

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.1683 of 2023

[Arising out of order dated 11.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata in I.A.(IB) No. 1649/KB/2023 in C.P. (IB) No.1382/KB/2020]

IN THE MATTER OF:

ODAT GmbH

Bahnhofstrabe 28, 49356 Diepholz
Deutschland/ Germany.

...Appellant

Vs.

1. CA Santanu Brahma,

Interim Resolution Professional of
Darjeeling Organic Tea Estates Private Limited
Rio AH-276, Salt Lake City,
Sector-II, Kolkata - 700091
Email: santanubhrahma@gmail.com.

2. The Committee of Creditors of

Darjeeling Organic Tea Estates Private Limited
Through the Lead Bank,
Indian Bank, SAM Large Branch,
14, India Exchange Place,
Kolkata 700001.
Email: samlkolkata@indianbank.co.in.

...Respondents

Present:

For Appellant: Ms. Purti Gupta and Ms. Henna George, Advocates

For Respondents: Mr. Shaunak Mitra, Mr. Akash Agarwal, Mr. Dripto Majumdar, Advocates with Mr. Santanu Brahma, RP for Respondent No.1.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ashish Choudhury, Mr. Santosh Kumar Ray, Ms. Ritupuram Sanyal, Ms. Zeba Khan, Mr. Abhishek Arora, Advocates for Respondent No.2 (CoC).

Cont'd.../

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Financial Creditor has been filed challenging the order dated 11.12.2023 passed in I.A.(IB) No.1649/KB/2023. I.A.(IB) No.1649/KB/2023 was filed by the Appellant seeking a direction to the Resolution Professional to include the Appellant in the Committee of Creditors (CoC) and also to provide voting rights to the Applicant/ Appellant. The application has been rejected by the impugned order. Aggrieved by which order this Appeal has been filed. Brief facts of the case necessary to be noticed for deciding this Appeal are:

- i. The Appellant – ODAT GmbH is a foreign financial lender who extended loan and advance to Darjeeling Organic Tea Estate Pvt. Ltd. (hereinafter referred to as ‘Corporate Debtor’) from the year 2014 to 2020. Total loan advanced to the Corporate debtor including interest amounts to Rs.158,97,81,571/-. The financial assistance advanced by the Appellant was a Reserve Bank of India approved external commercial borrowing. The Appellant has not appointed any Director in the board of the Corporate Debtor.
- ii. The Corporate Debtor was promoted by a Bansal Family but had to exit from the company by resignation on 15.06.2022 on account of insistence by the lenders, especially UCO Bank. The foreign shareholders of the Corporate Debtor appointed a Director in the Board of Director of the

Corporate Debtor namely Rembert Biemond in the year 2017. Rembert Biemond, a resident of Sweden has been working as Director in the Corporate Debtor since his appointment. Rembert Biemond is also one amongst the three Managing Directors of the Appellant. The Appellant – ODAT was incorporated on December 4, 2019 as a German company and was not in existence when Rembert Biemond was appointed as Director in the board of Corporate Debtor.

- iii. CIRP commenced against the Corporate Debtor by order dated 28.10.2022 of the Adjudicating Authority. CIRP process of the Corporate Debtor was stayed by order of this Appellate Tribunal, which interim order was vacated. The Appellant filed its claim in the CIRP of the Corporate Debtor for an amount of Euros 1,77,40,328/- equivalent to INR 158,97,81,751/- on 20.09.2023. The IRP constituted the CoC, in which Appellant has not been given voting rights on the premise that Appellant is a related party of the Corporate Debtor. Appellant sent a communication to the IRP on 26.09.2023 informing that it is not a related party. IRP having not accepted the Appellant as Financial Creditor with voting rights, Appellant filed an application being I.A. No.1649/KB/2023 before the Adjudicating Authority, in which application following prayers were made:

“a) Allow the instant application; and/or

b) Direct the Resolution Professional of Darjeeling Organic Tea Estates Private Limited to include the Applicant in the Committee of Creditors and also provide the voting rights to the Applicant; and/or

- c) Restrain the Interim Resolution Professional/Resolution Professional from holding the CoC meeting on 30.09.2023; during the pendency of the present application; and/or*
- d) Pass any such further orders as deemed fit by this Adjudicating Authority.”*

- iv. By email dated 29.09.2023, the IRP invited the Appellant to be a part of the CoC without having any voting rights. The I.A. filed by the Appellant was replied by the IRP. A Supplementary Affidavit was also filed in support of the I.A. The Adjudicating Authority by the impugned order dated 11.12.2023 rejected the application, aggrieved by which order this appeal has been filed.
- v. The Adjudicating Authority by the impugned order held the Appellant a related party under Section 5(24)(h) and 5(24)(m).

2. We have heard Ms. Purti Gupta, learned counsel for the Appellant, Shri Shaunak Mitra, learned counsel appearing for the Respondent No.1 and Shri Abhijeet Sinha, learned senior counsel appearing for the Committee of Creditors.

3. Learned counsel for the Appellant submits that the Adjudicating Authority committed error in holding the Appellant as a related party of the Corporate Debtor. Neither Section 5(24)(h) nor Section 5(24)(m) was attracted in the facts of the present case. Rembert Biemond was one of the three Managing Directors of the Appellant. The word ‘Geschäftsführer’ in German translates to Managing Director in English language but does not have the

same meaning in terms of executive powers that a Managing Director has under Indian Companies Act. Under the registration of Appellant as German Company, when there are more than one Managing Director, any business on behalf of the Appellant can be transacted at least by two Managing Directors. Rembert Biemond who was one of the Managing Directors in the Appellant has no authority to act on behalf of the Appellant. Rembert Biemond was appointed in the Board of Corporate Debtor by its investors in 2017 whereas the Appellant was incorporated on 4th December, 2019. Rembert Biemond being Director of the Corporate Debtor had discharged some functions as Director of the Corporate Debtor, which functions were not functions of Rembert Biemond on behalf of the Appellant. Rembert Biemond became involved in the Corporate Debtor's interim and critical decisions only since all Directors and key Managerial personnel of the Corporate debtor exited/ abandoned the Corporate Debtor. There was no other Director left in the Company and Rembert Biemond took some critical action in the Corporate Debtor to protect the Corporate Debtor and to save the livelihood of 8000 tea garden workers. Rembert Biemond being Director of the Corporate Debtor may be related party to the Corporate Debtor but the Appellant is not a related to the Corporate Debtor. ODAT has no direct relationship with Corporate Debtor except it has extended Loan to the Corporate Debtor as external commercial borrowing approved by the Reserve Bank of India. The claim filed by the Appellant before the IRP has been accepted to the extent of Rs.145,71,99,411/- on 23.12.2023. Section 5(24)(h) shall not apply in case in hand since a person can be termed as related party only in event of being demonstrated that the Corporate Debtor accustomed to act on the advice,

directions or instructions of such entity. In the present case, the Corporate Debtor is neither accustomed to nor shown to have acted on advice, direction or instructions of the Appellant. The actions of Rembert Biemond has wrongly been treated as actions of Appellant. All actions by Rembert Biemond were actions as Director of the Corporate Debtor. The Adjudicating Authority mistakenly treated Rembert Biemond as ODAT and ODAT as Rembert Biemond, which is factually incorrect. Appellant is a separate and distinct entity. Rembert Biemond is neither promoter or owner or controller of ODAT nor he can singly act on behalf of the ODAT. Actions of Rembert Biemond are not actions of Appellant. Rembert Biemond was acting as a professional independent Director of Corporate Debtor and not as ODAT. ODAT has no participation in policy making of the Corporate Debtor. ODAT has never gave or sought any technical information from Corporate Debtor. There is not a single document which show that any technical information was given by the Appellant to Corporate Debtor or was sought from Appellant by the Corporate Debtor. Section 5(24)(m) was not applicable. The Adjudicating Authority erred in holding that since Rembert Biemond was a common Director happen to be Managing Director of ODAT, he was in effect controlling affairs of ODAT and Corporate Debtor. There were three Managing Directors in the Appellant namely Mr. Ulrich Walter, Mr. Rembert Biemond and Mr. Thobias Von Glenk. As per the constitution documents of ODAT, the majority of two Directors could take a decision on behalf of ODAT GmbH. Rembert Biemond was also not a shareholder of Appellant. The Adjudicating Authority without considering and deciphering the true nature of the relationship of Appellant

with the Corporate Debtor has come to erroneous finding that Appellant is a related party of the Corporate Debtor.

4. Shri Shaunak Mitra, learned counsel appearing for the IRP refuting the submission of learned counsel for the Appellant submits that Appellant is a related party to the Corporate Debtor. It is submitted that in the Appellant's Company one Rembert Bimond AB holds 20% shareholding. Rembert Bimond AB is 100% owned by Rembert Bimond, hence, the Appellant is also related party within the meaning of Section 5(24)(d). Rembert Bimond, who is common Executive Director for both the Appellant and the Corporate Debtor, is the sole signing authority for the Appellant. It was Rembert Bimond who has authorized one Raju Kumar Singh to submit claim on behalf of the ODAT. Mr. Rembert Bimond, who is Director in the Corporate Debtor has been functioning as Acting Chairman of the Corporate Debtor. Rembert Bimond, Director of the Appellant had immediately prior to CIRP, had direct influence and deep entanglement in the management of the Corporate Debtor. Rembert Bimond sole Director of the Corporate Debtor was accustomed to act on the instructions of the Appellant. Even assuming that sub-clause 5(24)(h) is not applied then sub-clause (f) has to be applied. The Appellant was involved in policy making of the Corporate Debtor and there was clear interchange of managerial person. Allowing the Appellant in the CoC will cause huge prejudice to the Corporate Debtor. Rembert Bimond signed the loan agreement with the Corporate Debtor on behalf of the Appellant on 05.01.2020. Rembert Bimond was also signing agreements on Corporate Debtor's behalf with important clients. Appellant is a part of the

ODAT Group which include Artava AG and AUWA GmbH. Learned counsel for the Respondent No.1 supported the order of the Adjudicating Authority and submitted that no error has been committed by the Adjudicating Authority in rejecting the application. The Appellant is an alter ego of Rembert Biemond, the sole Director of Corporate Debtor, hence, no fault can be found in the order of the Adjudicating Authority.

5. Learned counsel for the CoC also supported the order of the Adjudicating Authority.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. Before we come to the impugned order of the Adjudicating Authority, it is relevant to notice certain details with regard to the Appellant. The Appellant is a limited liability company incorporated under the laws of Germany. The IRP has filed details of Commercial Register of the Appellant along with its reply to the I.A. which details are as follows:

“Commercial register B of the local court Walsrode

*Imprint Number of the company: HRB 208257
Retrieval from 04.10.2023 19:24*

Registration number	a) company b) Registered office, branch office, domestic business address, person authorized to receive, branches c) The object of the company	Share capital or share capital	a) General representation regulation b) Executive Board, Management Body, Managing Directors, General Partners, Managing Directors, Authorized Representatives and Special Powers of Representation	Procurator	a) legal from, commencement, articles of association or partnership agreement b) Other legal relationships	a) Date of registration b) Comments
1	2	3	4	5	6	7
1	a) ODAT Ltd.	25,000,00 EUR	a) If only one managing director has been		a) Limited liability company	a) 03.01.2020 Lindenthal

2	b) Diepholz Business address: Bahnhofstrabe 28, 49356 Diepholz c) Consulting and support for companies in the agricultural, food and sustainable technology sectors in Germany and abroad through coaching, organizational development, interim management and financing solutions.		appointed, he shall represent the company alone. If several managing directors have been appointed, the company shall be represented jointly by two managing directors. b) Managing director: Walter, Ulrich, Rehden, *23,08,1949 authorized to act as sole representative, with the power to conclude legal transactions in the name of the company with himself in his own name or as representative of a third party. b) Appointed as Managing Director: Biemond, Rembert Johannes, Jama/ Sweden, *17.07.1958 authorized to act as sole representative, with the power to conclude legal transactions in the name of company with itself in its own name or as representative of a third party. Appointed as Managing Director: Von Glenck, Tobias, Berlin, *07.071978 authorized to act as sole representative; with the power to enter into legal transactions on behalf of the company in his own name or as representative of a third party.		Articles of association as of 04.12.2019	
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8. Rembert Biemond was appointed as Director in the Corporate Debtor in the year 2017. The Appellant has extended loan facility under the Reserved Bank of India approved route of external commercial borrowing by Loan Agreement dated 15.01.2020, Advance Agreements dated 16.12.2019

and 20.12.2019 totalling to Euros 13,220,000, Euros 700,000 and Euros 1,660,000, respectively. Rembert Biemond was working as Director of the Corporate Debtor since 2017. In the application which was filed by the Appellant before the Adjudicating Authority, it was specifically pleaded that the Promoter/ Director of the Corporate Debtor Mr. S. P. Bansal resigned on 15.06.2022 and all Directors and key managerial personnel abandoned the Corporate Debtor and Rembert Biemond being the only Director left to protect the interest of foreign investors he acted as Director of the Corporate Debtor to protect the Corporate Debtor and its workmen. It is admitted fact between the parties that there are three Managing Directors of the Appellant. Email Dated 29.09.2023 of the IRP sent to the Rembert Biemond is referred, which email is as follows:

"Dear Mr. Remurt,

*Your authorization letter as sent by you is **not considered good for the purpose** for granting authority on behalf of "ODAT GmbH" on the below mentioned ground which has been already been mentioned in my email dated 27.09.2023*

Extract from pt. 1 of email dtd. 27.09.2023

"...Secondly, It is understood that ODAT GmbH has three Directors, Including your goodself. Hence the authorization letter should be signed by any two Directors (in either of the manner stated above) and the KYC document of the Authorized Representative also needs to be attested."

*In absence of signature of **one Director** your representation for authorization letter cannot be accepted.*

*Thanks & regards,
CA Santanu Brahma
IRP, Darjeeling Organic Tea Estates Pvt. Ltd. (in CIRP)”*

9. The Constitution Documents of the Appellant as has been extracted above which was filed by the IRP himself clearly indicate that if several managing directors have been appointed, the company shall be represented jointly by two Managing Directors. This being admitted position that there are three Managing Directors in the Appellant Company. The German word ‘Geschäftsführer’ translates to Managing Director in English language. Conclusion is that on behalf of the Appellant two Managing Directors have to act jointly to act on behalf of the Appellant.

10. Now, we come to the impugned order by which the Application of the Appellant seeking direction to include it in the CoC with voting rights has been rejected. The Adjudicating Authority upheld the decision of the IRP to treat the Appellant as a related party relying on Section 5(24)(h) and 5(24)(m). In Para 79 and 80 of the judgement is as follows:

“79. However, we are convinced that sub-clause (h) and (m) would come to the rescue of the respondent as we find that ODAT's board consists of three persons including Mr. Rembert as the Managing Director/ Director of ODAT and he is actively involved in Executive Director capacity. A Company functions through its Board and Mr. Rembert being Managing Director of ODAT, the Applicant has to be treated as

related party to the Corporate Debtor, at least from 2020, if not before. In light of several emails, documents placed by the Learned Counsel of the Respondent, it cannot be said that manager, director of the Corporate Debtor is not accustomed to act, as per the instructions of the Managing director of the ODAT, Mr. Rembert Beimond.

80. Mr. Rambert has got individual authority to act on behalf of ODAT and this is coming out very clearly from the authorization given by him to Mr. Rajkumar Singh to submit the claim on behalf of ODAT with his own signature.”

11. We may notice Section 5(24) which defines related party in relation to the Corporate Debtor. Section 5(24)(h) and (m) which clauses have been relied for unsuiting the claim of the Appellant, are as follows:

“5(24) “related party“, in relation to a corporate debtor, means—

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

x...x...x

(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;”*

12. As per Section 5(24)(h), related party in relation to an individual, means a person on whose advice, directions or instructions, the individual is accustomed to act. The word ‘a person’ as contained in Sub-clause (h) has to be read as per the definition of ‘person’ under Section 3(23) of the I&B Code. The definition of ‘person’ is an inclusive definition and the Appellant can be held to be a person. The crucial words in the Section 5(24)(h) is “a person on whose advice, directions or instructions, the individual is accustomed to act”. Thus, for applying Section 5(24)(h) it has to be proved that on the advice of Appellant a Director, Partner or Manager of the Corporate Debtor is accustomed to act. The mere fact that one of the Director i.e. Rembert Biemond is common in Appellant as well as the Corporate Debtor shall not ipso facto lead to prove fulfilment of Section 5(24)(h). It has to be pleaded and proved that on advise, direction or instruction of the Appellant, a Director, Promoter or Manager of the Corporate Debtor is accustomed to act. The Appellant is only financial lender, who has extended loan facility to the Corporate Debtor. No material has been placed on record to indicate that Appellant has given advise, direction or instruction to Director, Promoter or Manager of the Corporate Debtor who is accustomed to act accordingly. As noted above, the Appellant has to act jointly through two Managing Directors since there are more than one Managing Directors and it cannot be held that Appellant is acting through Rembert Biemond. Rembert Biemond is a Director in Corporate Debtor and all functions which are being referred to by the IRP including the emails and communication sent by Rembert Biemond

as Director of the Corporate Debtor and not as Managing Director of the Appellant. The Adjudicating Authority committed error in treating the actions of the Rembert Biemond, a Director of the Corporate Debtor to be directions or instructions of the Appellant. In the reply as well as submission of the IRP, learned counsel for the IRP has emphasised that it was Rembert Biemond who has authorised Raju Kumar Singh on behalf of the ODAT for filing claim in the CIRP which fact has also relied by the Adjudicating Authority in Para 80. Raju Kumar Singh was authorised to file claim in the CIRP by Rembert Biemond as Director of the ODAT. Filing of claim by Raju Kumar Singh authorised by Rembert Biemond which claim was filed on 20.09.2023 cannot be treated advise, direction or instruction of the Appellant to Director, Promoter or Manager of the Corporate Debtor. Filing of the claim before the IRP which is required as per CIRP Regulations, 2016 cannot be treated to be an incident which can be referred to and relied under 5(24)(h). ODAT-Appellant being Financial Creditor has to file claim in the CIRP. Appellant being a German company has to authorise someone to file the claim and Rembert Biemond authorising one Raju Kumar Singh to file a claim cannot be said to be an act of the Appellant which is covered under Section 5(24)(h). Acts of Rembert Biemond as Director of the Corporate Debtor in which correspondence in some places Rembert Biemond has also referred to as Acting Chairman were actions of Rembert Biemond as Director of the Corporate Debtor and behind those actions there is no advice, direction or instructions of the Appellant. The Adjudicating Authority without any basis has assumed advice, direction or instruction of the Appellant in actions of the Rembert Biemond which was Director of the Corporate Debtor. We, thus, are

of the view that finding of the Adjudicating Authority that appellant is related party under Section 5(24)(h) has no legs to stand.

13. Now we come to Section 5(24)(m). Section 5(24)(m) has four sub-clauses. Reliance has been placed on Sub-clauses (i) participation in policy making processes of the corporate debtor and (iv) provision of essential technical information to, or from, the corporate debtor. For coming to any conclusion on finding that condition as mentioned in 24(m)(i) are fulfilled, there has to be any evident material or pleading that Appellant is participating in policy making of the Corporate Debtor. There is no material on record or any such document or pleading on behalf of the IRP that there is any material to prove that Appellant has participation in the policy making process of the Corporate Debtor. Appellant has not nominated any Director in the Corporate Debtor. Even Rembert Biemond is Director who was nominated in the Corporate Debtor in 2017 by a Foreign Investor, at that time Appellant was not even incorporated. Participation in policy making process has to be through Director of the Corporate Debtor. There is no iota of evidence that Appellant has ever participated in policy making process of the Corporate Debtor. The Adjudicating Authority has again confused with actions of Rembert Biemond as Director of the Corporate. The actions of the Rembert Biemond as Director of the Corporate Debtor were his actions as Director of the Corporate Debtor and not on behalf of the Appellant. None of the correspondence and email which has been relied proves that functions of Rembert Biemond were not on behalf of the Corporate Debtor. He even claimed that he is discharging such functions on behalf of the Corporate

Debtor. The conclusion of the Adjudicating Authority with regard to Section 5(24)(m)(i) has been recorded in Para 86-86, which is as follows:

“85. Further Section 5(24)(m)(i) also supports the case of the Respondent. Through its Managing Director, Mr. Rembert who is director of Corporate Debtor and ODAT was clearly involved in participating in policy making process of CD from 2022. More over one of the reasons for him to be in the board is because of his expertise in agriculture consulting and therefore it is obvious that he has been providing essential technical information to the CD.

86. Considering the several evidence and documents placed on record, we are of the view that ODAT would be covered as "related party" under Section 5(24)(h). Section 5(24)(m) of the Code.”

14. The above observation of the Adjudicating Authority was on the basis that Rembert Biemond is involved in the policy making process of the Corporate Debtor. Actions of Rembert Biemond in the Corporate Debtor were on behalf of the Corporate Debtor and they were not on behalf of the Appellant. Appellant has nothing to do with day to day functions of the Corporate Debtor, appointment of staff and employees of the Corporate Debtor or any of the day to day functions. The Adjudicating Authority again committed error in treating actions of Rembert Biemond as actions of Appellant. The Adjudicating Authority observed that Rembert Biemond is Managing Director of the Appellant. We have already noticed that when there are more than one Managing Director, functions on behalf of the Appellant can be carried out at least by two Managing Directors. Present is not a case

that there is any evidence that two Managing Directors did any action which may suggest or indicate participation in the policy making process of the Corporate Debtor, therefore, finding of the Adjudicating Authority with regard to Section 5(24)(m)(i) is without any basis and cannot be sustained.

15. Now coming to the next limb finding with regard to Section 5(24)(m)(iv) i.e. provision of essential technical information to, or from, the Corporate Debtor. What was held by the Adjudicating Authority in Para 85 that one of the reasons for him to be in the board is because of his expertise in agriculture consulting and therefore it is obvious that he has been providing essential technical information to the Corporate Debtor. In the aforesaid observation the Adjudicating Authority has referred to Rembert Biemond. The Adjudicating Authority failed to notice that Rembert Biemond is in the Board of Director of the Corporate Debtor since 2017 when he was nominated by a foreign investor of the Corporate Debtor and Rembert Biemond was not nominated by the Appellant in the Board of Corporate Debtor. Hence, the whole observation is fallacious. In spite of pleading of the Appellant that there was no material to suggest essential technical information were received by the Appellant or were given by the Appellant to the Corporate Debtor. No finding has been returned referring to any material. Appellant was only Financial Creditor who has extended loan to the Corporate Debtor. There being neither any pleading regarding provision of essential technical information to, or from, the Corporate Debtor nor any proof, there was no occasion to come to the conclusion that condition under Section

5(24)(m) were fulfilled. The conclusion of the Adjudicating Authority were wholly baseless.

16. Shri Shaunak Mitra has also submitted that Rembert Biemond through its 100% proprietary i.e. Rembert Biemond AB has 20% shareholding in the Appellant and further the ODAT Group of Companies have considerable shareholding in the Corporate Debtor. The above submission was also addressed before the Adjudicating Authority that the Appellant is related party on the basis of Section 5(24)(d), which submission was rejected in Para 77-78, where the Adjudicating Authority has held following:

“77. Though the argument made by the respondent that the scope of Section 5(24)(d) is wide enough to include shares of relatives also and since in the current case Mr. Rembert holds shares in ODAT through the medium of his 100% owned and entity should be treated as "relative" looks very attractive, we are unable to accept his contentions, in view of several judgments in the context of corporate entity being treated separately from that of its shareholders as it bears its own name and seal of its own.

78. We take support of the Honourable Supreme Court judgement in the case of Tata Engineering and Locomotive (Supra) as reported in [1964] 6 SCR 885 and hold that ODAT is not covered under Section 5(24)(d) of the Code.”

17. The Adjudicating Authority having not accepted the Appellant being related party on the basis of Section 5(24)(d) and holding of related party only on the basis of Section 5(24)(h) and (m), which we have already found that

Section 5(24)(h) and (m) are not attracted, we do not find any substance in submission of learned counsel for the IRP that Appellant is a related party.

18. In view of the foregoing discussion and conclusions, we are of the view that the Adjudicating Authority committed error in holding the Appellant as a related party and rejecting I.A.(IB) No.1649/KB/2023 filed by the Appellant. In result, we allow the appeal. Set aside the impugned order dated 11.12.2023 and allow I.A.(IB) No.1649/KB/2023 directing the IRP of the Corporate Debtor to include the Appellant in the Committee of Creditors and also provide voting rights to the Appellant proportionate to the amount of claim admitted in the CIRP. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

13th February, 2024.

Archana