

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**IA(IBC)/2241/2023  
IN  
CP(IB)/577/CHE/2020**

*(Filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read with  
Rule 11 of the National Company Law Tribunal Rules, 2016)*

**Ammon Holdings Pte Ltd,**  
9 Raffles Place,  
# 27-00, Republic Plaza,  
Singapore - 048619

*... Applicant*

**Vs.**

**CA. Mahalingam Suresh Kumar,**  
Resolution Professional of  
Real Value Promoters Pvt Ltd  
No.27/9, Nivedh Vikas,  
Pankaja Mill Road,  
Puliyakulam, Coimbatore - 641 045

*... Respondent*

**IA(IBC)/619/2024  
IN  
IA/IB/2241/2023  
IN  
CP(IB)/577/CHE/2020**

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No.27/9, Nivedh Vikas,  
Pankaja Mill Road,  
Puliyakulam, Coimbatore - 641 045

... Respondent

Order Pronounced on 28<sup>th</sup> June 2024

**CORAM:**

**Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)**  
**Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

**Present:**

*For Petitioner* : Mr.Om Prakash, Sr.Advocate  
Mr.Arun Karthik Mohan, Advocate  
Ms.Ashwini Vaidialingam, Advocate  
Mr.Abhishek Awasthi, Advocate  
Mr.Abhyudai Singh, Advocate  
Ms.Gursimram Kohli, Advocate  
Ms.Swati, Sharma, Advocate

*For Respondent* : Mr.T K Bhaskar, Advocate,  
Mr.A G Sathyanarayana, Advocate  
Mr.Mayan Jain, Advocate  
Ms.Niveditha Narayanan, Advocate  
Mr.M.Suresh Kumar, RP

**COMMON ORDER**

*(Physical Hearing)*

**1. IA(IBC)/2241(CHE)/2023**

This application has been filed Ammon Holdings under Section 60(5) of Insolvency and Bankruptcy Code 2016 r/w Rule 11 of NCLT Rules 2016 against the Resolution Professional of the Corporate Debtor viz. Real Value Promoters Private Limited seeking the following reliefs,

*(a) Direct the Resolution Professional/Respondent to withdraw the letter dated October 18, 2023 forthwith;*

*(b) Direct the Resolution Professional/Respondent to not treat the claim of the Applicant/Ammon Holdings Pte. Ltd. as a related party claim and restore the status of the Applicant as that of a financial creditor of the Corporate Debtor;*

*(c) Direct the Resolution Professional/Respondent to immediately re-instate the Applicant as a member of the Committee of Creditors of the Corporate Debtor; and*

*(d) Pass an ex-parte ad interim injunction restraining the Resolution Professional/Respondent from taking any decision in which voting of the members of the Committee of Creditors is required, pending final adjudication and disposal of the present Application.*

*(e) Pass an ex-parte ad interim injunction restraining the Resolution Professional/Respondent from implementing or giving effect to any decision, or proposal, if taken/ given in the Committee of Creditors in the absence of the Applicant, pending final adjudication and disposal of the present Application;*

## **2. Applicant Submissions:**

2.1. The Applicant Ammon Holdings Pte. Ltd. is a category II foreign portfolio investor, registered with the Securities Exchange Board of India (SEBI). It is stated that the Applicant has made multiple portfolio debt investments in India across multiple sectors as a lender.

2.2. Real Value Ventures Limited (RVVPL) who is borrower of the Corporate Debtor viz. Real Value Promoters Pvt Ltd which had issued and allotted fully secured, rated, listed, rupee denominated, redeemable, transferable and interest bearing non-convertible debentures.

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*IA(IBC)/619(CHE)/2024 in IA(IBC)/2241(CHE)/2023 in CP(IB)/577/CHE/2020 and IA(IBC)/2241(CHE)/2023 in CP(IB)/577/CHE/2020*

*Ammon Holdings Pvt.Ltd Vs.CA. Mahalingam Suresh Kumar  
RP of Real Value Promoters Private Limited.*

2.3. The Applicant had subscribed to a total of 2,120 (two thousand one hundred twenty) debentures of Rs.10,00,000/-(Rupees Ten Lakhs Only) issued by the RVVPL for an aggregate amount of Rs.212,00,00,000/- (Rupees Two Hundred and Twelve Crores Only) in four tranches as follows:

(a) Debenture Trust Deed (DTD) dated 24.09.2015 executed by and between Real Value Ventures Private Limited (RVVPL), VS Suresh, Jayasathya Suresh, the Corporate Debtor, and IL&FS Trust Company Limited in respect of issuance 1,400 debentures.

(b) Debenture Trust Deed dated 11.04.2016 executed by and between RVVPL, VS Suresh, Jayasathya Suresh, the Corporate Debtor, and IL&FS Trust Company Limited in respect of issuance 290 debentures.

(c) Debenture Trust Deed dated 26.10.2016 executed by and between RVVPL, VS Suresh, Jayasathya Suresh, the Corporate Debtor and IL&FS Trust Company Limited in respect of issuance 270 debentures.

(d) Debenture Trust Deed dated 18.09.2017 executed by and between RVVPL, VS Suresh and Jayasathya Suresh, the Corporate Debtor, and IL&FS Trust Company Limited in respect of issuance 160 debentures.

2.3. The aforesaid debentures i.e. Debenture Trust Deeds (DTD) and Debenture Subscription Agreements (DSA) were secured by the following security interests:

i) The corporate guarantee of the Corporate Debtor pursuant to:

(a) Deed of Corporate Guarantee (DCG) dated September 24, 2015 executed by the Corporate Debtor in favour of the Debenture Trustee, acting for the benefit of Ammon.

(b) Deed of Corporate Guarantee dated April 11, 2016 executed by the Corporate Debtor in favour of the Debenture Trustee, acting for the benefit of Ammon.

(c) Deed of Corporate Guarantee dated October 26, 2016 executed by the Corporate Debtor in favour of Debenture Trustee, acting for the benefit of Ammon.

(d) Deed of Corporate Guarantee dated September 18, 2017 executed by the Corporate Debtor in favour of Debenture Trustee, acting for the benefit of Ammon.

(ii) The mortgage of the land admeasuring 17.26 acres situated at Pallavaram and Nemilichery Villages, Chennai and the development rights therein;

(iii) Hypothecation of the 'hypothecated assets' of the Borrower pursuant to the Deeds of Hypothecation dated September 24, 2015, April 11, 2016, October 26, 2016 and September 18, 2017 executed by and between the Borrower, the Corporate Debtor, Promoters and Debenture Trustee;

(iv) Pledge over the Promoters' shareholding in the Borrower pursuant to the Company Share Pledge Agreements dated September 24, 2015, April 11, 2016, October 26, 2016 and September 18, 2017 executed by and between Borrower, Promoters and Debenture Trustee;

(v) Pledge over the 26% of the Promoters' shareholding in the Corporate Debtor, pursuant to the RVPPL SPA Share Pledge

Agreements dated September 24, 2015, April 11, 2016, October 26, 2016 and September 18, 2017 executed by and between Corporate Debtor, Promoters and Debenture Trustee; and

(vi) The personal guarantee of Mr. VS Suresh pursuant to the Personal Guarantees dated September 24, 2015, April 11, 2016, October 26, 2016 and September 18, 2017 in favour of the Debenture Trustee.

2.4. In clause 2.1.2 of the Corporate Guarantee the Corporate Debtor had clearly acknowledged that the amounts payable by the RVVPL shall be irrevocably and unconditionally paid by the Corporate Debtor to Debenture Holders i.e. Ammon upon occurrence of any event of default. Further clause 2.3 of the Corporate Guarantee stipulates that it is a continuing guarantee and is separate and independent obligation of the Corporate Debtor.

2.5. The RVVPL had defaulted in its obligations under the DTD and DSA, specifically to redeem the debentures within the time frame agreed in the DTD and had also failed to make payments towards the periodic interest. Pursuant to that the Debenture Trustee acting on behalf of Ammon had issued the Notice of Default dated 09.01.2023 to the RVVPL, the Corporate Debtor and the Personal Guarantors in relation to the DTD.

2.6. As per the obligations in the Corporate Guarantee the total amount of outstanding debt as on 10.05.2023 is Rs.2071,40,50,000/- (Rupees Two Thousand Seventy One Crore Forty Lakhs and Fifty Thousand Only).

2.7. On 10.05.2023 the Corporate Debtor was admitted into CIRP, the Respondent herein was appointed as the Resolution Professional (RP) of the Corporate Debtor. The Applicant had filed a claim before the Resolution Professional on 26.05.2023 for an amount of Rs.2071,40,50,000/- (Rupees Two Thousand Seventy One Crore Forty Lakhs Fifty Thousand Only).

2.8. After due verification the Resolution Professional admitted the entire claim of the Applicant as a Secured Financial Credit. The CoC has been constituted wherein the Applicant has the voting rights of 83.7839% after it was revised to 82.359%. The Applicant had participated in 6 meetings of the CoC till 07.09.2023.

2.9. On 17.10.2023 the Applicant rejected the resolution for an extension of the 21 days late date submission of the resolution plan by the Prospective Resolution Applicants. Thereafter the Resolution Professional vide email dated 19.10.2023 intimated the Applicant that it has been categorized as related party.

2.10. The reasons stated by the RP to declare the Applicant as the related party are,

- a) One M/s.Giza Holdings Ptd. Ltd. holds 99% shares of RVVPL. The Applicant and Giza Holdings are come under the Xander Group.
- b) The Applicant holds secured debentures to the tune of Rs.212 crores in the RVVPL.
- c) The RVVPL and the Corporate Debtor having common Board of Directors.

d) The Applicant has controlling interest in the Corporate Debtor by 26% control through the invocation of the guarantees.

e) Further, the Resolution Professional relied on Section 24A(f) of IBC, 2016 to classify the Applicant as related party.

2.11. All the above allegations are totally denied by the Applicant, and it alleged the action of the RP is arbitrary and the decision was taken without proper application of mind. Further in the Written Submission filed by the Applicant it relied on the following cases:

a) *K. Sasidhar v. Indian Overseas Bank & Ors*, (2019) 12 SCC 150

b) *Kalpraj Dharamshi & Anr v. Kotak Investment Advisors Ltd.*  
2021 SCC OnLine SC 204

and argued that all the decisions taken by the Applicant in the CoC are based on its commercial wisdom and it cannot be a subject matter of judicial scrutiny.

### **3. RESPONDENTS SUBMISSIONS:**

3.1. The Resolution Professional in the counter contended that the Corporate Debtor having lands admeasuring 17.26 acres in Pallavaram and Nemilichery Villages near Chennai (hereinafter referred to as subject property). The said land is subject matter of Construction Agreement dated 28.09.2015 entered into between the RVVPL and the Corporate Debtor.

3.2. As per the said Construction Agreement the rights of panning, designing, development and construction, marketing, and commercial utilization of the built up superstructures in respect of Subject Property was assigned by the Corporate Debtor to the RVVPL for a paltry sum of

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*IA(IBC)/619(CHE)/2024 in IA(IBC)/2241(CHE)/2023 in CP(IB)/577/CHE/2020 and  
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*Ammon Holdings Pvt.Ltd Vs.CA. Mahalingam Suresh Kumar  
RP of Real Value Promoters Private Limited.*



Rs.50 lakhs whereas the Subject Property is valued at the relevant time was Rs.62 crores and the present value is approximately Rs.200 crores. After knowing the same the RP had moved a necessary avoidance transaction application.

3.3. Further in connection to the development and commercial utilisation of the Subject Property the RVVPL availed financial assistance by issuing 2120 debentures having face value of Rs.10,00,000/- each and had executed various Debenture Trust Deeds (DTD). In recital 'C' of the DTD dated 24.09.2015 it is stated as follows,

*"RVVPL is also a private limited company incorporated in Chennai on August 24, 1993 RVVPL is the registered, sole and absolute owner of the Current Land (as defined hereinafter) and the Promoters and RVVPL have agreed to enter onto a development rights agreement with the Company for granting Development Rights (as defined hereinafter) on the Current Land to the Company in the form and manner provided under this Deed. AS on the Effective Date, the shareholding of RVVPL, is as set forth at Schedule I hereto.*

In the above recital the term "current land" refers to the subject property

3.4. In recital D of the DTD it is stated as follows,

*"The Promoter represent and warrant to the Debenture Holders (as defined hereinafter) that the Company is in the process of acquiring the Development Rights and other rights, titles and interest onto the Current Land from RVVPL and shall complete such acquisition in the manner set out in this Deed. The Promoters represent and warrant to the Debenture Holders (as defined hereinafter) that the Promoters and RVVPL are also in the process of filing the Demerger Scheme (as defined hereinafter) with the High Court (as defined hereinafter) for demerger of the Demerged Undertaking (as defined hereinafter) from RVVPL into the Company in accordance with the Demerger Scheme and in the manner set out in this Deed, such that the Company shall be the absolute and exclusive owner of and shall be vested with and in*

*complete possession of the Demerged Undertaking along with all rights, title, interest, entitlements and ownerships attached to the same”*

Wherein the term “Demerged Undertaking” refers to the proposed project to be developed on the Subject Property. Pointing out the above recitals the Resolution Professional contended that the Subject Property which is an asset of the Corporate Debtor has been alienated to the RVVPL without proper consideration and which is an fraudulent transaction.

3.5. Further, the RP pointed out that as per in the recital H of the DTD which is extracted below,

*“The Company, the Promoters and RVPPL, have agreed and assured to the Debenture Holders that the issue of the Debentures, the due payment of the Redemption Amounts (as defined hereinafter) and all performances of their covenants, obligations, liabilities and all other terms and conditions under this Deed shall be secured by:*

- i. first ranking and exclusive equitable mortgage on the Current Land,*
- ii. first ranking and exclusive equitable mortgage on the Additional Land,*
- iii. first ranking and exclusive equitable mortgage on the Development Rights to the Current Land,*
- iv. first ranking and exclusive equitable mortgage on the Joint Development Rights to the JDA Land:*
- v. first ranking and exclusive charge by way of hypothecation on the Hypothecated Assets;*
- vi. first ranking and exclusive pledge on 100% (one hundred per cent) shareholding of the Company held by the Promoters.*
- vii. first ranking and exclusive pledge on 26% (twenty six per cent) shareholding of RVPPL held by the Promoters,*

- viii. *Personal Guarantee of VSS, and*
- ix. *Corporate Guarantee of RVPPL”*

Pursuant to the above Share Pledge Agreements dated 24.09.2015, 11.04.2016, 26.10.2016, and 18.09.2017 were executed by and between, the Corporate Debtor, VS Suresh and Jayasathya Suresh, and IL&FS Trust Company Limited whereby 10,35,008 equity shares held by VS Suresh and Jayasathya Suresh constituting 26% of the paid up equity share capital of the Corporate Debtor were pledged to the debenture trustee - IL&FS Trust Company.

3.6. Clause 7.2 of the Share Pledge Agreements reads as follows,

*“7.2. Additional Rights upon the occurrence of an Event of Default:*

*7.2.1. Upon the occurrence of an Event of Default, the Pledgors hereby irrevocably authorize the Debenture Trustee to attend any board meeting, general meeting of the members, or meeting of any class of members, or meetings of creditors of RVPPL and to exercise the voting rights in all such meetings as the Debenture Trustee is instructed by the Majority Debenture Holders.*

*7.2.2 Upon the occurrence of an Event of Default, the Debenture Trustee shall have the authority from time to time to collect dividends/interest on the Pledged Shares. The Debenture Trustee shall not be responsible (though entitled to) for the collection of the dividends when the same though declared are not received by the Debenture Trustee”*

The term default in the above clause is defined under clause 14.3.2 of the Debenture Trust Deed as upon occurrence of an Event of Default the

Applicant being the Majority Debenture Holder would become entitled to exercise voting rights in respect of equity shares constituting 26% of paid-up equity share capital of the Corporate Debtor.

3.7. In the event of default as per DTD, SPA and Corporate Guarantee as per clause 7.2 of the SPA the Applicant is entitled to instruct the Debenture Trustee to vote in respect of 26% shareholding of the Corporate Debtor at the general meeting of the Corporate Debtor. More over the default notices were already issued by the Applicant and the Debenture trustee to the RVVPL and the Corporate Debtor.

3.8. Section 5(24)(j) of the IBC stipulates that *“any person who controls more than twenty per cent of voting rights in the corporate debtor on account of ownership or a voting agreement”* shall be considered as a related party of the Corporate Debtor. Section 21(2) of the IBC stipulates that a Financial Creditor which 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”*. Therefore, the Resolution Professional has come to the conclusion that the Applicant is related party to the Corporate Debtor.

3.9. Further added that the above said clause 7.2 of the SPA authorizes the Debenture Trustee to attend the Board Meetings of the Corporate Debtor on the instructions of the Applicant. Since, the Applicant is the majority debenture holder the Debenture Trustee have go by the Applicants words as per the DTD. Which is even attracted by Section 5(24)(m)&(j).

3.10. In addition to the RP contended that the Applicant not permitting the RP to perform his legal duties and had voted against the essential resolutions such as issuance of Expression of Interest (EoI) in the meeting of the CoC.

3.11. Further in the Written Submissions the RP captured the records of decisions taken by the Applicant in the CoC and had tabulated the details which connects the RVVPL and Corporate Debtor and also the relation between the RVVPL and the Applicant.

4. Heard both the parties and perused the documents on record. It is matter of fact that the RVVPL and the Corporate Debtor has common Directors and they are related parties. The point for consideration is

- a) Whether the Applicant is related party to the Corporate Debtor or not?
- b) Whether the of Resolution Professional's action of the Applicant from the CoC is valid?

Noting the above, now we turn to the relevant provisions in the IBC, 2016.

*"5(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;”*

**“Section 21: Committee of creditors.**

...

*(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:*

*Provided that a 1[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]2 of the corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors:”*

The Resolution Professional contended that by virtue of DTD, SPA and the Corporate Guarantee entered into between the Applicant, Debenture Trustee, RVVPL and the Corporate Debtor the Applicant can directly control the 26% of voting rights of the Corporate Debtor in General Meetings and can directly or indirectly control the composition of Board and the policy making process of the Corporate Debtor.

5. Be that as it may let us now examine the relevant documents. The Debenture Trust Deed dated 24.09.2015 entered into between 1.RVVPL, 2. The Corporate Debtor, 3. Mr. V S Suresh, 4. Mr. Damodaran 5.Mrs. Jayasathya Suresh (3, 4, 5 are directors of the Corporate Debtor as well as RVVPL herein after referred to as “Common Directors”) and IL &FS Trust Company Limited (Debenture Trustee). Wherein Clause H (vii) of the above deed states that “*first ranking and exclusive pledge on 26% (twenty six per cent) shareholding of RVPPL held by the Promoters* “ has been given as security to the Debenture Holders.

6. Further, Clause 14 reads as follows,

**14.3 Occurrence and Consequences of Events of Default.**

14.3.1 Upon the occurrence of an Other Default and, or, Acceleration Default, the Debenture Holders shall have the right to give notice of the alleged Default ("**Default Notice**") to the Promoters and the Company.

14.3.2 The Promoters and the Company (as the case maybe) shall in case of an Other Default, have a period of 15 (fifteen) Business Days from the Periodic Interest Due Date or the due dates for payments of the Minimum Repayment Amounts set forth at **Schedule XV** hereto or the date of expiry of the Tenor, (as applicable), or from the date of the Default Notice (such period shall hereinafter be referred as the "**Cure Period**"), to cure the Other Default to the satisfaction of the Debenture Holders. If upon the expiry of the Cure Period (as applicable), the Company and the Promoters have failed to cure the Other Default (as the case maybe) to the satisfaction of the Debenture Holders, it shall be deemed to be an "**Event of Default**". For avoidance of any doubt it is clarified that no cure period shall be available for any Acceleration Default and Key Man Event; and any Acceleration Default and the Key Man Event shall be immediately deemed to be an Event of Default.

14.3.3 If upon the expiry of the Cure Period, the Other Default has not been rectified to the satisfaction of the Debenture Holders then it shall be deemed to be an Event of Default. Upon the occurrence of an Event of Default (which shall include the occurrence of an Acceleration Default and, or, the Key Man Event), the Debenture Trustee shall, without prejudice to any other rights under the Transaction Documents or Law, have the following rights but not the obligation (to be exercised only with the Debenture Holders Approval):

- (i) to require the Promoters, by way of a Notice, to cause the Company to mandatorily redeem, all and not less than all the Debentures at the Default Redemption Amount (viz. a cash price which shall be the amount that is higher of, (i) an amount that shall provide/ give a return of an annualized IRR of 26% (twenty six percent), Net of Taxes; or (ii) an amount that shall provide a return of 2 times, Net of Taxes; on the entire amounts invested/ contributed to acquire/ subscribe to all and not less than all the Debentures). The Promoters shall, within a period of 30 (thirty) days from the Notice, contribute funds

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into the Company to cause the Company to immediately redeem all and not less than all the Debentures at the Default Redemption Amount. This shall remain without prejudice to the obligations of the Promoters to pay the entire Default Redemption Amounts to the Debenture Holders or cause the Company to redeem all and not less than all the Debentures, as applicable. It is clarified that the Redemption Amounts shall be deemed to include the amount payable to the Debenture Holder under this Section 14.3.3(i); and, or,

- (ii) require the Promoters to purchase all and not less than all the Debentures held by the Debenture Holders, by payment of the Redemption Amounts, including the Default Redemption Amounts, in full; and, or,
- (iii) to enforce the Security Interest created under the Security Documents, without assigning any order of priority or preference between the Security created; and, or,
- (iv) to enforce their rights and entitlements under the Security Documents and otherwise available to them under the Law; and, or,
- (v) to take all such other actions expressly permitted under this Deed or in the other Transaction Documents, as deemed fit by them; and, or,
- (vi) to exercise all other rights, powers and remedies vested in the Debenture Trustee, as deemed fit by it under applicable Law to protect the interest of the Debenture Holders; and, or,



- (vii) get all rights over the Project Land and the Project; and, or,
- (viii) to enter and take possession of the Project Land and the Project and receive all the Company Revenues, without any disturbance or hindrance from the Promoters and, or, the Company (subject to the construction loans and statutory payments); and, or,
- (ix) remove all existing bank signatories of the Company; and, or,
- (x) cause the liquidation and winding up of the Company; and, or,
- (xi) freeze the Expense Account, and not allow any further distributions to the Company/ Promoters. The Debenture Holders shall be entitled to appropriate the amounts in the Expense Account towards redemption of the Debentures and payment of the Redemption Amounts to the Debenture Holders; and, or,
- (xii) appoint majority of the Directors on the Board of the Company; and, or
- (xiii) exercise such other remedies as permitted under the applicable Laws.

7. Reading the above specifically clause 14.3.3 (iii) & (xii) we notice that in the event of default the Debenture Trustee with the approval of the Debenture Holders enforce the security interest created under the security documents i.e. Share pledge Agreement and can appoint majority of Directors on the Board of the Company i.e. RVVPL. Further Clause 15.2 of the DTD states that the Debenture Trustee is bound by the decision of Majority Debenture Holders and the same is extracted below,

15.2 The Debenture Trustee shall act as per the instructions of the Majority Debenture Holders, in the exercise of any right, power or discretion provided for in the Transaction Documents. Any such instructions given by the Majority Debenture Holders shall be binding on all the Debenture Holders and the Debenture Trustee shall not be held liable with regard to any act done on the instructions of the Majority Debenture Holders.

8. The Share Pledge Agreement dated 24.09.2015 has been entered into between the Corporate Debtor, the Common Directors and the Debenture Trustee. Wherein, 7.2. reads as follows,

**7.2 Additional Rights upon the occurrence of an Event of Default.**

7.2.1 Upon the occurrence of an Event of Default, the Pledgors hereby irrevocably authorize the Debenture Trustee to attend any board meeting, general meeting of the members, or meeting of any class of members, or meetings of creditors of RVVPL and to exercise the voting rights in all such meetings as the Debenture Trustee is instructed by the Majority Debenture Holders.

9. The Corporate Guarantee dated 26.10.2016 has been entered in to between the Corporate Debtor and the Debenture Trustee. Clause 3 of the Guarantee Deed confers powers to the Debenture Trustee and the Debenture Holder to enforce debentures or the guarantee obligations.

10. It is clear from the above documents that in the event of default the Majority Debenture holders through Debenture Trustee can control the Board of RVVPL and control the 26% of voting rights of the Corporate Debtor. It is seen that the Debenture Trustee had issued Notice of Default dated 09.01.2023 to the parties to the DTD which includes RVVPL and the Corporate Debtor. The Applicant had not denied the fact that it is a Majority Debenture Holder.

11. At this juncture it is also necessary to look in to the time lines associated with this case. It is seen that the default notice issued by the Debenture Trustee is on 09.01.2023. The Corporate Debtor was admitted to CIRP on 10.05.2023. So, it is clear that before Insolvency Commencement date of the Corporate Debtor, the Applicant and the Debenture Trustee had invoked the security interest by issuing notice of default and confirmed that the Event of Default has occurred on the part of RVVPL and the Corporate Debtor. It is thus clear that from 09.01.2023 the Debenture Trustee has control over the 26% of voting of the Corporate Debtor and has acquired power to control the board.

12. Section 5(24)(j) defines that related party means, any person who controls more than twenty per cent of voting rights in the corporate debtor on account of ownership or a voting agreement. In the instant case the Applicant as a Majority Debenture holder acquired the power

to control the 26% of voting rights in the Corporate Debtor. Moreover, as per clause 7.2 of the DTD the Applicant had acquired right to control the board of the RVVPL, who are also directors of the Corporate Debtor.

13. We have also gone through the decisions of the Applicant in 6 meetings of the CoC that the applicant had rejected resolutions on publication of Form-G and engagement of forensic auditor which are very basic in the CIR process. Though the decisions were taken in the exercise of commercial wisdom of CoC it shows that the Applicant creating considerable resistance to the resolution process. The decisions taken by the Applicant in the CoC are extracted below,

COC Meeting	Date of Meeting	Resolution 1	Favour	Against	Not Voted/ Absent	Result	Ammon %
2nd COC	4th July 2023	Form G publication and eligibility Criteria	14.19%	84.85%	0.96%	Rejected	82.69%
		<b>Resolution 1</b>					
3rd COC	19th July 2023	Form G publication	12.37%	84.85%	2.78%	Rejected	82.69%
		<b>Resolution 2</b>					
		Circulation of Eligibility Criteria	95.06%	2.16%	2.78%	Approved	82.69%
		<b>Resolution 3</b>					
		Appointment of M/s. M K Dandekar & Co LLP , as the statutory auditor for Remuneration as Rs.3,50,000 + GST for audit of Financial statements of the CD for Financial year 2022-23	12.37%	84.85%	2.78%	Rejected	82.69%
		<b>Resolution 1</b>					
4th COC	31st July 2023	Form G publication*	95.04%	2.16%	2.80%	Approved	82.69%
		<b>Resolution 1</b>					
5th COC	9th August,2023	Approval of a tentative cost budget of Rs. 6 Lakhs plus applicable taxes for Suitable Forensic Auditor engagement.	12.33%	84.85%	28.24%	Rejected	82.69%
6th COC	7th Sep,2023	Approval of a total cost of Rs. 4 lakhs + GST[including all reimbursement expenses] for engagement of suitable Forensic Auditors .	14.12%	84.72%	1.16%	Rejected	82.36%
*	With a note:						
	<p>The Corporate Debtor has duly executed and registered irrevocable Construction Agreement togetherwith irrevocable registered Power of Attorney, both dated September 28, 2015, in favour of Real Value Ventures Private Limited ("RVVPL"##), pursuant to which RVVPL has irrevocable and exclusive Development Rights including all rights, interest, entitlements, privileges and benefits in the land measuring approximately 17.26 acres situated at Pallavaram and Nemilichery Villages, Chennai; accordingly, entire economic and monetary/ beneficial interest and value in the said 17.26 acres of land vests with RVVPL. The said 17.26 acres land is reflected in the books of the Corporate Debtor merely since it is holding title to the same (with all rights/ interest/ entitlements/ benefits in favour of RVVPL).</p> <p>The said entire approximately 17.26 acres situated at Pallavaram and Nemilichery Villages, Chennai alongwith all irrevocable development rights and all rights, title and interest in the same is exclusively mortgaged/ secured in favour of Ammon Holdings Pte. Ltd.</p> <p>[##RVVPL is a related party]</p>						

14. The Applicants decisions in the CoC clearly show the intention of the Applicant that it is not diligent towards resolution of the Corporate Debtor. The 1<sup>st</sup> proviso to the Section 21 of the IBC stipulates that, *“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:”*. The intention behind this provision is to keep the CIR process driven by the external creditors so as to ensure that the CoC is not disrupted by the related parties. Hon’ble Supreme Court in the case of *Phoenix ARC Vs. Spade Financial Services Ltd* (2021 SCC OnLine SC 51) held as under:

*“95. Hence, while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties in praesenti would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder. Mr Kaul has argued, correctly in our opinion, that if this interpretation is not given to the first proviso of Section 21(2), then a related party financial creditor can devise a mechanism to remove its label of a ‘related party’ before the Corporate Debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors.”*

15. In view of the above discussions, we reasonably conclude that the Applicant is related party to the Corporate Debtor and the decision of Resolution Professional removing the Applicant from the CoC does not require any interference of this Adjudicating Authority.

16. Accordingly, this IA(IBC)/2241(CHE)/2023 is **dismissed** and disposed of.

**17. IA(IBC)/619(CHE)/2024**

17.1. This application has been filed by Ammon Holdings one of the Financial Creditors of the Corporate Debtor Viz. Real Value Promoters Private Limited under Section 60(5) of Insolvency and Bankruptcy Code 2016 r/w Rule 11 of NCLT Rules 2016 seeking an ex-parte ad-interim injunction restraining the Resolution Professional from proceeding further with the CIRP of the Corporate Debtor pending final and disposal of application IA(IBC)/2214(CHE)/2023; and also sought ex-parte ad-interim direction to RP to provide all details, documents, agendas, minutes of meetings, Resolution Plans etc., in relation to the CIRP of the Corporate Debtor from.

17.2. Since, IA(IBC)/2241(CHE)/2023 has been disposed, the prayer sought in this application become infructuous. Accordingly, this application is **dismissed** as infructuous.

**Sd/-**

**RAVICHANDRAN RAMASAMY**  
MEMBER (TECHNICAL)

**Sd/-**

**JYOTI KUMAR TRIPATHI**  
MEMBER (JUDICIAL)