

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT – IV**

**ITEM No. 1**

**IA/3927/ND/2022 in IB/2503/ND/2019**

**IN THE MATTER OF:**

Ambrane India Pvt Ltd

...

Applicant

Versus

MKMG Jewel Developers Pvt Ltd

Respondent

**Order under Section 7 of IBC, 2016.**

**Order pronounced on 05.07.2023**

**Coram:**

**MR. P.S.N. PRASAD,  
HON'BLE MEMBER (JUDICIAL)  
DR. BINOD KUMAR SINHA,  
HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

**IA/3927/ND/2022 in IB/2503/ND/2019 stands dismissed.**

**Sd/-**

**DR. BINOD KUMAR SINHA  
MEMBER (TECHNICAL)**

**Sd/-**

**P.S.N. PRASAD  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT – IV**

**I.A. NO. 3927/ND/2022  
IN  
C.P. NO. (IB)/2503/ND/2019**

**IN THE MATTER OF:**

**AMBRANE INDIA PVT. LTD.**

**...FINANCIAL CREDITOR**

**VERSUS**

**MKMG JEWEL DEVELOPERS PRIVATE LIMITED**

**.... CORPORATE DEBTOR**

**IN THE MATTER OF:**

**BLISS EQUITY PRIVATE LIMITED**

**...APPLICANT**

**VERSUS**

**MR. DURGA DAS AGRAWAL  
INTERIM RESOLUTION PROFESSIONAL  
FOR MKMG JEWEL DEVELOPERS PRIVATE LIMITED**

**...RESPONDENT**

**CORAM:**

**SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 05.07.2023**

**ORDER**

**PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

1. The instant interlocutory application is filed on behalf of M/s. Bliss Equity Private Limited ('Applicant') who is the Financial Creditor of M/s. MKMG Jewel Developers Limited ('Corporate Debtor') under Section 60(5) of the Code, 2016 against Mr. Durga Das Agrawal, Interim Resolution Professional of M/s.

MKMG Jewel Developers Private Limited ('Respondent') seeking the following relief(s):-

- a) To pass an order granting ex-parte ad-interim stay of the impugned email dated 06.04.2022 of the Respondent whereby the Applicant i.e., M/s. Bliss Equity Private Limited has been declared as a Related Party of Corporate Debtor till the adjudication of the instant application;
- b) Pass any other order as this Hon'ble Tribunal may deem fit and proper.

2. Briefly stated the facts of the present case as averred by the applicant are that the Corporate Insolvency Resolution Process against M/s. MKMG Jewel Developers Private Limited ('Corporate Debtor') was initiated vide this Adjudicating Authority's order dated 12.01.2022 in C.P.(IB)/2503/2019 on an application filed under Section 7 of the Code, 2016 by M/s. Ambrane India Private Limited and Mr. Durga Das Agarwal ('Respondent') was appointed as Interim Resolution Professional and later confirmed as Resolution Professional.
3. The Applicant stated that the applicant being Financial Creditor of the Corporate Debtor had filed Claim Form in Form-C amounting to Rs.19,21,85,588/- (Principal Rs.11,76,00,000 plus interest Rs.7,45,85,588) with the Respondent in the CIRP of M/s. MKMG Jewel Developers Private Limited (Corporate Debtor) along with a declaration that the Applicant is not a related party of the Corporate Debtor as per section 5(24) of the I & B Code, 2016.
4. Furthermore, it was stated that the Respondent vide email dated 06.04.2022 had duly admitted the entire Claim amount, however, the Respondent had arbitrarily made a baseless opinion that the Applicant appears to be a related party to the Corporate Debtor on the grounds that (i) Mr. Neeraj Garg, Director of Bliss Equity Private Limited is a related party to the Corporate Debtor; (ii) Witnesses to the loan agreement is common for all the agreements; and (iii) All the agreements are on the same pattern.

5. The Applicant stated that Respondent IRP relied that the Applicant falls under Section 5(24) (d) on vague assumptions that email ids, witnesses, and document patterns are identical. These criteria do not qualify any financial creditor as a related party under section 5 (24) of the I & B Code, 2016, as such criteria for determining a Related Party are not mentioned in any law or in the provisions of the I & B Code, 2016. The Respondent had self-created such criteria for excluding the Applicant from the Committee of Creditors. Accordingly, in view of the above submissions, the Applicant is not a “Related Party” of the Corporate Debtor and deserves to be a member of the CoC of the Corporate Debtor.
6. Per Contra, in the reply filed by the Resolution Professional of the Corporate Debtor (‘Respondent’), it was submitted that before the initiation of CIRP against the Corporate Debtor, the Corporate Debtor was owned and operated by the Garg family and M/s. Bliss Equity Private Limited (‘Applicant herein’) is also controlled by the same Garg family.
7. Furthermore, the Respondent submitted that the Loan Agreement on which the claim has been filed by the applicant has been executed on 14.01.2018 wherein Mr. Jai Bhagwan and Ms. Yogita Garg (‘members of Garg Family’) were directors of the Corporate Debtor. It is further submitted that Mrs. Yogita Garg was a director in the Applicant Company as well and Mrs. Yogita Garg’s relatives were holding the entire share capital of the Applicant Company at the time when the alleged loan agreement was signed between the parties. Moreover, the Loan Agreement dated 14.01.2018 is neither notarised nor stamp duty has been paid on the said agreement.
8. The Respondent submitted that the applicant is a related party of the Corporate Debtor as provided in Section 5(24)(d) and 5(24(A))(i) of the Code, 2016.
9. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply, and the written submissions filed by the

parties. The relevant documents annexed with the respective submissions and the judgements relied on have been examined in detail.

10. The details of the directorships held by the Garg Family in the Corporate Debtor is as follow:-

Sr. No.	Name	Date of Resignation from Directorship
1.	Jai Bhagwan	23/01/2018
2.	Yogita Garg	23/01/2018
3.	Shivam Garg	Current Director in CD

Family chart of Garg Family Garg is as under :

- Jai Bhagwan is father of Neeraj Garg;
- Neeraj Garg is Father of ShivamGarg;
- Yogita Garg is daughter in law of Jai Bhagwan

11. The shareholding pattern of M/s. Bliss Equity Private Limited, which is held and controlled by Garg Family is reproduced below:-

Name of Share Holders	Directors of Company	Position in Corporate Debtor	Number of Shares
Neeraj Garg		Neeraj Garg is father of Shivam Garg, Director of CD. Neeraj Garg is son of Jai Bhagwan, erst while director of CD.	25,000
Ritsoft Technologies Private Limited.	Mr. Neeraj Garg	Neeraj Garg is father of Shivam Garg, Director of CD. Neeraj Garg is son of Jai Bhagwan, erst while director of CD.	10,96,755

	Yogita Garg	Yogita Garg is erst while director of CD and daughter in Law of Mr. Jai Bhagwan	
Heights Buildwell Private Limited	Neeraj Garg  Yogita Garg	Neeraj Garg is father of Shivam Garg, Director of CD. Neeraj Garg is son of Jai Bhagwan, erst while director of CD.  Yogita Garg is erst while director of CD and daughter in Law of Mr. Jai Bhagwan	11,00,000
Jai Bhagwan		Joint Bank account with Corporate Debtor ( Bank Account No. 13820200066765 , Federal Bank, as on 11/05/2022. CD has only one bank account.	25,000

12. Adverting to the factual matrix of the case, Ms. Yogita Garg being the director of the Applicant have also been the director in the Corporate Debtor which represents common control between the parties with extensive history demonstrating interrelationship between the Applicant and Corporate Debtor. The Corporate Debtor having an authorised and paid up share capital of Rs.1,00,000/- was given a loan by the Applicant of Rs.12,00,00,000/- without registering any charge as per the provision of the Companies Act, 2013 which evidently establish that the said loan transaction was influenced by the relationship between the Parties, rather than by commercial considerations. The applicant has not established his case by any cognizable evidence.

13. Section 5(24)(d) of the Code, 2016 which provides the definition of “Related Party” is reproduced hereunder:-

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

(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;”

14. On a perusal of the Signatory's details and shareholding pattern of the Corporate Debtor during the year 2018 i.e., the relevant period of execution of Loan Agreement, this Adjudicating Authority finds that Mrs. Yogita Garg was a director in the Corporate Debtor as well as the Applicant and Mrs. Yogita Garg's relatives were holding the entire shares of the Applicant. Therefore, this Adjudicating Authority is of the considered view that the Applicant was a related party of the Corporate Debtor under Section 5(24) of the Code, 2016 at the relevant point of time i.e., at the time of execution of loan agreement.
15. As regards the Applicant's argument that neither of the directors, of the Corporate Debtor is a director of the present Applicant, it is relevant to refer the Hon'ble Supreme Court in judgement, **"Phoenix Arc Private Limited v. Spade Financial Services Limited & Ors" [Civil Appeal No. 2842 of 2020; judgement dated 01.02.2021]** wherein it had observed as follows :-

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.** 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.

16. The definition under Section 5(24) and 5(24A) of Insolvency Bankruptcy Code 2016 being exhaustive in nature, however, it includes to includes to acknowledge the real nature of the transaction by lifting up the curtain and know exactly who is participating in CoC. Therefore, a set of fraudulent transactions between the financial creditors and corporate debtor needs to be discouraged keeping in view the letter and spirit of Section 21 of the Code, 2016.
17. **I.A.(IBC)/3927/2022 in C.P.(IB)/2503/2019 is devoid of merits and the same stands dismissed without costs.**

**Sd/-**

**(DR.BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-**

**(SH. P.S.N PRASAD)  
MEMBER (J)**