditor**

**And**

**Sarga Hotel Private limited**

**... Corporate Debtor**

**And**

**Rare Asset Reconstruction Limited**

**... Applicant**

**Versus**

**Sarga Hotel Private Limited**

**... Respondent**

**Date of Hearing: 16.06.2023**

**Date of Pronouncement of order: 13.09.2023**

**Coram:**

**Smt. Bidisha Banerjee : Member (Judicial)**

**Shri Balraj Joshi : Member (Technical)**

**Counsel appeared physically / through video Conferencing**

Mr. Swatarup Banerjee, Adv. ] For Rare ARC

Mr. Rahul Auddy, Adv.

Mr. Aditya Goptu, Adv.

Ms. Manju Bhuteria, Adv. ] For the RP

Ms. Pooja Mahajan, Adv.

Ms. Mahima Singh, Adv.

Ms. Shreya Mahalwar, Adv.

Ms. Mehak Nayak, Adv.

Mr. S. Majumdar, Adv.

Mr. Sourojit Dasgupta, Adv. Mr. Avishek

Mr. Abhinav Vasisht, Sr. Adv. ] For J.C. Flower ARC

Mr. Saptarshi Saha, Adv.

Mr. Arindam Mrinal Pal, Adv.

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Mr. Abhrajit Mitra, Sr. Adv.  
Mr. Sarvapriya Mukherjee, Adv.  
Mr. Saurav Jain, Adv.

] For SIDCL

**ORDER**

**Per Bidisha Banerjee, Member (Judicial):**

1. Heard the Ld. Sr. Counsel / Counsel on both sides.
2. This is an application filed by the applicant M/s. Rare Asset Reconstruction Limited under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking direction upon the Resolution Professional to allow the Applicant to participate, represent and vote in the Committee of Creditors (COC) of the Corporate Debtor, being a Financial Creditor and for other consequential reliefs.
3. **Submissions of the Applicant:**
  - a. The Ld. Counsel for the Petitioner submits that Rare Asset Reconstruction Ltd. (Rare ARC) is registered as a Securitization and Asset Reconstruction Company registered with the Reserved Bank of India (RBI) under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, is in the business of acquiring Non-Performing loans from Banks and Financial Institutions.
  - b. On an application by one Universal International Creation Limited against the Corporate Debtor, Sarga Hotels Private Limited (SHPL) was admitted under CIRP vide order dated 12.08.2020 passed by this Tribunal.
  - c. In the usual course of its business operations, the Applicant has acquired Non-Performing loans of M/s. Sarga Hotels Pvt Ltd.(SHPL) from one lender M/s. Srei Equipment Finance Limited (SEFL), as advanced by it to SHPL, the Corporate Debtor herein.
  - d. After the said admission order dated 12.08.2020, the Applicant had duly executed an Assignment Agreement dated 09.09.2020 between Srei

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Equipment Finance Limited (SEFL) and Rare Asset Reconstruction Ltd. (Rare ARC).

- e. That the said financial assets were acquired on cash plus Security Receipt on 15% : 85% basis in the Trust account, the sole Trustee of which is Rare ARC only.
- f. That the Applicant, being the financial creditor (holding 52% share in total debt) and holding significant voting rights, filed its claims with the RP totaling to Rs. 31,708.77 lakh in the prescribed format. Post admission of the entire claims of the Applicant, the Applicant had duly represented with proportionate voting rights in the CoC constituted in the resolution process.
- g. That while the resolution process was underway, one M/s. Rishima SA Investment LLC preferred an appeal against the Order of Admission in CP(IB)No. 767 of 2020 dated 12.08.2020 before the Hon'ble National Company Law Appellate Tribunal being Company Appeal (AT) (Insolvency) No. 800 of 2020. The Hon'ble NCLAT vide an order dated 27<sup>th</sup> August, 2021 set aside the Order of Admission dated 12.08.2020 in Company Appeal (AT) (Insolvency) No. 800 of 2020 titled as Rishima SA Investment LLC Vs. Sarga Hotel Private Limited.
- h. Subsequently on an application filed by the Reserve Bank of India, vide order dated 08.10.2021 this Tribunal in CP(IB)No. 294 of 2021 titled as "Reserve Bank of India Vs. Srei Equipment Finance Limited(SEFL)" was admitted for CIRP and the process commenced. One Mr. Rajneesh Sharma came to be appointed as an Administrator of SEFL, whereupon the management of SEFL came to vest with the administrator.
- i. Later, an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed by Yes Bank Limited which was allowed by this Tribunal vide its order dated 11.02.2022 in CP(IB)No. 302 of 2021. In the said order dated 11.02.2022, Mr. Avishek Gupta was appointed as the Interim Resolution Professional (IRP) to commence the resolution process. Accordingly, the IRP published Form 'A' on 14.02.2022 as

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prescribed Code inviting claims from all the creditors of the Corporate Debtor.

- j. The Applicant Rare ARC vide its email dated 24.02.2022, duly submitted its claims in the prescribed Form-C dated 24.02.2022 with the RP totaling to Rs. 3,93,46,52,000/- (Rupees Three Hundred Ninety-three Crores Forty-six Lakhs Fifty-two Thousand only).
- k. That subsequent to submission of its Form 'C' dated 24.02.2022, communications ensued between the RP, Mr. Avishek Gupta and the Applicant, whereby the RP time and again, requested for certain documents / data which in-turn, was duly provided to him by the Applicant.
- l. The Application was ousted from CoC, being a related party. The applicant alleged that the RP's email dated 30.04.2022 ousting the Applicant from the CoC, was totally misplaced and based on an erroneous understanding of law, especially, Section 21(2) of the Code. The RP placed reliance on the ILC Report 2020 and the judgment of Phoenix ARC Private Limited V/s. Spade Financial Services Limited &Anr. (2021) 3 SCC 475 which held no relevance or connection in any manner whatsoever considering that the referred case law is based on completely different facts and circumstances.

**4. Submissions by the Respondent RP**


- a. On August 29, 2018, SREI Infrastructure Finance Limited ("SIFL") sanctioned an Impugned Loan of Rs. 300 Crores approximately (hereinafter referred to as "Impugned Loan"). The impugned loan was purportedly transferred to SREI Equipment Finance Limited ("SEFL") vide a Business Transfer Agreement dated 16/08/2019 amended as on 14/11/2019 ("Business Transfer Agreement").
- b. A CIRP was initiated against the Sarga Hotel Private Limited (Corporate Debtor) on August 18/08/2020 by this Tribunal on an application bearing CP (IB) No. 767 of 2020 filed by an Operation Creditor Universal International Creation Limited (UICL) which was set aside by the Hon'ble NCLAT vide an Order dated August 27, 2021.



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- c. On September 09, 2020, SREI Equipment Finance Limited (“SEFL”) entered into an assignment agreement with RARE ARC to assign the Impugned Loan (“Assignment Agreement”) annexed in **Annexure “4”** on Page 33 of the **IA(IB) 822 of 2022**. In that Assignment Agreement the Borrower was **Sarga Hotel Private Limited** (CIN: U55101WB2004PTC098787) to whom a Financial Assistance of Rs. 293.92 Crores had been extended by the Assignor under any of the Financing Documents as listed in Schedule 1 and included any Person who has created any Security Interest and/ or pledge to secure, including but not limited to mortgage of immovable properties as collateral securities and/or a guarantee in respect of the repayment of any Financial Assistance granted by the Assignor to a Borrower. The Cut-off date, i.e., the date with effect from which (including that day) all economic benefits pertaining to the Impugned Loan including all realizations and recoveries, if any, made on and after said date shall be for the benefit of RARE ARC, has been defined as August 12, 2020, in Clause 1.1(g) of the Assignment Agreement, annexed on Page 38 of the IA(IB) 822 of 2022.
- d. On October 04, 2021, the Reserve Bank of India (RBI) superseded the erstwhile board of SREI Equipment Finance Limited (“SEFL”) and SREI Infrastructure Finance Limited (“SIFL”) and vide an order dated October 2021, this Tribunal, in **C.P. (IB) 294/KB/2021** admitted to initiate the CIRP against SREI Equipment Finance Limited (“SEFL”) and SREI Infrastructure Finance Limited (“SIFL”) appointing Mr. Rajneesh Sharma as an Administrator to carry out the duties of the RP
- e. During the CIRP, the Administrator filed an Application being **I.A. (IB) 744/KB/2022 in C.P. (IB) 294/KB/2021** (“Administrator’s First Application”) on or around July 24, 2022, against the Kanoria Foundation, Respondent No. 1 (in where, Sarga Hotel Private Limited is Respondent No. 10) wherein, amongst others, the Impugned Loan has been classified as transaction amounting to fraudulent trading and wrong trading under Section 66 of the Insolvency and Bankruptcy Code, 2016.

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- f. During CIRP of the Corporate Debtor, a claim from RARE ARC, on behalf of RARE ARC 051 TRUST (for brevity “**051 Trust**”) was received by the RP for an amount of Rs. 393.43 Crores (hereinafter referred as “**Claim**”) in Form-C on February 24, 2022, as a financial Creditor. In the process of verification of the Claim, it came to light that the loan which formed the subject matter of the Claim was assigned to RARE ARC by the SREI Equipment Finance Limited (“**SEFL**”) pursuant to an assignment agreement dated September 09, 2020 (“**Assignment Agreement**”) and allegedly, the assignment was made effective retrospectively with a Cut-Off dated August 12, 2020, being the same date when the Corporate Debtor was admitted into the First CIRP *vide* an Order dated August 12, 2020, which was subsequently set aside as “collusive” by an Order dated August 27, 2021 passed by the Hon’ble NCLAT.
- g. It also came to light that 15% Security Receipts (for brevity “**SR**”) of 051 Trust are held by RARE ARC while the remaining 85% SRs are held by the SREI Equipment Finance Limited (“**SEFL**”) which in the opinion of the RP appointed by this Bench, is a related party of the Corporate Debtor, both being part of the Kanoria Group of Companies.
- h. That upon the verification of the claim of RARE ARC the RP found that the time when the assignment was made, **SEFL was a related party of the Corporate Debtor under Section 5(24) of the I&B Code, 2016 as both SEFL and the Corporate Debtor are eventually owned, directly or indirectly, by the Kanoria Foundation whose ultimate beneficiaries are understood to be the members of the Kanoria Family** and inform the same to the RARE ARC by an email dated April 30, 2022. While the claim of RARE ARC was being admitted as a financial creditor but RARE ARC should not have any right of representation, participation and voting in the CoC of the Sarga Hotel Private Limited under the proviso of Section 21(2) of the I&B Code, 2016.

**5. Rejoining by the applicant to oppose RP’s stand:**

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- a. That the applicant and the Corporate Debtor do not have any connection whatsoever. The Applicant, being an independent ARC, is being managed by an independent Board of Directors and team of expert professionals, completely unconnected to the Corporate Debtor. As such, the Applicant cannot even remotely be treated as a 'related party'.
  - b. That the Non-Performing Assets "NPA" of the Corporate Debtor, SHPL were acquired in the regular course of business.
  - c. According to the procedure laid down in the SARFAESI Act, 2002, a sale to an ARC is a bona fide sale and is in accordance with the regularity framework.
  - d. A third-party assignee i.e. the Applicant cannot be ousted from participation in the CoC.
  - e. The ILC report 2020, categorically provides that when a related party financial creditor assigns their debt to a third party in good faith, such third party should not be disqualified from participating, voting or being represented in a meeting of the CoC.
  - f. The mere fact that the cut-off date coincides with the date of admission of the Corporate Debtor into CIRP (First Admission into CIRP) cannot in any manner curtail the statutory rights of the Applicant to participate / vote in the CoC of the Corporate Debtor.
  - g. Even otherwise, the reliance placed on the cut-off date of 12.08.2020 is fallacious as it is a matter of record that vide order dated 27.08.2021 passed by this Hon'ble NCLAT, the Order dated 12.08.2020 admitting the Corporate Debtor into CIRP was set aside, the Applicant continue to hold the financial assets in its capacity as the ARC till date.
  - h. The Hon'ble Supreme Court in **Swiss Ribbons (P) Ltd. &Anr. Vs. Union of India &Ors. (2019) 4 SCC 17** held that the Resolution Professional does not have adjudicatory powers and thus, the Resolution Professional could not have held the Assignment Agreement as suspicious without any basis and more so when the SEFL is already under CIRP, knowing fully well that while SEFL is currently in control of Administrator of SEFL, any such adverse action will cause severe loss

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to SR holders, who have no connection whatsoever with either one of them including Rare ARC, CD and / or SEFL declaring the Applicant as a related party is best example of misuse of power provided under IBC.

- i. That the power of erstwhile promoters of SEFL stand suspended pursuant to ongoing CIRP. As such the Applicant cannot be treated as a 'related party' of the Corporate Debtor under Clauses (h), (i), (j), (l) and (m) of Section 5 (24) of the Code, under any circumstances whatsoever.

**6. Submissions of Ld. Counsel for the Applicant:**

The Applicant is aggrieved with the restraining Orders/ Decisions of the RP dated 30.04.2022 whereby the RP rejected the right of the applicant to be a part of the Committee of Creditors of the Corporate Debtor on the following counts:-

- a. The rejection by the RP is because the applicant is a 'Related Party' under section 5 of sub-section (24) of the Insolvency and Bankruptcy Code, 2016, and since the RP feels that the assignment was made under suspicious circumstances in view of the aforesaid 1<sup>st</sup> CIRP proceedings, but the RP has not expressed how the Suspicious Circumstances come within the ambit of clauses (h), (i), (j), (l) and (m) of section 5 of sub-section (24) of the Insolvency and Bankruptcy Code, 2016.
- b. The RP has failed to make out a case as to what entitles him to restrain the applicant from being a part of the Committee of Creditors or as to how the applicant qualifies as a 'Related Party' under clauses (h), (i), (j), (l) and (m) of section 5 of sub-section (24) of the Insolvency and Bankruptcy Code, 2016.
- c. That the RP has relied upon the NCLAT order dated 27.02.2021 of setting aside the 1<sup>st</sup> CIRP but admittedly neither the applicant (Rare ARC) nor SREI Equipment Finance Limited was subject to matter for the dispute between operational creditors and shareholders (no question was raised on SREI or RARE ARC) and both were not party to any of these proceedings (1<sup>st</sup> CIRP or NCLAT appeal).
- d. The second proposition which the RP has made that in terms of the ILC Report 2020 and the judgment of **Phoenix ARC Pvt. Ltd Vs. Spade**

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**Financial Services Ltd & Anr** reported in **(2021) 3 SCC 475**, that the RP is entitled to label the applicant as ‘Related Party’ under section 21(2) is wholly misconceived and contrary to both the ILC Report 2020 and the judgment of **Phoenix Vs. Spade Financial** passed by the Hon’ble Supreme Court of India.

- e. A mere reading of clauses (h), (i), (j), (l) and (m) of section 5 of sub-section (24) of the Insolvency and Bankruptcy Code, 2016, fails to show that applicant is disqualified under any of the aforesaid provisions.
- f. That the ILC Report, specially in clause 11.9, the Committee has suggested that unless it is “**proved**” that a ‘Related Party’ Financial Creditor has assigned and/or transferred its debt to a third party in bad faith or with a fraudulent intent to vitiate the proceedings under the code, the Assignee should NOT be treated akin to a ‘Related Party’ Financial Creditor under the first proviso to section 21(2). therefore, without prejudice, unless the loan by SEFL to SARGA is declared as Fraudulent, the same does not take away lenders right to recover dues.
- g. That two avoidance applications filed by the administrator of SREI is sub-judice in another court (Bench I of NCLT Kolkata) and unless it is heard and or adjudicated upon and decided against the applicant the Applicant cannot be ousted from CoC “as a related party”.
- h. That the RP had disqualified the Applicant on 30<sup>th</sup> April 2022 for the reasons stated in the email of 30<sup>th</sup> April 2022. The reasons stated in the communication dated 30<sup>th</sup> April 2022 has been challenged by the present applicant. The RP cannot be permitted to build his case or strengthen his case or develop his case by filing subsequent 2 supplementary affidavits to bring in new facts.
- i. That the entire argument of the Ld. Counsel for the Resolution Professional is on the basis of presumption. Further, the decision of the RP on 30<sup>th</sup> April, 2022 was much prior to the filing of the two avoidance applications. Therefore, the judgments relied upon by the counsel for the Resolution Professional which are on “**Proven Facts**” cannot apply to

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the present case where the transactions is yet to be proved as fraudulent to be adjudicated upon the.

7. We have considered the rival contentions and perused the pleadings.

**8. Analysis and Findings:**

a. In order to classify a transaction as a related party transaction, one needs to first determine whether the parties involved are 'related parties' as contended by the RP in his e-mail communication dated 30.06.2022.

In his reply affidavit, the RP has stated that SEFL was a related party of the Corporate Debtor under Clauses (h) (i), (j) (l) and (m) of Section 5 (24) of the Code, including since both SEFL and the Corporate Debtor are eventually owned, directly or indirectly, by the Kanoria Foundation whose ultimate beneficiaries are understood to be members of the Kanoria family.

**9. Statutory Provisions:**

a. **Section 5(24) of IBC defines "Related Party" and provides as under:**

*(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;*

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*(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;*

**b. Section 2(76) of the Companies Act defines “Related Party” as under:**

*(i) a director or his relative;*

*(ii) a key managerial personnel or his relative;*

*(iii) a firm, in which a director, manager or his relative is a partner;*

*(iv) a private company in which a director or manager (or his relative) is a member or director;*

*(v) a public company in which a director or manager is a director (and) holds along with his relatives, more than two per cent of its paid-up share capital;*

*(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;*

*(vii) any person on whose advice, directions or instructions a director or manager is accustomed or act;*

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*Provided that nothing in sub-clause (vi) and (vii) shall apply to the advice, directions or instructions given in professional capacity;*

*(viii) any body corporate which is-*

*(A) A holding, subsidiary or an associate company of such company;*

*(B) A subsidiary of a holding company to which it is also a subsidiary;*

*or*

*(C) An investing company or the venturer of the company;*

*[Explanation- For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate]*

*(ix) such other person as may be prescribed;*

**10. Judicial Decisions:**

- i. **In Phoenix Arc Private Limited v. Spade Financial Services Limited & Ors.**, the Hon’ble Supreme Court has read the definitions of ‘financial creditor’ and ‘related party’ (in relation to the corporate debtor) under section 5(7) and section 5(24), respectively, of Insolvency and Bankruptcy Code, 2016 (‘Code’) in light of the ‘collusive arrangements’, and ‘extensive history demonstrating interrelationship’ among the parties. It was noted that the “boards of directors of these companies were ‘acting’ under the pervasive influence of common set of individuals, having ‘deeply entangled’ interrelationships” and that felt that where, the Court refused to entertain the entities as financial creditors, “as the debt was merely an eye-wash, arising out of sham and collusive transactions”, the entities should not be treated as financial creditors.

Further, it is almost trite that those entities which are related to the Corporate Debtor can often negatively affect the insolvency process. What is required to be looked into is the connection between two individuals, the positions held by one in the entities controlled by the other person which could have been used by such person to guide the affairs of the corporate debtor. Hon’ble Court observed “62. *While a strict determination of intent or mens rea may not always be possible by the NCLT and NCLAT in*



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*summary proceedings, it is possible to draw the inference from the facts at hand. These are that there was a deep entanglement between the entities of .... did hold positions during this period which could have been used by him to guide the affairs of the Corporate Debtor”.*

- ii. In terms of section 21(2) of the Code, there must be a present relationship between the financial creditor and the corporate debtor to exclude the financial creditor from the committee of creditors.

*The Hon’ble Court held “while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties in praesenti would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder.”*

- iii. To determine whether a transaction is made in ordinary course of business, we find that

The Division Bench of Karnataka High Court, in the case of **BNP Paribas v. United Breweries Ltd (MANU/KA/3008/2013)** while dealing with Section 562 of Companies Act, 1956, on the issue of disposition of property has defined the words “in the ordinary course of business, as under:

*“Honest dispositions made in the ordinary course of business are usually allowed. While passing orders, the Court considers whether the transaction in question is in furtherance of the company’s business and / or in the interest of the company in liquidation and / or its creditors. Before a winding up petition is presented, it is in and incidentally to give security to its bankers for any overdraft or loan it may arrange. But after a petition is presented the situation is different. Prima facie all debts will have to be paid pari passu.”*

- iv. **The Division Bench of Orissa High Court in the case of Dilip Kumar Swain v. Executive Engineer, Cuttuck Municipal Corporation (MANU/OR/0136/1996)** has defined “ordinary course of business” in the following words:

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*“In the ordinary course of business” means in the usual course of routine of business. It is used to detect current routine of business. It is trite law that definition or interpretation given in respect of a particular entry has to be judged in the background of that statute itself and cannot always throw a guiding light in respect of other statutes. It has to be judged in the background and context in which it is used in a particular statute.”*

- v. In the case of **Fortune Pharma**, the Adjudicating Authority saw that the CIRP was started by the Corporate Debtor under Section 10. The Corporate Debtor’s connected parties had transferred their obligations to a non-related party through various assignment agreements in order to reduce SBI, the Applicants’ voting share from 100% to 50%. The Court emphasised the directors / promoters of the Corporate Debtor’s thorough preparation of the execution of the assignment deeds with the goal of reducing the Applicant’s voting rights. By assigning its debt to another party without a concrete cause for the other party’s acceptance of the debt, a related party cannot abruptly become a non-related party.

We would note that the prospect of related parties eroding the value of the Corporate Debtor is adequately guarded against under the IBC, whether during the lookback period of two years prior to the bankruptcy initiation date, during the CIRP, or even through payments and benefits under a resolution plan. The intricate framework for identifying avoidance transactions entered into with related parties and provisions to protect the interests of stakeholders of a Corporate Debtor is at the heart of achieving one of the most important goals of the IBC: resolving insolvency while maximizing value, preserving assets, and safeguarding the interests of all stakeholders of the Corporate Debtor.

11. In this context we would refer to the order dated 11.02.2022 of this Adjudicating Authority vide which the Corporate Debtor was placed under CIRP. The relevant para is extracted below:

*‘10. The Corporate Debtor in its reply affidavit has further submitted that the Corporate Debtor was established as a public company in the year 2004 as a wholly owned subsidiary of Shristi infrastructure Development Corporation*

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*Limited as a special purpose vehicle for the purpose of setting up of a Hotel (hereinafter referred as to SIDCL), and acquired a land admeasuring 8 Acres in Newtown within Police Station Rajarhat, from West Bengal Housing Infrastructure Development Corporation Ltd. (WBHIDCL). SIDCL granted a lease to the Corporate Debtor of the divided and demarcated portion of land containing an area of 3.5 Acres for a period of 50 years and executed a deed of lease dated 31st March, 2007 with effect from 22 March, 2007. A deed of extension and modification was executed on 12th September, 2008 vide which the term of lease was extended for 80 years.”*

As per the above order, the Corporate Debtor was established as a wholly owned subsidiary of the said Shristi Infrastructure Development Corporation, which is in turn promoted and owned by the Kanodia family of Kolkata. This fact is also borne out by the press clipping given in the media section of the company's own web site and as such the family is a de-facto promotor of the Corporate Debtor. Since the SREI group also promoted by the Kanodia family is holding 85 % of the Security receipts for the loan given by the applicant to the Corporate debtor, the family connection is quite obvious and the said stipulations of Section 5(24) squarely find their applicability in the present case.

12. As such we have no hesitation in upholding the decision of the RP to oust the RARE ARC, the applicant in this IA, from the Committee of Creditors being a related party of the Corporate Debtor, which is by virtue of section 21(2) is proscribed for their inclusion in the Committee of Creditors. IA(IB) No. 822/(KB)/2022 therefore fails and is disposed of accordingly.
13. We also direct the RP to go ahead with the CIRP accordingly.
14. List the main CP for further progress on **14.09.2023**.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
16. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-II)**



IA(IB) No. 822/(KB)/2022

In CP(IB) No. 302/(KB)/2021

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee,**  
**Member (Judicial)**

Signed on this the 13<sup>th</sup> day of September, 2023

M. Jana, PS