IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. 3699 ND 2024
IN
C.P. IB 445 (ND) OF 2023

IN THE MATTER OF:

MR. RISHI GUPTA
...Applicant No.1

MR. SANDEEP JAIN
...Applicant No.1

Versus

IDBI TRUSTEESHIP SERVICES LIMITED
...Respondent No.1

DUCTURUS RESOLUTION PROFESSIONAL PRIVATE LIMITED
...Respondent No.2

KAUTILYA FINANCE BV
...Respondent No.3

KAUTILYA REAL ESTATE FUND
...Respondent No.4

AND IN THE MATTER OF:

IDBI TRUSTEESHIP SERVICES LIMITED
...Financial Creditor

Versus

SHREE VARDHMAN BUILDPROP PRIVATE LIMITED
...Corporate Debtor

Order Pronounced on: 10.07.2026

CORAM:

SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Abhishek Anand, Ms. Sakshi Kapoor, Advocates.

For the RP : Mr. Abhirup Das Gupta, Mr. Rahul Gupta, Mr. Rahul Dadhich, Ms. Vagisha Tiwari, Mr. Rajat Juneja Advocates.

For Respondent 1, 3 & 4 : Mr. Krishnendu Dutta, Sr. Adv., Mr. Pranjit Bhattacharya,Ms. Salonee Shukla, Ms. Shalini Singh, Advocates.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicants being the ex-directors of Shree Vardhman Buildprop Private Limited ("Corporate Debtor") under Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules, 2016") seeking the following reliefs:

"(i) Delete Respondent No. 3 and Respondent No. 4 from the COC of the Corporate Debtor for being related parties to the Corporate Debtor;

(ii) Direct the Respondent No. 2 not to hold further COC meetings of the Corporate Debtor till the Hon'ble Supreme Court decide Civil Appeal No. 6288/2022 and Civil Appeal No. 6273/2022 filed against the decision of the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) Insolvency No. 356 of 2022; or

(iii) Pass such other order(s), directions(s), relief(s) as deemed fit and proper by this Hon'ble Tribunal in the fact and circumstances of the present case and in the interest of justice."

2. SUBMISSIONS OF THE APPLICANTS:

i. This Adjudicating Authority vide order dated 29.04.2024 initiated CIRP of the Corporate Debtor and appointed Respondent No. 2 as the Interim Resolution Professional ("IRP").

ii. The Corporate Debtor developed a Residential Group Housing Project in the name and style of "Shree Vardhman Mantra" ("Project") on a land parcel admeasuring approximately 11.262 acres. situated at Village Badshahpur, Sector 67, Gurugram Manesar Urban Complex, Gurugram ("Project Land").

iii. DSS Infrastructures Private Limited ("DSS"), which is a wholly owned subsidiary of the Corporate Debtor, is the full and absolute titleholder of Project Land. DSS had unconditionally and irrevocably transferred the Development Rights over the Project Land in favour of the Corporate Debtor.

iv. The Corporate Debtor approached Respondent No. 3 ("1st Debenture Holder") for financial assistance for the development of the Project. Subsequently, Respondent No. 3 agreed to disburse an amount of Rs. 35,00,00,000/- (Rupees Thirty Five Crore Only) to the Corporate Debtor for the purpose of development and completion of the Project. Accordingly, the Debenture Subscription Agreement dated 14.06.2016 ("DSA") was executed between the Respondent No. 3, Corporate Debtor, DSS Infrastructures Private Limited and the Promoters of the Corporate Debtor including the Applicants whereby the Respondent No. 3 agreed to subscribe to and the Corporate Debtor agreed to issue and allot 35 (Thirty Five) number of to be listed, rated, senior, fully secured, redeemable, transferable, interest-bearing non-convertible debentures of face value of INR 1,00,00,000/- (Rupees One Crore only) each, aggregating upto Rs. 35,00,00,000 /- (Rupees Thirty Five Crore Only) to the Debenture Holder.

v. The Respondent No. 1 was appointed as Security Trustee vide Debenture Trust Deed 14.06.2016 ("First DTD") for the debentures issued to Respondent No. 3 in terms of the DSA for financing the Project.

vi. Under the First DTD, Respondent No. 1 was the sole signatory to the Utilization Escrow Account and Project Revenue Escrow Account. All the cash flow of the Project was received in the Project Revenue Escrow Account to which Respondent No. 1 was the sole signatory and the Corporate Debtor or the Applicants were not even entitled to give any instructions to the Project Revenue Escrow Agent.

vii. Clause 9 of the First DTD makes it clear that Corporate Debtor or Applicants had no control over the cashflow of the Project and the entire control vested with the Respondent No. 1 at the behest of Respondent No. 3. Thus, Respondent No. 1 and Respondent No. 3 were having complete "control" over the cash flow of the Project.

viii. Schedule 19 of the First DTD also provides that Respondent No. l, Respondent No. 3 or their Designated Representatives shall have unfettered access to carry out sales, technical, legal, or financial inspection of, and visit and inspect during normal business hours, the Project Land and the Project (inducing fortnightly site for review of the progress of the Project and access to all work areas, stores, reports, records, documents, drawings and other construction related details as required by the Designated Representatives), the registered office and operating office the Corporate Debtor and DSS, and the Promoters.

ix. Due to change in policy on affordable housing scheme by Government of Haryana under Deen Dayal Jan Awas Yojna, the Corporate Debtor was entitled to amend the sanctioned plans and an additional tower could be constructed in place of the existing planned EWS tower.

x. As a result, the Corporate Debtor was in need of additional funds to get the approvals and also to complete the construction and development. The Corporate Debtor, Applicants and Respondent No. 1 agreed to revise the terms of the First DTD and therefore, the parties entered into and executed Debenture Trust Deed dated 02.02.2021 ("Second DTD") whereunder the Corporate Debtor issued and allotted 135 number of senior, unlisted, fully secured, redeemable, transferable, interest bearing, non-convertible Series B Debentures of face value of Rs 10,00,000/- each, aggregating upto 13,50,00,000/- to Respondent No. 4 ("2nd Debenture Holder").

xi. Even under the Second DTD, Respondent No. 1 was the sole signatory to the Utilization Escrow Account and Project Revenue Escrow Account. Respondent

No. 3 and Respondent No. 4 were not only lenders of the Corporate Debtor but were in fact, acted as co-promoters having "controlling power" over the affairs of the Project and were involved in all the decisions of the Project including but not limited to cash flow, sales etc.

xii. The Corporate Debtor was obliged to obtain 'Approved Instructions' from Respondent No. 1 related to 'Reserved Matters' as provided in Schedule 20 of the First DTD and Second DTD. Admittedly, Corporate Debtor even had to alter its Articles of Association to include 'Reserved Matters' as provided under the First DTD and Second DTD.

xiii. The role of Respondent No. 3 and 4 was not of lenders, rather, they became co-promoters in the Project as without the permission of Respondent No. 3 and Respondent No. 4, no action with respect to the Project could be undertaken by Corporate Debtor. Materially, Respondent No. 3 and Respondent No. 4 exercised complete control over decisions related to the board of Corporate Debtor, its lending/borrowing powers, shareholding, business activities and so forth.

xiv. Further, fixation of the sale price of the units, interactions with the customers, issuance of application forms, collection of payments from the customers and so forth were being carried out by the representatives of Respondent No. 3 and Respondent No. 4 rather than the Corporate Debtor. This is evident from the fact that a WhatsApp group was created by the representatives of Respondent No. 3 and Respondent No. 4 namely Mr. Rahul & Mr. Akash where sales made in relation to Shopping Mart at the Project were duly recorded & updated. Further, various instruments/ cheques depicting payments issued by customers were duly circulated in the WhatsApp group. Notably, these instruments/ cheques along with booking/ application forms were circulated by the representatives of Respondent No. 3 and Respondent No. 4 itself after receiving the same from the customers.

xv. Thus, the participation of Respondent No. 3 and Respondent No. 4 in the COC constituted for the Corporate Debtor ought not be allowed since Respondent No. 3 and Respondent No. 4 in essence, are related parties of the Corporate Debtor as defined under Section 5(24) of Code.

xvi. Also, Respondent No. 3 and Respondent No. 4 had control not only over the Escrow accounts in relation to the Project but also over the Project account opened with Haryana Real Estate Regulatory Authority and also, on the payments made by the customers. As such, Respondent No. 3 and Respondent No. 4 being related parties of the Corporate Debtor cannot become part of the COC of the Corporate Debtor as the same is against the settled provision of law. Reliance is placed on ArcelorMittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors., (2019) 2 SCC 1, 'IDBI Trusteeship Services Limited v. Mr. Abhinav Mukherji & Ors, Company Appeal (AT) Insolvency No. 356 of 2022 (pending before the Hon'ble Supreme Court).

xvii. The Applicants vide Letter dated 29.06.2024 duly informed Respondent No. 2 about Respondent No. 3 and Respondent No. 4 being related parties to the Corporate Debtor and therefore, ought to be deleted from the meetings of the COC, however, Respondent No. 2 failed to take any step in this regard.

3. SUBMISSIONS OF THE RESPONDENT No. 1, 3 & 4:

i. The Respondents submitted that the promoters/suspended directors have no locus to challenge the related party status of the Respondents. In terms of the Order dated 29.04.2024 whereby CIRP was initiated against the Corporate Debtor and an IRP was appointed by this Adjudicating Authority. From the said date, the powers of the Applicants herein in relation to the Corporate Debtor stood suspended.

ii. The Applicants, being merely participants in a CoC, herein have no locus to interfere with a CIRP, specifically by making a challenge to the composition or distribution of voting rights of members of the CoC. Reliance has been placed on ***Ravi Shankar Vedam v. Tiffins Barytes Asbestos & Paints Ltd.***

& Ors., Civil Appeal No.5516 of 2023, Gurdeep Singh Sahani v. Burger Paints India Ltd., 2017 SCC Online NCLAT 437 Ramesh Kesavan v. CA Jasin Jose & Anr., Civil Appeal No. 4419 of 2024, Vijay Kumar Jain v. Standard Chartered Bank, (2019) 20 SCC 455.

iii. The present challenge is barred by Res Judicata. The allegation that the Financial Creditors are related parties was raised by the Corporate Debtor at the stage of admission, in the following manner:

   a. In the reply dated 19.09.2023 to C.P. (I.B.) No.445 of 2023.
   b. The application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the Corporate Debtor.
   c. The same issue was also raised by the Corporate Debtor during the course of arguments at the stage of admission.

iv. The argument alleging that the Financial Creditors are "related parties" of the Corporate Debtor stands impliedly rejected vide the Admission Order dated 29.04.2024.

v. The Applicant No.2 also challenged the Admission Order dated 29.04.2024 before the Hon'ble NCLAT, New Delhi in Sandeep Jain v. IDBI Trusteeship Services Ltd., C.A.(A.T)(Ins.) No. 1026 of 2024 wherein the NCLAT expressly rejected the entire basis of the argument that the Debenture Trustee i.e., Respondent No.1 being the signatory to the Project Revenue Escrow Account amounts to "control" in any manner.

vi. The RP had conducted 24 meetings of the CoC. The Applicant No.1 did not attend any CoC meetings of SVBPL and the Applicant No.2 only attended 4 CoC meetings. However, the issue of "related parties" was not raised even once before the CoC of the Corporate Debtor. The allegation of "related parties" is not only belated but entirely malafide with the deliberate attempt to derail the CIRP of the Corporate Debtor

vii. Certain individual homebuyers had also filed an application being I.A. No.4139 of 2024 in C.P.(I.B.) No.446 of 2023 raising identical contentions before this Adjudicating Authority which was dismissed as withdrawn by the homebuyers vide Order dated 25.08.2025.

viii. The term "related party" is exhaustively defined under Section 5(24) of the IBC. Reliance is placed on Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd., (2021) 3 SCC 475 . The Application does not contain a singular pleading on which provision of Section 5(24) of the IBC is satisfied by the Financial Creditors, such that they qualify as a "related party" of the Corporate Debtor.

ix. Regarding Debenture Trustee being the signatory to Project Revenue Escrow Account, it is submitted that Clause 9.4 of the First DTD dated 14.06.2016 expressly states that the construction of the Project shall be done from the monies contained in an account named Project Operating Account. The Corporate Debtor and therefore, the suspended management are admittedly the sole signatories to the Project Operating Account. By way of deliberate suppression, the Applicants herein have made a false equivalence between the Project Revenue Escrow Account and the Project Operating Account.

x. In terms of Clause 9.3 of the First DTD dated 14.06.2016, balance subscription account is to be transferred to the Project Revenue Escrow Account. Clause 9.3(2)(a) of the First DTD dated 14.06.2016, expressly provides that the entire subscription amount deposited in the Project Revenue Escrow Account has to be transferred to the Project Operating Account in terms of Schedule 15 of the First DTD dated 14.06.2016.

xi. The Applicants have willfully suppressed the fact that the Corporate Debtor along with the suspended management are the sole signatories to the Project Operating Account which is the only account to be utilized for all Project related expenses. Therefore, it is the Corporate Debtor along with the suspended management who have always been in "control" of all the Project related expenses.

xii. The Applicant's entire case on the Debenture Trustee i.e. Responded No. 1 being the sole signatory to the Utilization Escrow Account is based on deliberate suppression and wilful misrepresentations of the transaction documents between the parties.

xiii. In view of Clause 2 of the Debenture Subscription Agreement dated 14.06.2016, the sole purpose of the Utilization Escrow Account was for receiving the subscription amount (i.e., the amount disbursed by the Respondent Nos.3 and 4). This was intended to ensure that the amount in the Utilization Escrow Account was strictly utilized for the purpose of construction and developed of the proj~ct (i.e., for the reason the money was borrowed in the first place).

xiv. In order to further protect the amounts borrowed by the Corporate Debtor, the amounts lying in the Utilization Escrow Account were hypothecated in the favour of the Debenture Trustee under the Hypothecation Deed dated 18.07.2016 (hereinafter referred to as "Hypothecation Deed").

xv. The Respondents submitted Clause 1.1, 4.2 and 9.2 of the First DTD dated 14.06.2016 , were included to ensure that the subscription amounts are not mis-utilized or misappropriated by the promoters and actually served the intended purpose (i.e., the construction and development of the project). There are merely protective provisions to prevent misutilization of the funds provided by the Respondent Nos.3 and 4 and does not amount to exercising "control" by the Respondents, in any manner, whatsoever. Therefore, the issue of being a "related party" under Section 5(24) of the Code does not arise at all.

xvi. The Applicants have failed to show a single provision which grants any kind of rights on the Respondents to manage or control the entire affairs of the Company.

xvii. The Applicants have also demonstrably failed to show that any of the rights granted to the Respondents amount to them having any the Board of Directors of the Company which comprised of a total number of 4 Directors. The Applicants' only case is that the Respondents were purportedly the sole signatories to certain bank accounts of the Corporate Debtor, which were also expressly directed towards protecting the subscription amount and for ensuring that they are utilized for the construction and development of the Project. The Applicants have placed on record certain incomprehensible WhatsApp chats, Cheques etc. which purportedly indicated that the Respondent were exercising control over the Corporate Debtor. Even the cheques relied upon by the Applicants is not signed by any individual which the Applicants allege is a Respondent representative. The WhatsApp chats are equally frivolous and do not in any manner indicate any control being exercised by the Respondents.

xviii. The Applicants' entire case is based on an argument that has been expressly rejected in a matter with identical facts and identical transaction documents, inasmuch as, a financial creditor or its trustee being the sole signatory of bank accounts such as the Project Revenue Escrow Account and the Utilisation Escrow Account amounting to "control" over a corporate debtor was rejected in its entirety by the Hon'ble NCLAT in Sandeep Jain v. IDBI Trusteeship Services Ltd., 2025 SCC OnLine NCLAT 286 which has been upheld by the Hon'ble Supreme Court of India vide Order dated 21.02.2025 in Sandeep Jain v. IDBI Trusteeship Services Limited, Civil Appeal No. 2640 of 2025. Therefore it is settled that a party, merely by being the sole signatory to an account or a committee that is in charge of receiving the monies paid by unit-holders of a real estate project, does not equate to such signatory having any form of "control" over a Corporate Debtor's affairs.

xix. The Applicants' reliance on the judgment of the Hon'ble NCLAT in IDBI Trusteeship Services Ltd. v. Abhinav Mukherji, 2022 SCC Online NCLAT 267 is patently flawed. The said case expressly grants locus for a challenge to composition of the CoC only in favour of minority homebuyers, i.e., only those creditors who are part of the CoC and affected by it. Also in Abhinav Mukherjee the AoA were specifically amended through the operation of the Debenture Trust Deed to incorporate negative rights in favour of the debenture trustee but the AoA of SVBPL do not grant any negative rights to the Respondents. The Applicant's pleaded case is that through the stratagem of certain bank accounts, the Respondents' exercised certain negative rights which amount to control of the Corporate Debtor but There is not a singular provision in the AoA of SVBPL which grants any such rights qua the Corporate Debtor in favor of the Respondents. Further, the Hon'ble NCLAT in Abhinav Mukherji (supra) completely fails to examine that in Phoenix ARC (supra), the Hon'ble Supreme Court had expressly rejected the application of "control" as defined in any in any other legislation, in the context of IBC.

4. SUBMISSIONS OF THE RESPONDENT NO. 2:

i. The Respondent No. 2 has also raised similar issues as those raised by the Respondent No. 1, 3 & 4. The submissions made by Respondent No. 2 in brief are stated herein below.

ii. The Applicants being the Directors (Powers Suspended) of the Corporate Debtor, are not part of the COC. Thus, they have no locus standi to object to the inclusion of Respondent No.3 and 4 into the COC.

iii. The question whether or not Respondent No.3 and 4 are related parties to the Corporate Debtor stand substantively answered by earlier decisions by this Adjudicating Authority which have been affirmed by the Hon'ble Supreme Court of India.

iv. In any case, Respondent No. 3 and 4 were at best only a part of the Project Management Committee (PMC) which was overseeing the execution of the housing project being of the Corporate Debtor and at no point supplanted the board of the directors of the Corporate Debtor. This is evident from the fact that the Corporate Debtor continued to take unilateral decisions even after the formation of the PMC.

v. The RP duly verified the claim forms along with the supplementary documents and has also received non-related party declarations along with their claim forms by the Respondent Nos. 3 and 4 and thereby satisfied itself in terms of the Financial Creditors herein not being related parties to the Corporate Debtor. Further, the RP had no reason to doubt the status of Respondent Nos. 3 and 4 as unrelated Financial Creditors of the Corporate Debtor and has admitted them into the CoC after due verification, in exercise of jurisdiction vested onto it by the Code.

vi. The Applicants have relied upon WhatsApp Chats to substantiate their contents which is prima facie inadmissible in terms of Section 63 (4) of The Bharatiya Sakshya Adhiriiyam, 2023 as no certification of affidavit has been provided by the Applicants.

vii. The Respondent No. 3 and Respondent No. 4 have strategically incorporated protective covenants within the Debt Instruments with the intention to safeguard their investment which is standard in any such relationship in order to prevent misuse of funds, etc. the relationship between the Corporate Debtor and Respondent No. 3 and Respondent No. 4 was governed by the Debenture Trust Deeds and the Debenture Subscription Deeds, in terms of which the control over the affairs of the Corporate Debtor was vested entirely with the management and the directors of the Corporate Debtor whereas, the Respondent No. 3 and Respondent No. 4 were solely the subscriber of the debt instruments.

viii. There had already been a clear and categorical default in the payment of both interest and principal amounts well before the execution of the Restated Debenture Trust Deed dated 02.02.2021 (hereinafter referred to as "Restated DTD"). The Corporate Debtor (CD) had persistently failed to honor its repayment obligations under the original terms of issuance, thereby triggering events of default which further lead to execution of Restated DTDs to restructure the debt obligations. The existence of such defaults establishes beyond doubt the financial stress and inability of the CD to service its debt obligations, which continues to persist.

ix. It a well-established industry practice that whenever a debt is restructured or restated, the lender, (Respondent no. 3 and Respondent no. 4 herein) seeks to exercise financial oversight through control mechanisms such as the establishment of a Trust and Retention Account (TRA). This is a prudent and standard measure designed to protect the lender's exposure and ensure that cash flows are monitored effectively. In the present case, though an Escrow Account was already in existence, its purpose was limited and distinct i.e., it was specifically intended for the incurrence of construction related expenses strictly in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA). Consequently, the Escrow Account did not serve the broader purpose of controlling the inflow _and outflow of funds related to debt servicing, which necessitated the creation of a TRA as stipulated under the Restated DTDs.

x. Under the Debenture Trust Deed executed in 2021, certain Reserve Matters were specifically 12 incorporated, thereby conferring upon Respondent no. 3 and Respondent no. 4 an oversight role unlike to that of a partner or related party in respect of the project.

xi. Proceedings under Section 138 of the Negotiable Instruments Act, 1881 have been initiated against the Corporate Debtor in the year 2023, clearly evidencing the existence of defaults and dishonour of payment instruments issued towards discharge of debt obligations.

xii. Under the terms of the Settlement Deed executed in 2021, the clauses governing payment of interest and principal in respect of the Non Convertible Debentures (NCDs) were expressly stated to be independent of the terms and conditions of the Project Management Committee (PMC). This clear contractual demarcation signifies that the obligations of the Corporate Debtor to pay interest and principal amounts to the debenture holders subsist irrespective of any issues or contingencies arising under the PMC arrangement. Further, the arrangement of PMC got necessitated owing to default in debt obligations by the Corporate debtor. Therefore, any attempt by the CD to conflate or subordinate its payment obligations to the PMC terms is untenable in law and contrary to the express provisions of the Settlement Deed.

xiii. Mere representation on the PMC would not in any manner mean that the financial creditors have substantive control over the entirety of the affairs of the Corporate Debtor. The PMC was constituted only for the limited reason of bringing transparency to the execution of the housing project funded by Respondent No.3 and 4, the PMC did not in any manner supplant the board of directors of the Corporate Debtor.

5. <u>FURTHER SUBMISSIONS OF THE APPLICANTS</u>:

i. The Applicants have submitted that they have the locus to challenge the 'related-party' status of the Respondents. Section 21(2) of the IBC expressly disqualifies a financial creditor who is a related party of the corporate debtor from being represented, participating or voting in any meeting of the CoC. However, the Code does not restrict any stakeholder, including ex-directors, from raising objections concerning the illegal constitution of the CoC.

ii. The illegality in the constitution of Committee of Creditors can be raised by any stake holder since it is in derogation of a statutory bar provided by the statute itself and such illegal constitution of CoC vitiates the CIRP itself. It is incorrect on part of the Financial Creditor and Debenture Holders to contend that issue is one of voting rights only. This argument is incorrect and misplaced in as much as issue of voting rights presupposes a valid constitution of COC with some discrepancy in percentage of voting rights. In the present case it is inclusion of Debenture Holders which is in contravention of proviso to section 21(2) which has resulted in Debenture Holders claiming a super majority of more than 95% of voting rights.

iii. A statutory bar such as the one contained under Section 21 (2) of the IBC, which disqualifies a related party financial creditor from participating in the

COC, is a legal issue. The constitution of the CoC is the foundation to the corporate insolvency resolution process and any illegality in its constitution goes to the very root of the proceedings. The ex-directors, being privy to the affairs of the Corporate Debtor and having knowledge of the relationships between the parties, are in a position to point out violations of statutory provisions regarding related parties.

iv. The argument of Respondents that the issue of Related Party was raised by Applicants at the stage of hearing in CP (IB) No. 445 of 2023 or in a Section 8 Application under the Arbitration and Conciliation Act, 1996 is misconceived.

v. The Applicants never raised such an objection at that stage, and neither is it permissible in law to challenge the inclusion of a party in CoC, being a Related Party, prior to admission of Corporate Debtor into CIRP. As far as the Section 8 Application is concerned, it is submitted that the Applicants had filed IA No. 5023 of 2023 under Section 8(1) read with Section 5 of the Arbitration and Conciliation Act, 1996, seeking reference of disputes to arbitration as per the arbitration clause in the Debenture Trust Deed. Consequently, at the stage of the Section 8 Application as well, the Applicants could not have raised the issue of the constitution of the CoC.

vi. Further, the Respondents have argued that similar grounds have already been taken in the appeal before the (NCLAT) in Comp. App. (AT) (Ins) No. 1026 of 2024. against Admission Order dated 29.04.2024. The appeal before the Hon'ble Appellate Tribunal was against the Admission Order, and no challenge to the constitution of CoC was raised therein. As such, the issue of related party disqualification under Section 21(2) of the Code was never raised or decided either by this Adjudicating Authority or in appeal by the Hon'ble Appellate Tribunal. The application before this Adjudicating Authority seeks determination of the legality of the CoC's composition, a matter which only arises post admission and which could not have been challenged before the Hon'ble NCLAT at the stage of challenging the admission order.

vii. The Applicants' right to raise legal objections is a part of their right to participate in proceedings before this Hon'ble Tribunal, particularly when the objection relates to a jurisdictional or statutory bar under the IBC. The Hon'ble Supreme Court in multiple decisions, has upheld the principle that illegality in the constitution of statutory bodies like the CoC can be raised at any stage and must be addressed to preserve the sanctity of the insolvency resolution process.

viii. Further, the Applicant No.2 vide Letter dated 29.06.2024 duly informed Respondent No. 2 about Respondent No. 3 and Respondent No. 4 being related parties to the Corporate Debtor and therefore, ought to be deleted from the meetings of the COC, however, Respondent No. 2 failed to take any step in this regard. The objections to the constitution of CoC can be raised prior to approval of Resolution Plan by this Adjudicating Authority. Moreover, the present Application was filed long before the approval of Resolution Plan by the CoC during its 20^{th} meeting dated 20.03.2025. Therefore, the submission of Respondents that the present Application is filed at a belated stage, is entirely misconceived, erroneous and therefore, liable to be rejected.

ix. The Respondents, in their Reply, have incorrectly placed reliance upon Clause 9.3(2)(a) of the DTD to suggest that the entire subscription amount deposited in the Project Revenue Escrow Account was to be transferred to the Project Escrow Account in terms of Schedule 15 of the First DTD dated 14.06.2016 while ignoring the fact that the ultimate control over transfer of funds to Project Operating Account vested with Respondents themselves. In this regard, reliance may be placed upon Clause 9.3(iii)(a) which granted Respondents with the authority to "control" transfer of funds to Project Operating Account.

x. As opposed to the Applicant, it is the Respondents who have wilfully suppressed the true nature and purport of the First DTD. As such, the

Respondent Nos. 3 and 4 have always been in "control" towards disbursal of funds from Project Revenue Escrow Account to Project Operating Account.

xi. The second proviso to Section 21(2) of the IBC cannot be relied to contend that even if Respondent Nos. 3 and 4 are Related Parties of the Corporate Debtor, they are nevertheless entitled to participate in the Committee of Creditors. The legislative protection is available only in cases where a Financial Creditor becomes a Related Party “solely” on account of conversion/substitution of debt into equity shares or instruments convertible into equity shares. In the present case, Respondent Nos. 3 and 4 are not being treated as Related Parties on account of any debt to-equity conversion. In fact, the Applicants’ case is founded entirely on the pervasive control rights, affirmative voting rights, reserved matter rights, escrow control mechanisms and direct participation in the management and policy decisions of the Corporate Debtor and the Project.

xii. The Applicants have relied on the following judgements:

a. Vijay Kumar Jain v. Standard Chartered Bank(2019) 20 SCC 455.

b. Mr. Ramesh Kesavan vs. CA Jasin Jose & Ors., Company Appeal (AT) (CH) (INS.) No. 422 / 2023.

c. Sai Peace and Prosperity Apartment Buyers Association vs. ASK Investment Managers Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 252 of 2020).

d. Phoenix ARC (P) Ltd. versus Spade Financial Services Ltd. (2021) 3 SCC 475.

e. Revolution Infocom (P) Ltd. v. Sandwoods Infratech Projects (P) Ltd., 2022 SCC OnLine NCLAT 4572.

f. Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta and Ors. – (2019) 2 SCC 1.

g. Institution of Mechanical Engineers (India) through its chairman v. State of Punjab & Ors. (2019) 16 Supreme Court Cases 95.

h. Federal Bank Limited vs. M/s Feedback Infra Private Limited in CP(IB) No. 545/ND/2023 (NCLT, New Delhi)

i. V.S. Suresh vs. ASK Investment Managers Ltd.

j. Subhkam Ventures (I) Private Limited v. Securities and Exchange Board of India, 2010 SCC OnLine SAT 35.

k. IDBI Trusteeship Services Ltd. v. Abhinav Mukherji, 2022 SCC OnLine NCLAT 267.

l. Telangana State Trade Promotion Corporation v. A.P. Gems & Jewellery Park Private Limited & Anr, Company Appeal (AT)(CH) (Ins.) No.54 of 2021.

6. ANALYSIS AND FINDINGS:

i. We have heard the submissions advanced by the Learned Counsel appearing for the parties and have carefully perused the record.

ii. The present Application has been preferred by the Applicants, who are the suspended directors/ex-directors of the Corporate Debtor seeking deletion of Respondent Nos.3 and 4 from the Committee of Creditors on the ground that they allegedly constitute "related parties" of the Corporate Debtor within the meaning of Section 5(24) of the Code.

iii. The Applicants contend that Respondent Nos. 3 and 4, though styled as financial creditors, had in substance assumed the role of co-promoters of the Project. The Debenture Trust Deeds vested them with extensive affirmative rights, control over escrow mechanisms, reserved matter approvals, supervision of project implementation, authority over project cash flows and active involvement in commercial decisions relating to sales and construction. According to the Applicants, these contractual rights collectively amount to "control" over the affairs of the Corporate Debtor, thereby attracting the definition of "related party" under Section 5(24) of the Code and disentitling

Respondent Nos.3 and 4 from participation in the Committee of Creditors under Section 21(2).

iv. The Respondents have opposed the Application by contending that the Applicants, after commencement of CIRP, possess no enforceable right to challenge the composition of the Committee of Creditors; that substantially similar issues had already been urged during the admission proceedings as well as before the Hon'ble NCLAT; that the contractual stipulations relied upon by the Applicants are standard lender protection mechanisms ordinarily incorporated in structured finance transactions and cannot be equated with management or policy control over the Corporate Debtor; and that the Resolution Professional, after due verification of the claims and declarations, rightly constituted the Committee of Creditors.

v. In the present case, the Applicants are not seeking to interfere with the commercial wisdom of the Committee of Creditors or with any commercial decision taken by it. Their grievance pertains to the very constitution of the Committee of Creditors on the ground that Respondent Nos. 3 and 4 are allegedly disqualified from participating by virtue of the statutory embargo contained in Section 21(2) of the Code. It is well settled that although the powers of the Board of Directors stand suspended upon commencement of CIRP, the suspended directors do not cease to be participants in the insolvency process. The constitution of the Committee of Creditors is the very foundation of the CIRP, and any allegation that its composition is contrary to the provisions of the Code cannot be rejected solely on the ground that it has been raised by suspended directors. Accordingly, we proceed to examine the rival contentions on merits.

vi. The Respondents have further submitted that the issue regarding the alleged control exercised by Respondent Nos.3 and 4 had already been raised during the hearing of the Section 7 Petition as well as before the Hon'ble NCLAT in appeal against the admission order and therefore the present Application deserves to be rejected being barred by the principle of *res judicata.* The challenge in the present proceedings concerns the legality of the constitution of the Committee of Creditors, which arises only after commencement of CIRP. Such an issue could not have been finally adjudicated before constitution of the Committee itself. Therefore, we are of the considered view that the present Application is not barred by *res judicata.*

vii. The core issue before this Adjudicating Authority is whether Respondent Nos.3 and 4 are related parties within the meaning of Section 5(24) of the Code.

viii. Section 21(2) of the Code excludes a financial creditor who is a related party of the Corporate Debtor from representation, participation or voting in meetings of the Committee of Creditors. The legislative object behind such exclusion is to ensure that the commercial wisdom of the Committee remains uninfluenced by persons whose relationship with the Corporate Debtor is likely to compromise the independence of the insolvency resolution process. The relevant provision of Section 21(2) of the Code is reproduced hereunder:

> "***Section 21: Committee of creditors.***
>
> *(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:*
>
> *Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor,) shall not have any right of representation, participation or voting in a meeting of the committee of creditors:*
>
> *Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or*

completion of such transactions as may be prescribed], prior to the insolvency commencement date."

ix. Equally, the expression "related party" is exhaustively defined under Section 5(24) of the Code. The burden lies upon the Applicants to establish that the Respondents satisfy one or more of the statutory conditions enumerated therein. Mere commercial proximity or contractual oversight is insufficient to attract the statutory disqualification. The relevant provision of Section 5(24) of the Code is reproduced hereunder:

*"(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;

(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;"*

x. The entire case of the Applicants proceeds on the footing that the contractual rights available to Respondent Nos.3 and 4 under the Debenture Trust Deeds amount to "control" over the affairs of the Corporate Debtor. According to the Applicants, the escrow arrangements, reserved matter approvals, monitoring of project implementation, inspection rights and supervision over utilisation of funds collectively demonstrate that the financial creditors had effectively taken over management of the Corporate Debtor.

xi. Relevant Clause of the Debenture Subscription Agreement dated 14.06.2016 is reproduced hereinbelow:

2.3 *Purpose and Utilization*

(i) The Obligors agree that the Company shall utilize the Subscription Amount deposited in the Utilization Escrow Account only for the purpose of (i) creation of DSRA and (ii) meeting Costs for Construction as per Schedule 35 and (iii) payment of any demand for Governmental Approval Payments in accordance with this Agreement). ("Purpose").

(ii) The Subscription Amount shall be distributed from the Utilization Escrow Account only on the later of the Listing Date or the Security Completion Date, in the manner set out in Clause 5.2(iii) (*Distributions from the Utilization Escrow Account*);

(iii) The Company hereby further agrees and acknowledges that receipt of the Subscription Amount in the Utilization Escrow Account of the Company, shall be a valid receipt of the Subscription Amount by the Company for the purpose of issue and allotment of Debentures to the Subscriber on the Allotment Date.

(iv) In the event, the Company is desirous of utilizing the Subscription Amount for any purposes other than the Purpose as agreed above, then, the Company shall be required to obtain the prior written permission of the Debenture Trustee (acting on the Approved Instructions), and the term 'Purpose' shall be construed accordingly;

(v) Notwithstanding anything contained herein, the Obligors hereby agree, undertake and confirm that they shall not use any amounts out of the Subscription Amount for any illegal use, stock market transactions or speculations, personal enrichment or enrichment of any of the Promoters or the Senior Management Staff, or any private purposes in any manner whatsoever, and the Obligors shall submit to the Debenture Trustee a certificate confirming the same in accordance with sub-clause (iii)(c) of Schedule 19 (*Information Covenants*);

(vi) The Company shall, and the Promoters shall cause the Company to, provide to the Debenture Trustee, a certificate from its statutory auditors in the manner set forth in sub- clause (iii) (d) of Schedule 19 (*Information Covenants*) below, certifying in writing that the Subscription Amount has been utilized strictly for the Purpose.

xii. Relevant clauses of the Debenture Deed dated 14.06.2016 are reproduced hereinbelow:

> 1. DEFINITIONS AND CONSTRUCTION
>
> 1.1 Definitions

> **"Project Revenue Escrow Account"** shall mean a non-interest bearing current account to be opened and maintained by the Company with the Project Revenue Escrow Agent, in which the Designated Cash Flows and other amounts shall be received and distributed in accordance with this Deed and the Project Revenue Escrow Agreement;

> **"Project Operating Account"** shall mean a non-interest bearing current account to be opened and maintained by the Company with the Project Revenue Escrow Agent into which funds shall be transferred/deposited in terms of the Definitive Agreements and the Project Revenue Escrow Agreement;

> **"Utilization Escrow Account"** shall mean a non-interest bearing current account to be opened and maintained by the Company with the Utilization Escrow Agent, in which the Subscription Amount shall be received and distributed in accordance with this Deed and the Utilization Escrow Agreement;

> 9.2 *Utilization Escrow Account*
>
> (i) Signatory
>
> The Debenture Trustee (acting on the Approved Instructions) shall be the sole authorized signatory to the Utilization Escrow Account, and none of the Obligors shall be entitled to give any instructions to the Utilization Escrow Agent.
>
> (ii) Deposits in the Utilization Escrow Account
>
> Subject to the conditions of this Deed including fulfilment of Conditions Precedent in the manner contemplated in this Deed,

> the Initial Subscriber shall pay the Subscription Amount to the Company on the Allotment Date by depositing the same in the Utilization Escrow Account.

9.3 *Project Revenue Escrow Account*

(i) Signatory

The Debenture Trustee (acting on the Approved Instructions) shall be the sole authorized signatory to the Project Revenue Escrow Account, and none of the Obligors shall be entitled to give any instructions to the Project Revenue Escrow Agent.

(ii) Deposits in the Project Revenue Escrow Account

a) Within one (1) Business Day of the later of Listing Date or the Security Completion Date, the Balance Subscription Amount will be deposited into the Project Revenue Escrow Account. The Balance Subscription Amount shall be transferred from the Project Revenue Escrow Account to the Project Operating Account in terms of **Schedule 15.**

b) Further, the Obligors hereby agree, undertake and confirm that all the Designated Cash Flows shall be received in the Project Revenue Escrow Account only, including:

(I) All Project Receivables; and

(II) All payments towards Contingency Amounts.

9.4 *Project Operating Account*

(i) Signatory

The Company shall be the sole authorized signatory to the Project Operating Account, until the occurrence of an Event of Default, in which case, the Debenture Trustee shall be entitled to solely operate the Project Operating Account and issue instructions in this regard to the Project Revenue Escrow Agent, who shall also be acting as the escrow agent for the Project Operating Account.

(ii) Deposits in the Project Operating Account

The Project Operating Account shall receive the amounts which are to be used for Project Expenses in the manner contemplated in this Deed.

(iii) Distributions from the Project Operating Account

The Company shall be entitled to make distributions from the Project Operating Account towards the Project Expenses as provided in this Deed. The amounts transferred to the Project Operating Account on account of Permitted Company Payments may be used by the Company for general corporate purposes, including for payment to its Affiliates.

xiii. A careful examination of the Debenture Subscription Agreement and the Debenture Trust Deeds reveals that the rights relied upon by the Applicants substantially relate to safeguarding the utilisation of monies advanced by the financial creditors, ensuring completion of the financed project, monitoring project revenues and preventing diversion of funds. Such stipulations are commonplace in structured project finance transactions, particularly in the real estate sector where lenders routinely insist upon escrow arrangements, monitoring mechanisms, reporting obligations and approval requirements for specified financial decisions.

xiv. The existence of escrow mechanisms or restrictions upon utilisation of project revenues cannot, by themselves, establish management control over the Corporate Debtor. On the contrary, the transaction documents indicate that day-to-day execution of the project, operation of the Project Operating Account, construction activities and management of the affairs of the Corporate Debtor continued to remain with the management of the Corporate Debtor. The rights retained by the financial creditors were intended to secure repayment of their financial exposure and ensure proper deployment of the funds advanced by them.

xv. A careful examination of Clause 9 of the First Debenture Trust Deed demonstrates that the Utilization Escrow Account and the Project Revenue Escrow Account were established as security and monitoring mechanisms to ensure that the subscription amounts advanced by the debenture holders were utilised solely for the development of the Project and that project revenues were dealt with in accordance with the agreed contractual framework. The mere fact that the Security Trustee was the authorised signatory to these accounts does not, by itself, establish management or policy control over the Corporate Debtor. The Project Operating Account, through which the project expenses were done, continued to remain under the control of the Corporate Debtor, and the requirement of lender approvals for transfer or utilisation of funds constitutes a commercially negotiated safeguard intended to protect the lenders' financial exposure rather than an assumption of management.

xvi. Likewise, the Reserved Matters under Schedule 20, the inspection and monitoring rights under Schedule 19, under the Debenture Trust Deeds and the enhanced oversight mechanisms, which we have perused, are consistent with standard lender protection measures adopted in structured real estate financing, particularly after the occurrence of defaults and debt restructuring. Such covenants must be viewed in their commercial context. They are intended to preserve the value of the secured asset and prevent actions prejudicial to repayment of debt. Such provisions are intended to safeguard the lenders' security interest and ensure completion of the financed project, and cannot, without more, be construed as conferring management or policy control contemplated under Section 5(24) of the Code.

xvii. Significantly, the Applicants have neither produced the amended Articles of Association demonstrating that Respondent Nos. 3 and 4 acquired the right to appoint or remove directors or control the affairs of the Company, nor established that the lenders supplanted the Board of Directors in managing the Corporate Debtor. Accordingly, the contractual rights relied upon by the Applicants remain protective in nature and do not render Respondent Nos. 3 and 4 related parties of the Corporate Debtor.

xviii. The existence of contractual approval rights over specified transactions cannot automatically be equated with control contemplated under Section 5(24). If every lender insisting upon affirmative covenants, reporting obligations, escrow controls and approval rights were to be treated as exercising management control over the borrower, virtually every secured project finance lender would become disentitled from participating in the Committee of Creditors. Such an interpretation would be wholly inconsistent with the scheme and object of the Code.

xix. The Applicants have also relied upon certain WhatsApp communications, copies of cheques and alleged participation of representatives of Respondent Nos.3 and 4 in sales-related activities. Apart from the Respondents' objection regarding admissibility of such electronic records, these documents, even if taken at face value, merely indicate monitoring of project implementation and customer collections. They do not establish that Respondent No. 3 and 4 assumed control over the management, policy decisions or corporate governance of the Corporate Debtor.

xx. Significantly, no material has been placed before this Adjudicating Authority demonstrating that Respondent No. 3 and 4 possessed the power to appoint or remove directors, dictate the composition of the Board, determine business policy of the Corporate Debtor, or otherwise substitute themselves for the management of the Corporate Debtor.

xxi. The Resolution Professional has stated that the claims submitted by Respondent Nos.3 and 4 were duly verified together with declarations regarding their status as unrelated financial creditors before constitution of the Committee of Creditors. Except reiterating their interpretation of the Debenture Trust Deeds, the Applicants have not demonstrated that the Resolution Professional ignored any statutory disqualification apparent on the face of the record.

xxii. The Resolution Professional is required to verify claims based upon documents and declarations available before him. In the absence of cogent material establishing that Respondent Nos.3 and 4 satisfied the statutory ingredients of a related party under Section 5(24), no fault can be attributed to the Resolution Professional in admitting their claims and constituting the Committee of Creditors accordingly.

xxiii. In view of the foregoing discussion, we are of the considered opinion that the Applicants have failed to establish that Respondent Nos. 3 and 4 exercised such pervasive management or policy control over the Corporate Debtor as would render them related parties within the meaning of Section 5(24) of the Code. The contractual rights relied upon by the Applicants are, in our considered view, protective covenants intended to safeguard the financial exposure of secured lenders and ensure completion of the financed project. Such commercial safeguards, without evidence of actual management control over the affairs of the Corporate Debtor, cannot attract the statutory disqualification contained in Section 21(2) of the Code.

xxiv. Consequently, we find no infirmity in the constitution of the Committee of Creditors by the Resolution Professional or the participation of Respondent Nos.3 and 4 therein.

xxv. The Application, bearing **I.A. 3699 OF 2024**, being devoid of merit, is accordingly **dismissed**.

No order as to costs.

-SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

-SD/-

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)