

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1649/KB/2023

In

C.P. (IB) No. 1382/KB/2020

*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:

UCO Bank *... Financial Creditor.*
Verses
M/s. Darjeeling Organic Tea Estates Private Limited *... Corporate Debtor.*

And

IN THE MATTER OF:

ODAT-GmbH *... Applicant.*
Verses
CA. Santanu Brahma, IRP of Darjeeling Organic Tea Estates Private Limited
... Respondent No. 1.

And

The Committee of Creditors (CoC) of Darjeeling Organic Tea Estates Private
Limited *... Respondent No. 2.*

Date of Hearing: November 24, 2023.

Date of Pronouncement: December 11, 2023.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant in IA. (I.B.C)/1649(KB)2023:

Mr. Joy Saha, Sr. Adv.; Ms. Ramya Hariharan, Adv.; Ms. Asmita Rakhecha, Adv.
and Mr. Soumyajit Saha, Adv.

For the COC:

Ms. Urmila Chakraborty, Adv.; Mr. S.K. Ray, Adv.; Ms. Rituparna Sanyal, Adv.
and Ms. Swastika Sengupta, Adv.

For the RP: Mr. Shaunak Mitra, Adv.; Mr. Manas Das, Adv. and Mr. Dripto
Majaumdar, Adv.

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ORDER

Per D Arvind Member (Technical):

1. This Court is congregated through hybrid mode.
2. Heard the Ld. Senior Counsel/ Ld. Counsel for both parties.

Brief Facts of the Case:

3. This is an application made under Section 60(5) of Insolvency and bankruptcy Code, 2016 (for brevity “I&B Code”) read with Rule 11 of the National Company Law Tribunal Rules 2016 by **ODAT GmbH** (hereinafter referred to as “ODAT”/ “Applicant”) which is a German company. The Applicant, being the financial creditor, has sought for certain relief through this application as under:
 - 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.*
4. It is claimed that the Applicant has provided financial assistance to Darjeeling Organic Tea Estates Pvt Ltd (hereinafter called the “Corporate Debtor” or the “CD”), between the period 2014-18.
5. The Corporate Debtor became financially unviable and Corporate Insolvency Resolution process (CIRP) was initiated against the Corporate Debtor on 28.10.2022 by the order in C.P. (IB) No. 1382/KB/2020 of this Adjudicating Authority.

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6. On the vacation of stay from the National Company Law Appellate Tribunal (NCLAT), the Applicant herein being a Financial Creditor filed its claim of Euros 1,77,40,328/- equivalent to INR 158,97,81,751/- with the Interim Resolution Professional/Resolution Professional of the Corporate Debtor on 20.09.2023.
7. The Applicant thereafter understood that the Committee of Creditors (CoC) has been constituted in which the Applicant has not been given voting rights on the premise that it is a “related party” to the Corporate Debtor.
8. On becoming aware of this position of the Resolution Professional (RP), the Applicant wrote a letter to the Resolution Professional (Respondent No. 1 herein) asking him to immediately include the Applicant in the CoC constituted by him, as according to the Applicant ODAT is not a related party to the Corporate Debtor.
9. In Reply to this letter, the Resolution Professional (Respondent No. 1) sent an e-mail on 27.09.2023 requesting the Applicant, to revisit the declaration forming part of Form-C filed by the Applicant with regard to Related Party, in terms of Section 5(24) of and Section 5(24A) of the Insolvency and Bankruptcy Code 2016 and reconfirm the claim.
10. The Resolution Professional further noted in the said e-mail that considering the available documents and information, the Applicant is a related party of the Corporate Debtor as per 5(24) and Section 21 of the I&B Code and the Applicant being an alleged related party of the Corporate Debtor shall not have any right of representation or participation or voting rights in CoC.
11. When the action of the Resolution Professional of not including the Applicant with full voting rights in the CoC was disputed, the Resolution Professional sent another e-mail dated 27.09.2023 informing that the Applicant has been included in the list of creditors but would not have any voting share as ODAT is a related party.
12. The RP of the Corporate Debtor further stated that on preliminary verification the Applicant was found to be related party, hence will not have voting shares though ODAT representative was invited to be present in the CoC meeting.

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13. Upon receiving the said e-mail of the RP, the Applicant on 28.09.2023 responded claiming that the Applicant is not a related party of the Corporate Debtor with several reasons for saying so thru an Email.
14. In the same e-mail Applicant requested the Resolution Professional to decide on the question of “related party” before holding any meeting of CoC.
15. It was also submitted by the Applicant that, failure on the part of Resolution Professional to include the Applicant as a member of CoC shall not only cause grave prejudice to the statutory rights of the Applicant but it is also a flagrant violation of the integrity of Insolvency Resolution Process.
16. In the absence of any action by RP on the above request, this application has been filed seeking direction to the Resolution professional of the Corporate Debtor to include the applicant in CoC and also provide voting rights and in the meantime, direction I sought that RP may be restrained from holding the CoC meeting during the pendency of the present application.

Submission made by the Learned Counsel for the Applicant:

17. The Learned Senior Counsel for the Applicant submits that the Applicant (ODAT) is not a related party to the Corporate Debtor.
18. The basis of treating the Applicant as a Related Party, by the RP is only based on the fact that Mr. Rembert Biemond is a common director in the Corporate Debtor and ODAT.
19. Merely because he is a common director in both the entities will not make the Applicant a Related Party of the Corporate Debtor, unless any of the requirements mention in Section 5(24) (a) to Section 5(24)(m) exist to be called as related party.
20. The learned counsel took us through Section 5(24) of the I&B Code 2016 to claim that ODAT is neither a director or partner of the Corporate Debtor or a relative or partner of the Corporate Debtor to come under Section 5(24)(a) of I&B Code.

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21. ODAT is not key managerial personnel of the Corporate Debtor or relative of a key managerial personal of Corporate Debtor to be covered by Section 5(24)(b) of the Code.
22. ODAT is not a limited liability partnership or partnership firm in which a director, partner or manager of the Corporate Debtor or his relative is a partner to be covered under Section 5(24)(c) of the Code.
23. Though ODAT is a private company incorporated outside India, in which a director (Mr. Rembert Biemond), or partner or manager of the Corporate Debtor, is a director but does not hold more than 2% of its share capital, to come under Section 5(24)(d) of the Code.
24. ODAT is not a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than 2% of its paid-up capital to be covered under Section 5(24)(e) of the Code.
25. ODAT is not a body corporate whose Board of Director or Managing Directors or Manager in the ordinary course of business acts on the advice, direction or instruction of a director, partner or manager of the Corporate Debtor to come under Section 5(24)(f) of the Code, 2016.
26. ODAT is not a limited liability partnership or partnership firm whose partners are employees in the ordinary course of business acts on the advice, directions or instruction of a director, partner, or manager of the Corporate Debtor to be covered under Section 5(24)(g) of the Code.
27. ODAT is not the person on whose advice, directions or instructions the Director, Partner, or Manager of the Corporate Debtor is accustomed to act to come under Section 5(24)(h) of the Code.
28. ODAT is not a holding or a subsidiary or an associate company of the Corporate Debtor or subsidiary of a holding company to which Corporate Debtor is a subsidiary to be covered under Section 5(24)(i) of the Code.
29. ODAT does not control more than 20% of voting rights in the Corporate Debtor. In fact, ODAT does not own any share in the Corporate Debtor nor Corporate

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Debtor owns any share in the Applicant to come under Clause (j) & (k) of Section 24 (5) of the Code.

30. No case has been made out that ODAT can control the composition of board of directors in the Corporate Debtor to come under Section 5(24) (l) of I&B Code, 2016.
31. Ld. Senior Counsel further submits that ODAT is not associated with the CD on account of participation of policy making process of the Corporate Debtor or having more than 2 directors in common between Corporate Debtor and ODAT or ODAT is engaged in providing or receiving any essential technical information to or from the Corporate Debtor to be covered under Section 5(24)(m) of the Code.
32. Thus, the Learned Senior Counsel took pain to rely on several communications exchanged between Mr. Rembert Biemond to claim that under none of the clauses mentioned in Sec 5(24) of the Code, ODAT can be covered as related party.
33. He further submits that it is not the case of the respondent that Mr. Rembert Biemond holds any share in Corporate Debtor or the ODAT.
34. He further submits that Mr. Rembert Biemond is not a resident of India, not an authorized signatory to bank accounts, not an “Occupier” under the factory Act and not an authorized signatory for filing GST returns or for the matter IT returns of the corporate debtor.
35. He further submits that Mr. Rembert Biemond is a director in many companies. Only when all the directors of the Corporate Debtor left after the commencement of Insolvency, Rembert Biemond took over the management of the Company at a very macro level to ensure that the value of Corporate Debtor is protected, and the employment of thousands of workers are not put into jeopardy.
36. He has further submitted that Bansal who were in the board of the Corporate Debtor, controlled operations and management of the company till 15.07.2022 and thereafter till 31.08.2022 one Mr. Ashok Tyagi was in charge and Mr.

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Rembert Biemond started overseeing the management and operations of the Corporate Debtor only after the commencement of insolvency.

37. The Learned Counsel submitted that in terms of Supreme Court decision in the case of *Tata Engineering and Locomotive Co. Ltd. vs. State of Bihar* reported in **MANU/SC/0036/1964: [1964] 6 SCR 885**, the entity of the corporation is entirely separate from that of its shareholders, it bears its own name and a seal of its own and its assets are separate and distinct from those of its members and therefore Mr. Rembert Biemond being shareholder of 100% owned Rembert Biemond AB, which has 20% share in ODAT is of no relevance.
38. Even otherwise ODAT being a foreign company is not a relative in any manner as “any person” mentioned in Section 5(24)(h), 5(24)(j), 5(24)(k), 5(24)(l) and 5(24)(f) does not include a foreign company in terms of Section 3(23) of the I&B Code, 2016 which defines the word “Person” read with definition of Company as defined in Section 2(20) under the Companies Act 2013 .
39. The learned senior counsel further submits that Corporate Debtor is a large company with more than 8000 employees and the same cannot be managed by Mr. Rembert Biemond who is not even a resident in India. He hardly comes to India for the purpose of attending meetings.
40. He vehemently argued that someone in Sweden controlling day to day affairs of the company with more than 8000 workers is practically impossible. Mr. Rembert Biemond is in the board of Corporate Debtor only because he is an expert in the field in which CD operates as he is in the board of several other companies worldwide.
41. Thus, he submitted that merely because Mr. Rembert Biemond is a common director between Corporate Debtor and the Applicant, ODAT cannot be treated as a related party in terms of Section 5(24) of I&B Code, 2016.

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Per contra, submission made by the Learned Counsel for the Respondent:

42. The Learned Counsel for the Respondent submits that Mr. Rembert Biemond is the one who is controlling ODAT as an important member of the board.
43. This is evident from the authority letter given by him on behalf of ODAT to authorize one Mr. Raju Kumar Singh to submit the claim on behalf of ODAT as Financial Creditor of CD, with the resolution professional of the Corporate Debtor. He relied on the authority letter dated September 2023 duly signed by Mr. Rembert Biemond.
44. The Learned Counsel took us through extract of minutes of Corporate Debtor's AGM held on 18.12.2020 to prove that Mr. Rembert Biemond was acting as a acting chairman since early June 2020 not just after commencement of insolvency as claimed.
45. The Learned Counsel submitted that Mr. Rembert has signed Corporate Debtor's balance sheet for 31.03.2020 and also for the year 31.03.2021 and has been shown as the CD's KMP in 2020-21 balance sheet under the heading "related parties" the disclosure of which is a statutory requirement under Indian Laws.
46. Relying on minutes of board meeting held on 05.06.2022 wherein resignation of Bansal's from directorship of Corporate Debtor was accepted and Mr. Rembert was authorized to do all acts and give effect to such resolution. This substantiates that Rembert was in effective control and management of CD.
47. Learned Counsel further submits that Ashok Tyagi was only appointed as additional director of CD on 31.08.2022 as appose to Rembert who was an acting chairman of the board under whose behest all managerial decisions of the CD were taken.
48. He further submits that Rembert himself identified Corporate Debtor's acting chairman and director in an E-mail dated 11.09.2022 wherein he has provided Instruction to all staff members on all the operations and management of the company.

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49. He also claimed that Mr. Rembert has also written to CD staff members as “acting chairman” of board on 03.09.2022 where he has admitted that he was in fact acting as Managing Director of the CD.
50. In the document relied by him it has been mentioned that one Mr. Hansraj Seva Singh has been appointed by Rembert to act on Rembert behalf and in the said E-Mail Rembert intimated his intentions to make additions to the top management.
51. Therefore, the claim of ODAT that Rembert did not appoint any senior officers/staff of the CD is incorrect.
52. The learned counsel further submits that on 14.09.2022 Rembert wrote to the CD staff informing them of the new reporting structure to be effective from 15.09.2022. In the organogram shared by Rembert he has been identified as the Acting chairman and as the ultimate reporting authority of the CD. To this effect reliance was placed on E-Mails sent by Mr. Rembert on 14.09.2022, by the Counsel.
53. Relying on several other documents such as handling negotiations with Key Man technologies on behalf of CD, communication issued by Anil Upadhyya CFO who has asked Rembert for his advice on several issues, the Ld. Counsel submits that Mr. Rembert was in complete control of the operations and management of the company after the commencement of Insolvency and played an active role too as a senior board member even prior to commencement of insolvency.
54. It is the claim of the learned counsel that ODAT falsely contented that Rembert was non-executive director of ODAT and all decisions were taken by majority of board and whereas in the ODAT’s Commercial Register (which is a statutory document in that country) shows Mr. Rembert as managing director of ODAT, authorized to act as sole representative of ODAT. This is also evident from the authorization given by Mr. Rembert to Mr. Raju Kumar Singh to make ODAT’s claim as a financial creditor with the resolution professional of Corporate Debtor vide Authorization Letter dated September 2023.

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55. The Learned Counsel also submits that Mr. Rembert does hold 20% of the shareholding of ODAT in the name of Rembert Beamond AB which is nothing but the alter ego of the individual Mr. Rembert because the said Rembert Beamond AB is 100% owned by Rembert Beamond, as evident from the publicly available document similar to MCA Portal in India.
56. Therefore, he submits that it cannot be contended that merely because shares were not held in his own name and instead held by entity fully controlled and owned by him, Mr. Rembert is not shareholder of ODAT. Hence Rembert who is managing director of CD or an Executive Director who was controlling ODAT, holds 20% Share Capital of ODAT through the Rembert Beamond AB cannot be disputed.
57. He further submits that the word “Person” mentioned in several clauses of Section 5(24) of I&B Code would include a person resident outside India. The word “Person” has been defined in Section 3(23) of the Code includes a company and also a “person” resident outside India
58. Since person includes a company that would mean a company outside India would also be treated as a person which in this case is ODAT and consequently covered by several sub-clause of Section 5(24) of I&B Code.
59. He submits that there is a deep entanglement of the affairs of CD and ODAT. ODAT would become related party and would be covered in terms of Section 5(24)(d), 5(24)(f), 5(24)(h), 5(24)(i) and 5(24)(m) of I&B Code 2016 and consequently there is no case made out by the Applicant for not to be treated as related party within the four corners of Section 5(24) of the I&B Code.

Analysis and findings:

60. The issue that needs to be decided in this case is whether ODAT has to be treated as a “related party” to the Corporate Debtor in terms of Section 5(24) of I&B Code 2016 and consequently they should have voting rights in CoC meetings or not.

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61. We have heard extensively the arguments made by the Learned Senior Counsel of the applicant and the Learned Counsel for the Respondent and perused the extensive documents placed on record including the written submissions placed by both parties.
62. Several documents were placed to demonstrate that Mr Rembert Biemond has played significant role in the management of Corporate Debtor particularly after commencement of insolvency and prior to commencement of insolvency as one of the key board members of the Corporate Debtor.
63. Even prior to commencement of CIRP, Mr. Rembert Biemond has signed the balance sheets and the annual returns of the corporate debtor on few occasions. He was holding himself as acting Chairman and Managing Director after commencement of CIRP.
64. Reliance was placed on Rembert's handling one of the key customers "Keyman Technology's contract".
65. Reliance was placed on letter issued by Mr. Rembert on 09.09.2022 to all the staff members of the Corporate Debtor.
66. Reliance has been placed on the email dated 17.10.2022 addressed by Mr. Rembert Biemond as Chairman and Managing Director of Corporate Debtor indicating few serious concerns of running the operations after the commencement of CIRP.
67. Reliance was also placed on an important document dated 03.09.2022 wherein Mr. Rembert Biemond was acting as chairman of the Corporate Debtor which was sent all the staff of Corporate Debtor. In the said document, we find certain paras are important for dealing with the case in hand and hence reproduce as under:

"In 2020 when Mr. Bansal (Now former promoter) confessed to me that certain things in our company was not in order which was unfortunately a gross understatement, I have to step up and become your acting chairman as nobody else was available."

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“After the recent resignations including top management, I have to step up once more as no other solution is available and now in fact acting as MD.’

“While a lot is possible from 7000Kms away, I felt even negotiating with unions, political leaders, meeting with key board members, talks/WhatsApp/e-mail message/zoom calls with the senior management often from 6AM until in the night, this cannot replace onsite, on the ground feel needed for good and effective leadership.’

“Mr. Hartaj Seva Singh, advisor to the company is therefore in the coming weeks and months act in my name and be in daily contact with me, additions to the top management may follow as planed after several stabilization pays.”

- 68.** The learned counsel for respondent has also placed strong reliance on minutes of the meeting held by the Senior employees of the Corporate Debtor on 31.10.2022. In the minutes of the said meeting, it has been recorded that Mr. Rembert Biemond remotely operates business of the CD and is actively involved in all major business activities.
- 69.** In the said email, it has been further stated that whole management and control of the operations of the company has now been vested with Mr. Hartaj Seva Singh in terms of strict restrictions issued by Rembert vide E-Mail dated 11.09.2022 and letter dated 03.09.2022. Mr.Hartaj Seva Singh would act on behalf of Mr. Raembert Biemond to give personal touch to the operations and management of the CD
- 70.** Countering these documents Learned Senior Counsel for the Applicant submitted that is only after commencement of insolvency that Rembert Biemond, in order to salvage the company and maximise its value has stepped in that too remotely to guide the senior employees of the Corporate Debtor and therefore it cannot be

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said that senior employees of the Corporate Debtor were accustomed to act based on the advice, directions or instructions prior to initiation of CIRP.

71. It is his submission that in any event it is not the case of the respondent that senior employees of the Corporate Debtor are accustomed to the advice, directions, instructions of ODAT .
72. We are of the view that whether Mr. Rembert Biemond was controlling the management and operations of the CD prior to commencement of Insolvency or post commencement of insolvency is relevant as long as he is not a director controlling ODAT in Managing or Executive Director capacity or holding shares in ODAT in excess of 2% of its shareholding
73. Admittedly ODAT is a private company and Mr. Rembert Biemond who is a Director of Corporate Debtor as well as ODAT and holds beneficial ownership and control 100% shareholding of Rembert Biemond AB which holds 20% shareholding in ODAT.
74. As per Section 5(24) (d) of I&B Code 2016, Mr. Rembert Biemond who is director of CD does not directly own any share in ODAT but owns 20% through his 100% held entity called Rembert Biemond AB.
75. Since Mr. Rembert Biemond does not hold any share in ODAT we will have to see whether his holding 20% through the entity Rembert Biemond AB would come within the purview of “relative” as mentioned in said sub-clause (d) of Section 5(24) read with explanation to Section 5(24A) of the Code, which deals with the word “relative”.
76. Though explanation to Section 5(24A) of the Code which deals with the definition of “relative” mentioned in that section, and not under Section 5(24), in the absence of definition of “relative” in any other Sections, we are inclined to go with this explanation (definition) on the word “relative” in Section 5(24A).
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

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controlled 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.
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.
81. It is also clear that the term “person” mentioned in sub-clause (h), (m) will also include a company outside India. This is because the word person is defined in Section 3(23) of I&B Code to include person resident outside India. The word person is defined to include a company and consequently a company outside India would also be treated as a “person”.
82. From his own admission in his letter dated 03.09.2022 addressed to all the staff of Corporate Debtor, he was in thick of things from 2020 actively participating in operations and management of the company and more so as a sole authority from the commencement of insolvency from 2022.

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83. It has been brought out on record based on ODAT's commercial register showing Mr. Rembert to be the managing director of ODAT and authorized to act as a sole representative of ODAT.
84. Therefore, it can be said that the Corporate Debtor acts on the advice, direction or instruction of the same person who is in the capacity of Managing Director/ Director of ODAT.
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.
87. We rely upon the judgment passed by the Hon'ble Apex Court in ***Phoenix Arc Private Limited vs. Spade Financial Services Limited*** reported in **MANU/SC/0045/2021** that:

"94. Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing between a related party financial creditor and the corporate debtor. As such, the financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso."

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“95. Hence, 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. Mr. Kaul has argued, correctly in our opinion, that if this interpretation is not given to the first proviso of Section 21(2), then a related party financial creditor can devise a mechanism to remove its label of a 'related party' before the Corporate Debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors.”

(Emphasis Added)

- 88.** In this case, the shares in ODAT are held by Mr. Rembert Biemond AB which is 100% owned by Mr. Biemond. Though we have dealt with that in para 77 in this order, even this has to be taken into account in light of the judgment cited supra
- 89.** Keeping the legal analysis and discussion aside for a moment and see why Mr. Rembert Biemond was appointed as acting chairman and managing director of the Corporate Debtor after commencement of CIRP and as Director and Key Managerial Person from 2020 (prior to commencement of CIRP), things will be even more clear.
- 90.** Mr. Rembert Biemond is the Managing Director of ODAT GMBH, Germany which is engaged in the business of consulting in agriculture, food industry at home and abroad through coaching, organizational development, interim management and financial solutions. This is as per “North Data” a European Company Search Engine.
- 91.** From the documents placed on record we find that from 2014-18, ODAT has advanced substantial financial assistance in excess of 50% of the total borrowings of the Corporate Debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

ODAT-GmbH

I.A. (IB) No. 1649/KB/2023 In C.P. (IB) No. 1382/KB/2020

92. By appointing Mr. Rembert Biemond in the board of Corporate Debtor, it is obvious that the same is for providing technical guidance which is the business of ODAT apart from taking part in management of the affairs of the CD from 2020. While he started playing active role from 2020, he became the acting Chairman and MD of the CD after the commencement of the CD while he is the Managing Director / Executive Director of the ODAT GmbH.
93. If ODAT has to protect their asset (financial assistance to Corporate Debtor) in the Corporate Debtor, they have to take control of the management and operations of the CD in the facts and circumstances of the case and that has what has happened.
94. Therefore, Mr. Rembert Biemond's involvement with Corporate Debtor has been examined under Section 5(24)(h) and 5(24)(m) of the Code and we find that ODAT is covered under both the above sections as related party.
95. In view of the above discussions and findings, the application filed by the Applicant being **I.A. (IB) No. 1649/KB/2023** is not maintainable and accordingly **dismissed**.
96. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

D Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 11th Day of December, 2023.

Bose, R. K. [LRA]