

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

**MA/569/2018
In
CP/603/(CB)/2017**

Under Sections 60(5) R/w Section 21 of the Insolvency and
Bankruptcy Code, 2016 R/w Rule 11 of the NCLT Rules, 2016

In the matter of **M/s. Anandram Developers Pvt. Ltd.**

M/s. Asset Reconstruction Company (India) Limited
...Applicant/Financial Creditor

Versus

Mr. Gopal Krishna Raju and Ors.
...Respondents

Order delivered on 05.03.2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Petitioner(s) : Mr. E. Omprakash, *Sr. Counsel*
Mr. P. Elayaraj Kumar & Mr. V. M. Karthik,
Counsels

For Respondent 1: Mr. Rishi Srinivas, *Counsel*

For Respondent 2: Mr. Arvinth Pandian, *Sr. Counsel*

For Respondent 3: Mr. Shankara Narayan, *Sr. Counsel*

Ms. Harshini J., *Counsel*

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under adjudication is MA/569/2018 filed in
CP/603/(CB)/2017. The Application has been filed by the



Applicant/Financial Creditor viz., M/s. Asset Reconstruction Company (India) Limited with the prayers as follows:

- i. *Set aside the meeting of the COC's conducted by the first Respondent on 29.09.2018 and 08.10.2018 as the same are contra/without complying the order passed by this Hon'ble Tribunal on 27.09.2018;*
- i A) *Set aside the report dated 08.11.2018 of the first Respondent and consequentially declare Respondents 2 and 3 herein, as falling within the definition of "Related Party" under the Code and therefore restrain them from in any manner exercising any right of representation/participation or voting in the members of COC.*
- ii. *Consequentially declare all actions of the 1st Respondent on the basis of the approval with the voting of Respondents 2 & 3, without deciding the related party issue under the provisions of the statute and the order of this Hon'ble Tribunal, as null and void;*
- iii. *Restraining the 1st Respondent from proceedings with the further CIRP on the basis of defective CoC composition and voting, pending the decision on the issue of related party;*
- iv. *And grant such further reliefs which this Hon'ble Tribunal may deem fit and proper in the circumstance of this case and in the interest of justice and thus render justice.*

Factual matrixes:

2. *The Factual matrixes of the case are that the Corporate Debtor had availed Credit facilities/loan from two financial institutions namely Indian Overseas Bank and Oriental Bank of Commerce. The Applicant, being the Assignee of the Debts from the said Financial Institutions has stepped*

into the shoes of their Assignors pursuant to the Assignments.

3. The case of the Applicant is that it has to recover a total sum of Rs. 120,03,00,000/- from the Corporate Debtor, which had been determined by the orders of the Debts Recovery Tribunal, Chennai and Recovery Certificate issued.

Submissions of the Applicant:

4. The counsel for the Applicant has submitted that the CIRP was initiated against the Corporate Debtor on 06.06.2018 by this Authority and Mr. Gopal Krishna Raju was appointed as Interim Resolution Professional (IRP). The IRP caused a public announcement on 11.06.2018 about the initiation of the CIRP against the Corporate Debtor and called for the claims. The Applicant, being the financial Creditor had filed its claim in form C as required under the Regulations with the IRP by electronic mode. The IRP constituted the Committee of Creditors (COC) and had issued notice dated 29.06.2018 for convening the first

meeting of the COC on 06.07.2018. The Applicant on receipt of notice from IRP came to know that the Respondent No.2 viz. **M/s. Jayapushpam Investments and Trading Pvt. Ltd.**, Respondent No. 3 viz. **M/s. JDA Consultancy Pvt. Ltd.** And one **M/s. Anand Cine Services Pvt. Ltd.** had also submitted their alleged claims before the IRP claiming to be the Financial Creditors. It is submitted that IRP had taken a decision with regard to the claim submitted by **M/s. Anand Cine Services Pvt. Ltd.** observing that their claim falls under the category of *Related Parties* and reported that they will not have any right of representation, participation or voting in the COC meeting. But with regard to the alleged claims submitted by the 2nd and 3rd Respondents, IRP seems to have admitted the same and included them in the COC. Immediately on receipt of the notice, the official of the Applicant sent an email on 29.06.2018 calling upon the IRP for the details of the claims submitted by the 2nd and 3rd Respondents and pointing out the status of the Companies, which was not replied.

5. Counsel for the Applicant has further submitted that only after the first COC meeting, the IRP shared the details of the claims submitted by the 2nd and 3rd Respondents and the said ***M/s. Anand Cine Services Private Ltd.*** The perusal of the claims submitted by the 2nd and 3rd Respondents, reveals that the said claims are on the basis of an alleged assignment of debts of unsecured loans taken from the shareholders namely i) *Mrs. Indira Anand, Wife of Late Anand Rao*, ii) *Mr. K. Bapaiah, S/o. K. Sathyanarayana* and iii) *Mr. K.Tharun Kumar, S/o Mr. Sivarama Krishnaiah*, by three Assignment Deeds dated 31.03.2017, placed at page 136 to 174 of the typed set filed with the Application. A perusal of the Assignment Deeds speaks volumes of the alleged transactions. Apparently the shareholders who claimed to have lent unsecured loans, falling in the category of related party transactions and not entitled to claim the amounts.
6. Counsel for the Applicant has submitted that perusal of the documents show that the said shareholders claim to

have lent monies to the Corporate Debtor over a period of time and up to 01.04.2011, more particularly Mrs. Indira Anand Wife of Late Anand Rao, claimed to have lent to the tune of Rs. 249,28,86,436/-, Mr. K. Bapaiah S/o. K. Sathyanarayana, to the tune of Rs.34,00,00,000/- and Mr. K.Tharun Kumar S/o. Mr. Sivarama Krishnaiah to the tune of Rs.66,50,000/-. It is further seen that reference is made to loan agreement and the schedule to the Assignment Agreements which state that there is a moratorium upto 31.03.2016 and thereafter payable with interest at 15 % p.a. from 01.04.2011.

7. **Counsel for the Applicant has submitted that the claims by the 2nd and 3rd Respondents and M/s. Anand Cine Service Pvt. Ltd are camouflaged as financial creditors based on documents which are apparently created for the purpose of such claims.** Even assuming that the original unsecured creditors are entitled to make the claim, their transactions are hit by related party transactions and Proviso to Sec. 21 (2) would come into

place as such the assignees cannot have any better title. On a bare perusal of the transactions which had taken place among the shareholders of the Corporate Debtor and the second and third Respondents, fall under the category of related party transactions as defined under Sections 5 (24) & (24A) of the I&B Code, 2016.

8. Counsel for the Applicant has further submitted that there are Common Shareholders, Directors, promoters etc. as between the Corporate Debtor, Claimants and other related Companies, clearly falling under the definition of related parties. Hence, the second and third Respondents cannot have any right of representation, participation or voting in a meetings of the COC. The very claims are bogus, time barred, validated by self-serving documents of the Corporate Debtor apparently to reduce the voting right of the Applicant and defeat the purpose of the COC. The Assignment Deeds are invalid, legally not tenable and hence the claims based on the same cannot be sustainable in law and on facts.

9. Counsel for the Applicant has submitted that they are the only institutional financial creditor and entitled to be represented in the Committee of Creditors with the entire voting rights. The first Respondent has been acting in contrary to the provisions of the Code and the Regulations defeating the very purpose of the said provisions and regulations. More particularly the first Respondent has acted contrary to Proviso to Section 21 (2) r.w. Section 5 (24) & (24-A) of the Code and in spite of being pointed out, has not acted and entertained the related party by providing voting rights and acting as per their mandate, which is untenable in law and on facts.
10. Counsel for the Applicant has submitted that it had filed a petition no. MA/248/2018 before this Authority and the tribunal vide its order dated 27.09.2018 directed the 1st Respondent herein to take a decision within three weeks on the issue raised by the Applicant by providing due opportunity to both parties. Without adhering to the same, the 1st Respondent has proceeded to conduct two CoC

meetings hurriedly and seeking to complete the CIRP on the basis of defective voting and mandate in the CoC.

11. It is also submitted by the counsel for the applicant that in the 3rd meeting of the CoC held on 29.09.2018, the RP has circulated an Information Memorandum (IM) pertaining to the Corporate Debtor. In the said Information Memorandum in respect of particulars of debt due from related party, it has been wantonly mentioned as **NIL**. Whereas even in the first COC meeting itself IRP has qualified the debt of M/s. Anand Cine Services as related party. Counsel for the Applicant has further submitted that 1st Respondent is completely acting on the dictates of the 2nd and 3rd Respondents claiming to be the majority financial creditors and they try to bully with the voting right.

12. The counsel for the Applicant has further submitted the alleged assignee of the related party holding a majority voting right to seeking to hijack the entire process for their benefit. **The assignee is also part of the project being developed by the Corporate Debtor and has a clear**

conflict of interest in the matter. The Corporate Debtor being a wilful defaulter to the banks, and the promoters/directors/shareholders being disqualified under Sec. 29A, are now driving the process through their alleged assignees defeating the rights of the assignee of the banks, being the financial creditor. The conduct is a gross illegality apparent on the face of record and a clear fraud is sought to be perpetrated in a clever designed manner in active collusion by all parties by a clear abuse of process.

13. Counsel for the Applicant has submitted that the Insolvency Law Committee Report on the question of related parties clearly set out to preclude to the legislative intent. In terms of the said Insolvency Law Committee Report, Section 5 (24) is finding place in the statute book and the amendment to Section 5 (24) also makes it clear as to the relationship which would attract the related party status in the case of Directors, Promoters and personal guarantors of the Corporate Debtor. In the said context the Transaction

Audit Report relied by the first Respondent is not sustainable in law and on facts.

14. Counsel for the Applicant has submitted that the Transaction Audit Report has decided the issue by rendering a findings that even prior to the initiation of the CIRP, the Assignment had happen and therefore the status of the Assignor need not be looked into and the assignee is examined in a standalone category to hold that they are not related parties. The said bifurcation as to verification of the status on the date of initiation of CIRP is nowhere found in the law. **It is pertinent to point out that the rights of the assignee would only flow from the assignor and in the instant case the consideration under the assignment deeds speaks volumes of the transaction as to who is the real beneficiary. In the said circumstances, it is clearly seen that the 2nd and 3rd Respondents are related parties. Further, the entire intent of the Assignment Agreement is to defraud the secured lender by way of transfer of loan to interested**

parties by the related parties. The loans assigned under the alleged Assignment Agreements were unsecured in nature which were given by individuals on moratorium until March 2016. Besides that, the alleged Assignment Agreements are **unregistered**.

15. Counsel for the Applicant has submitted that the Transaction Audit report as well as the 1st Respondent had failed to consider the ***vital facts reflecting in the documents, that the 2nd and 3rd Respondents are interested parties also by virtue of an existing obligation from ADPL in respect of the land given by them under the Joint Development Agreement dated 21.06.2012. Both 2nd and 3rd Respondents own portion of the mortgaged land (11,905 Sq.fts and 7620 Sq.fts respectively). This land has been given by them to be included in the project developed by corporate debtor and form a part of the mortgaged land portion. As per the joint Development Agreement the 2nd and 3rd Respondents were to be allotted with 99,609 Sq.fts on 1st and 2nd floor***

and 2nd Respondent was to be allotted 54,902 sq.fts on Ground Floor in the finally constructed property. Both 2nd and 3rd Respondents control and own ingress and egress of the property from Arcot Road and Dr. Bhanumathi Ramakrishna Road and without considering the lands belonging to these two entities, the entire project cannot be undertaken (As per the Joint Development Agreement dated 21/06/2012). The Assignment agreements entered into between the **related party individuals and interested parties in order to secure the recoverability of the amounts in the hands of interested parties, since they also own a share of the property.** Hence, both the second and third Respondents are in the position to influence the decision making. As such in the capacity as business partners in developing the property, who have a say and bearing on the activities of the Corporate Debtor. In view of the same the 2nd and 3rd Respondents are liable to be declared as related parties to the Corporate Debtor.

16. Counsel for the Applicant has submitted that the 1st Respondent without following the Regulations contemplated

under the Code is acting in an arbitrary manner. The Conducting of the meeting of COC by the 1st Respondent on 29.09.2018 and 08.10.2018 are in clear derogation to the order passed by this Hon'ble Tribunal on 27.09.2018 in the Application filed by the Applicant. As such said meeting of the COC which are conducted by the 1st respondent are liable to be set aside. All actions of the 1st Respondent without deciding the related party issue by complying with the order of this Tribunal dated 27.09.2018, is null and void and against the statutory mandate. The statute does not permit a CoC to make decision with a vote of the related party as a financial creditor. This issue goes to the root of the matter and needs a decision at the earliest and in the first instance.

Submissions of Respondent 2

17. The Respondent 2 has filed the reply. Counsel for the Respondent No. 2 has submitted that the Applicant is an assignee of debts from Banks and has not had any direct dealings in terms of lending to the Corporate Debtor. It is the admitted case of the Applicant that unsecured loans to

the tune of Rs. 324 crores were shown as debts due to unsecured creditors by the CD itself in 2014. Therefore, having become an assignee of the loan from banks with full knowledge of existence of other unsecured creditors, the Applicant herein has filed instant application in an effort to bitter its commercial contract through the aegis of the CIRP process itself, which it is not entitled to do in law. It is submitted by the counsel that the intention of Applicant in the instant case appears to be to take the CD into liquidation, wherein, as a secured creditor, Applicant seeks to sell the assets of the CD and credit all monies to itself, to the detriment of the other unsecured creditors, thereby unjustly enriching itself at the cost of other unsecured creditors like the Respondent herein. It is further submitted by the counsel for Respondent 2 that it is evident from the constant inconsistent and illegal conduct of Applicant, during the CRP wherein, it has refused to submit any documents to the RP apart from a Debt Recovery Certificate (DRC) which itself appears to be subject to challenge before the Hon'ble DRT, which fact, the Applicant herein has not



disclosed in the instant application, which wholly shows its *mala fide*.

18. It is also pleaded by 2nd respondent that the Applicant on 17th October, 2018 and 23rd October, 2018, wrote two emails to the 1st Respondent (RP) herein, against the Expression of Interest issued by the RP and asked the RP to issue a fresh EOI, in a national edition of a newspaper. In furtherance to such request, when the same was included as an item in the agenda of the CoC meetings, the Applicant, voted against the very same resolution of fresh Expression of Interest, which had, in the first place, come up for discussion at its behest. This conduct of the Applicant is unequivocal proof of the fact that the Applicant is acting in a manner wholly contrary to law and with an intention to drive the CD into liquidation. It is submitted that the Applicant, even if a resolution plan is passed, will not suffer any loss as his entire principal plus 50-60% of interest as per its admitted claim is given in the Resolution Plans under consideration by the COC, which the Counsel

for the Applicant seeks to reject, with a greed to take the entire assets of the CD to itself, thereby causing huge losses to the Respondent.

19. Counsel for the Respondent No.2 has submitted that 2nd Respondent is not in any manner a related party under section 5(24) and 5(24A) of the Code. The whole case of the Applicant is based on the deeds of assignment. The Assignment took place in the year 2017 i.e. much prior to the commencement of the CIRP. The CIRP commenced in June, 2018. The assignment of March, 2017 is **not** challenged by the Applicant. The only challenge is the **consequence** of the assignment, i.e. the argument appears to be that the person to whom debts were owed initially, i.e. the assignor was a related party and hence the assignee is also hit by the same disability.

20. Counsel for the Respondent No.2 has submitted that as per a NCLAT Judgment, the failure to challenge the validity of the assignment is a lethal defect, as in the words of the NCLAT, if the assignment's validity is upheld, the

consequences of such assignment cannot be challenged. In this case, as the validity of the assignment is admitted and not under challenge, the consequence, i.e. the participation in the COC as an unrelated party, cannot be challenged, as the right to participate in the CoC is "automatic" as per the dicta laid down by the NCLAT. For this reason alone, owing to not challenging the validity of the assignment deeds, ergo, owing to admission of their validity, the Applicant has lost its right to challenge the consequence arising directly out of such assignment.

21. It is submitted that the 2nd Respondent is unaware of the family tree of the promoters of the CD which is placed at page nos. 175 to 186 of the Applicant's Typed Set. For the sake of the argument, it can be presumed that the said family tree is correct. A mere perusal of the said family tree would show that none of the directors or shareholders of the 2nd Respondent find a place in the family tree. It is the admitted position of the Applicant that the Directors and shareholders of the 2nd Respondent are Kanniappan Vijay

Kumar, Mr. Balachandran Vishwanathari Kasi and Mr. Shyammkumar, who admittedly are not relatives of the promoters and are not shown in the family tree, as submitted vide page no. 176. However, the argument appears to be that the relatives of the promoters of the CD had promoted another company, in which one of the directors of the 2nd Respondent was also a shareholder.

22. Counsel for the Respondent No.2 has further submitted that in determining whether a person is a related party to the CD or not, it is trite in law, as has been held by the Hon'ble Supreme Court in the **Swiss Ribbons Case (2019) SCC Online SC 73**, that persons who can be directly connected as a related party to the CD itself can only be termed a related party and not others. In other words, arguments such as A knows B, B knows C and therefore A knows C and thus A is related party to C is directly rejected by the Hon'ble Supreme Court. In this regard the counsel for Respondent 2 has made a reference to judgment passed by the Hon'ble Supreme Court in **Swiss Ribbons Private Ltd v/s Union of India**

reported in 2019 SCC Online SC 73, wherein the court has observed as follows:

*“We are of the view that persons who act jointly or in concert with the others are connected with the business activity of the resolution applicant. Similarly, all categories of persons mentioned in section 5(24A) show that such persons must be “connected” with the resolution applicant within the meaning of section 29A(j).... The expression related party, therefore, and “relative” contained in the definition sections must be read noscitur a sociis with the categories of persons mentioned in **Explanation I**, and so read, would include only persons who are connected with the business activity of the resolution applicant.”*

Based on the above observation of the Apex Court, it has been submitted by the counsel for Respondent 2 that from the extract supra, it is unequivocally clear that a person can said to be a related party only in those cases where he/she is "directly" connected to the CD itself and not in cases where it is sought to be created through a chain with no direct nexus or privity in dealings. The



counsel further pleaded that insofar as Section 5(24-A) is concerned, it may not apply to 2nd Respondent, for two reasons, namely: (1) the applicability as per the legislative history of the amendment through which section 5(24-A) was introduced, is itself limited to three sections, of which Section 21 which relates to participation in the CoC, is not mentioned and (2) section 5(24-A) was introduced vide a later amendment, i.e. an amendment after the commencement of the CIRP and hence, cannot be given effect retrospectively.

23. Counsel for the Respondent No.2 has further submitted that Section 5(24) and section 5(24-A) use the term "related party", i.e. "party", a word which is person specific, this should be contrasted against the terms "debt", "claim" or "creditor", all of which are transaction specific and not person specific. Assignment by an unrelated party, say even by ARCIL to the promoter's father would render the promoter's father itself a unrelated party under the IBC as it would then seem that the transaction alone matters and

not the person. The counsel for 2nd Respondent has referred to the Committee on Insolvency of March 2018, which while specifically considering the question of whether assignees of related parties should also be treated as related parties, noted that the same was not necessary, in the following words:

1.25. Conversely to the above, a recent case under the Code was cited to the Committee to demonstrate how promoters of a corporate debtor are indirectly gaining control of the CoC by arranging for the debt of the corporate debtor to be assigned to them. Allegedly, such promoters sabotage the CoC and pass resolution plans that entail a massive haircut to the creditors. It was suggested to the Committee that creditors who have acquired debt by any assignment of debt within a year prior to commencement of insolvency shall be excluded from the CoC. However, the Committee felt that given the limited experience of interpretation of provisions of the Code by practitioners as well as adjudicating authorities, the protection in section 21 (2) whereby any related party to whom the corporate debtor owes a financial debt is excluded from the CoC is sufficient to ensure that the CoC is not sabotaged by the promoters and other related parties of the corporate debtor.

On the basis of the report quoted above, the counsel for Respondent No. 2 has contended that the admitted position under the IBC itself, even as the Committee is that an assignee of a related party, cannot be considered a

related party, which position has also been upheld by the NCLAT holding that once an assignment is valid, then, the related party status of the assignor, is irrelevant and the assignee can participate in the CoC. The counsel further referred to the judgment passed by the Hon'ble NCLAT in ***Edelweiss Asset Reconstruction Company Ltd. vs. Synergies Dooray Automotive Ltd, Company Appeal (AT) (Insolvency) No. 169/2017***, wherein the Appellate Tribunal observed as follows;-

66. On perusal of above three assignment agreements, it is clear those documents are duly executed with the concerned authorities, and they are not questioned by any party to those proceedings. Appellant herein, being similarly situated like that of 'Synergies Castings Limited' and Millennium Finance Limited', do not have any locus standi to question the veracity of those documents on mere apprehensions or allegation of mala fides, or fraudulent etc. Admittedly, the Appellant is not a party to those Assignment agreements. It is not tenable to raise apprehensions before the Adjudicating Authority to adjudicate. The courts usually adjudicate issues basing on cause of action arisen in a particular case. The Adjudicating Authority cannot enter into roving enquiry on mere apprehensions, baseless allegations. It is a settled law that whatever the rights the original assignor got it from the original lender will automatically accrues to subsequent assignees basing on executing appropriate legal documents in accordance with law. Here, in this case, 'Millennium Finance Limited' has got all the rights as per the assignment agreements all dated 24th November, 2016. Hence, the allegations/ apprehensions made by the Appellant being baseless and mere apprehensions, and based on conjecture and surmised cannot be accepted, particularly

when they have been executed in accordance with law and accepted by the Registrar of Companies. The Appellant doesn't have any locus standi to question those documents in the insolvency proceedings initiated under 'I & B Code' on a farfetched argument that they are going to be effected the rights of 'Synergies Castings Limited' and 'Millennium Finance Limited' are recognized basing on the Assignment Agreements in question and the Appellant cannot assume jurisdiction to question the documents in question basing on baseless allegations, apprehension etc. Therefore, the Adjudicating Authority summarily rejected the contentions/ allegations of the Appellant with regard to documents in question.

In the result, we hereby declare that both 'Synergies Castings Limited' and 'Millennium Finance Limited' were eligible to execute the assignment agreements in question and all rights flow those agreements to 'Millennium Finance Limited'. After getting assignment of rights, the 'Millennium Finance Limited' is fully competent to participate in 'Committee of Creditors' in question and it cannot be called a related party as explained.

24. The counsel for Respondent 2, by relying upon the observation of the Hon'ble NCLAT has contended that now it is settled law that an assignee of a related party is not a related party and can participate in the CoC and for this reason, the sole ground on which the application here rests, ought to fail as being unsustainable. In light of the same, it is submitted that the underlying basis of the case of the Applicant itself stands refuted by a decision of the Hon'ble

NCLAT, for which reason alone, the instant application deserves to be dismissed.

Submissions of Respondent 3;

25. The reply has also been filed by Responded No.3, based on which the Counsel for the Respondent No.3 has submitted that there is no challenge to the admission of the claim made by the Respondent but the challenge is merely to the participation of the Respondent herein, in the Committee of Creditors.

26. It is further contended by the counsels for Respondents No.2&3 that suspended directors of the Corporate Debtor are Mr. Kovelamudi Bapaiah, Mr. Mukundan Vijayan, Mr. Komma Reddy Tarun Kumar and Mr. Birendrakumar Sahoo. None of the aforesaid individuals are either director or shareholders in the 2nd and 3rd Respondents, the directors of the 2nd Respondent are Kanniappan Vijay Kumar, Mr. A Balachandaran Vishwanathan Kasi and Mr. Shyammkumar, which clearly establishes that there is no

commonality of directors between the Corporate Debtor and the 2nd Respondent. It is further stated that the directors of the 3rd Respondent are Kanniappan Vijay Kumar, Mr. A Balakrishnan and Mr. Shyammkumar, which clearly establishes that there is no commonality of directors between the Corporate Debtor and the 3rd Respondent.

27. Counsel for the 3rd Respondent has submitted that the allegations made in the application are completely silent on how the 3rd Respondent is a related party under Section 5(24) or 5(24A) of the Code, but implies that the amounts claimed, arising out of assignment deeds executed by the Directors of the Corporate Debtor to the 3rd Respondent, ought to render the 3rd Respondent a related party. In other words, the argument appears to be that an assignee of a debt, who has taken the assignment from a related party shall also be a related party for the purpose of the Code. This submission is wholly incorrect and contrary to the tenets of Section 5(24) and 5(24A) of the Code.

28. In the light of the pleadings, the detail of which is noted hereinabove, the only issue arises is as follows:

Issue: *Whether the Respondent no. 2 and 3 are Related Parties to the Corporate Debtor?*

29. In connection with the above issue it is necessary to refer to the contents of the deed of assignments dated 31.03.2017 executed by K Tarun Kumar (Suspended Director of the CD), in favour of Respondent No. 2 viz. *M/s. Jayapushpam Investments and Trading Pvt. Ltd.*, and two deeds of assignment dated 31.03.2017 one executed by K. Bapaiah and another by A. Indira Anand (Suspended Director/Erstwhile shareholder respectively of the CD) in favour of Respondent No. 3 viz. *M/s. JDA Consultancy Services Pvt. Ltd.*

All the three deeds of assignment mentioned above *inter alia* contain the recitals that have bearing on the issue framed hereinabove. The relevant portions of all the three deeds are reproduced as follows:

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- i. Assignment deed executed by K Tarun Kumar in favour of Respondent No. 2 contains the contents as follows:

“The Assignee in the course of business had entered into an agreement with Anandram Developers Pvt. Ltd (Corporate Debtor) for jointly owing and developing property located at 45-47, Arcot Road, Saligramam, Chennai-600093 for development of a multi storied commercial complex. The assignee has also brought land belonging to the assignee for the joint development”.

** * * * **

“In consideration of the assignee agreeing to allot equity shares at an appropriate valuation in the capital of the Assignee within one year from the date of this assignment (the consideration), the assignor doth hereby irrevocably, unconditionally and absolutely assign, transfer and release without course into the assignee and the assignee hereby acquires and takes over from the assignor....”

- ii. Assignment deed executed by K. Bapaiah in favour of Respondent No. 3 contains the contents as follows:

“The Assignee in the course of business had entered into an agreement with Anandram Developers Pvt. Ltd (Corporate

Debtor) for jointly owing and developing property located at 45-47, Arcot Road, Saligramam, Chennai-600093 for development of a multi storied commercial complex. The assignee has also brought land belonging to the assignee for the joint development”.

* * * * *

“In consideration of the assignee agreeing to settle the amount covered under the deed of assignment within one year from the date of this assignment (The consideration) the assignor doth hereby irrevocably, unconditionally, and absolutely assign, transfer and release without recourse into the assignee and the assignee hereby acquires and takes over from the assignor....”

iii. Assignment deed executed by A. Indira Anand in favour of Respondent No. 3 contains the contents as follows:

“The Assignee in the course of business had entered into an agreement with Anandram Developers Pvt. Ltd (Corporate Debtor) for jointly owing and developing property located at 45-47, Arcot Road, Saligramam, Chennai-600093 for development of a multi storied commercial complex. The assignee has also brought land belonging to the assignee for the joint development”.

* * * * *

“In consideration of the assignee agreeing to settle the amount covered under the deed of assignment within one year from the date of this assignment (The consideration) the assignor doth hereby irrevocably, unconditionally, and absolutely assign, transfer and release without recourse into the assignee and the assignee hereby acquires and takes over from the assignor...”

30. From the above quoted contents of the deeds of assignment, it becomes quite clear that besides the consideration i.e. *allotment of equity shares, settlement of the amount in favour of the assignors by the assignees, agreements for joint ownership and development of property have been entered into between the assignors and the assignees, as reflects from the recitals of the assignment deeds.* If the assignment deeds are read as a whole, the element of partnership between the assignors and the assignees is clearly established. In essence, the said documents are assignments cum partnership deeds which point out towards Joint Development Agreement dated

21.06.2012 entered into among the Respondent Nos.2 and 3 and the Corporate Debtor. A partnership deed, also known as a partnership agreement, is a document that outlines in detail the rights and responsibilities of all parties to a business operation. It has the force of law and is designed to guide the partners in the conduct of the business, i.e. in this case agreements are made for joint ownership and development of the property mentioned therein. This fact remained un-rebutted by the respondents. Therefore, the relationship between the assignor viz., suspended Directors/Erstwhile shareholder of the corporate debtor and the assignees viz., Respondents No.2 and 3 is of partnership for the purpose of the joint ownership and development of the land. In other words, the assignors' viz., suspended directors/erstwhile shareholder of the Corporate Debtor and the assignees viz., Respondent Nos. 2 and 3 are partners, owners and developers of the property mentioned in the agreements. Thus, both the 2nd and 3rd Respondents are in a position to influence the decision making in the capacity as business partners as

owners and developers of the property, who have a say and bearing on the activities of the Corporate Debtor, which surely falls within the purview of the definition of "related party" given under Section 5(24)(a) of the I&B Code, 2016 which reads as follows:

(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;

Besides the above, as per the assignment deeds dated, 31.03.2017 entered into between *K. Tarun Kumar* and Respondent No. 2 viz. *M/s. Jayapushpam Investments and Trading Pvt. Ltd.*, the allotment of equity shares at appropriate valuation in the capital of the assignee (R, 2), has been agreed upon, which in all probabilities will not be less than the amount involved in the assignment deed. It clearly shows that Respondent No. 2 viz., *M/s. Jayapushpam Investments and Trading Pvt. Ltd.*, is a related party to the corporate debtor. This fact has also not been

denied by the Respondent No. 2 either in reply or at the time of making final submissions.

31. In the light of the facts and circumstances stated above, the defence taken by the respondent Nos. 2 and 3 is misconceived and devoid of merits, the same stands rejected. The respondents 2 and 3 are held to be falling within the purview of the definition of '*related party*' as given under Section 5(24) of I&B Code, 2016. Consequently, the respondent 2 and 3 are barred from taking participation in the CoC under first proviso of sub Section (2) of Section 21 of the I&B Code, 2016. Therefore, the Resolution Professional is directed to delete the names of Respondent Nos. 2 and 3 from the list of the Committee of creditors with immediate effect and to proceed with the CIRP pertaining to the Corporate Debtor viz. **M/s. Anandram Developers Pvt. Ltd** in accordance with law. Accordingly, the Application stands allowed. There is no order as to costs.

32. The Order is pronounced in the open court in the presence of both the sides.


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

VISHNU