

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
IA/338(AHM)2021
in
CP(IB) 271 of 2019

Order under Section 21 r.w 60(5) & 5(24) IBC

IN THE MATTER OF:

Punjab National Bank & Ors.

.....Applicants

V/s

Alpha(India) Properties Ltd & Ors.

.....Respondents

Order delivered on: 20/02/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT No.2**

IA 338/NCLT/AHM/2021
in
CP (IB) 271/NCLT/AHM/2019

In the matter of:

(IA 338/NCLT/AHM/2021)

Punjab National Bank & Ors. Applicants

Versus

Alpha (India) Properties Ltd. & Ors. Respondents

In the matter of:

(CP (IB) 271/NCLT/AHM/2019)

Acrow Construction Pvt. Ltd. & Ors. Financial Creditors

Versus

K.G. Corporation Ltd. Corporate Debtor

Memo of Parties

IA 338/NCLT/AHM/2021

1. Punjab National Bank
#181-A1, 18th Floor, 'E' Wing
Maker Tower, Cuffe Parade
Mumbai-400 005

2. Bank of India
Asset Recovery Management
Branch
First Floor,
Bank of India Building
Andheri West
Mumbai-400 058

3. UCO Bank
India Exchange Place Branch
(Post Box No.2148)
2, India Exchange Place
Calcutta
West Bengal – 700 001

..... Applicants

Versus

1. Alpha (India) Properties Ltd.
2. Acrow Construction Pvt. Ltd.
3. Archana Syntex Pvt. Ltd.
4. Avazy Realcon Pvt. Ltd.
5. Clematis Trading Company Pvt. Ltd.
6. Eloquent Traders Pvt. Ltd.
7. Eremurus Trading Co. Pvt. Ltd.
8. Glean Trading Pvt. Ltd.
9. Heavy Steel Pvt. Ltd.
10. Jyotsana Developers Pvt. Ltd.
11. Kausar Textiles Pvt. Ltd.
12. Raves Trade Pvt. Ltd.
13. Royal Compservices Pvt. Ltd.

14. Super Financial Advisory Solutions Pvt. Ltd.
15. Systematic Trading Pvt. Ltd.
16. Tanvish Trading Pvt. Ltd.
17. Unique Warehouse Pvt. Ltd.
18. Udit Textiles Pvt. Ltd.
19. Vignaharta Corrugators Pvt. Ltd.
20. Wellworth Apparels Pvt.Ltd.
- 21 Naren Sheth
Resolution Professional
of K G Corporation Limited
1014-1015, Prasad Chamber
Tata Road No.2
Opera House (East)
Mumbai-400 004

..... Respondents

Order pronounced on 20.02.2024

CORAM:

**MRS. CHITRA HANKARE
MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

Appearance:

- For the Applicants : Mr. G Aniruth Purusothaman, Adv.
- For the RP : Mr. Pavan S Godiawala, Adv. a.w. Mr. Saumitra Chaturvedi, Adv
- For the Respondents : Mr. Krishnendu Datta, Sr. Adv. a.w. Mr. Parth Shah, Adv. for R-2,6,8 & 19

Mr. Mandeep Singh Saluja, Adv. for R-1,7,10,13, 14 & 20

Mr. Yuvraj Thakore, Adv. for R-3,4,5,9,15 & 17

Mr. Lokesh Malik, Adv. for R-11,12,16 & 18

JUDGMENT

1. The present IA is filed under Section 21 read with Section 5(24) and 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016, seeking reconstitution of Committee of Creditors of the Corporate Debtor along with other consequential reliefs.
2. The main application, i.e. CP (IB) 271 of 2019, was filed under Section 7 of the IBC, 2016, by Acrow Construction Pvt. Ltd.& Ors. for initiating Corporate Insolvency Resolution Process (CIRP) against corporate debtor, i.e. K.G. Corporation Ltd. which was admitted on 09.11.2020. The applicants are members of CoC holding 32.45% of the voting share. According to applicants, Respondent Nos.1 to 20 are related parties of the corporate debtor who are wrongfully made as members of the CoC holding 67.55% voting share. Respondent No.21, i.e. RP, admitted claims of Respondent Nos. 1 to 5, 7 to 9, and 11 to 20 to the tune of Rs.1279.93 crore with the help of CoC of related party. These respondents cannot have any rights of representation and participation in the meetings. The applicants informed RP about the same by email. The applicants apprehend that Respondent Nos.1 to 20 are not financial creditors. Granting voting rights to these

respondents is not permissible under law as it will affect the interest of other creditors. Due to wrongful grant of voting rights to these respondents, voting share of CoC members is skewed. It impacts upon decision making power of CoC. Therefore, applicants are seeking reconstitution of CoC and to declare these respondents as related parties.

3. Respondent Nos.1,7,10,13,14 and 20 have filed their reply. They contended that the applicants have not filed any proof to substantiate their allegations. The applicants approached this Tribunal attempting to oust the unsecured creditors from the CoC so that the fate of resolution of the corporate debtor lies in their hands. The allegations are based on false appreciation of facts and law. These respondents have denied all allegations levelled against them. These respondents are not related parties to the corporate debtor. To show a party is related to the corporate debtor it should hold more than 20% voting rights in the corporate debtor on account of ownership which, in this case, is not held even by a single financial creditor. Respondent No.10 have not held more than 20% shareholding. There exists no relationship between Respondent Nos. 6 and 10, so the possibility of clubbing those two distinct financial creditors to reach the referred threshold never arrives. Neither the RP nor these respondents have any control over the voting share. Hence, prayed for dismissal of the application.
4. Respondent Nos.2,6,8 and 19 by filing their reply denied all the allegations made in the application. They contended that they

are not related parties of the corporate debtor and do not fall in any clauses of Section 5 (24) of the Code. The application is filed with malafide intention. They have filed their claims in Form-C as per invitation of claims by IRP. Their claims were supported by required documents. As their claims were legitimate they were made part of CoC. In Form-C, Clause-6, they have declared that they are not related parties of the corporate debtor. Respondent No.6 only holds 12.74% of shareholding, therefore, does not fall within the purview of Section 5(24) of the Code. The applicants have combined the shareholding of Respondent Nos.6 and 10 but they are separate legal and distinct entities. There is no interchange of managerial personnel between the corporate debtor and such persons. Hence, prayed for dismissal of the application.

5. The reply is also filed by Respondent Nos. 3,4,5,9,15 & 17 contending that there is no relationship between these respondents and corporate debtor. The applicants have combined the shareholding of Respondent Nos. 6 and 10 to say that they hold 28% shares. There should be some relationship between the parties who combined together to reach the 20% criteria. They are bonafide claimants who had filed their claims which were admitted after verification. Hence, prayed for dismissal of the application.

6. Respondent Nos. 11,12,16 and 18 have filed their reply. They have also denied the allegations made in the application. The allegations are unsubstantiated whims and fancies of the applicants. The applicants merely placed reliance upon the fact

of interchange of managerial personnel amongst the CoC members which does not make them related party. There is no any inter-change of managerial personnel between these respondents and corporate debtor. The allegations against them do not fall within four corners of Section 5(24) of the code. Only an invitation of claims by the IRP, they have filed their claims in Form-C within the stipulated period with supporting documents. As their claims were legitimate they were rightly made part of CoC. The application is filed at a belated stage i.e. by the end of CIRP. Hence, prayed for dismissal of the application.

7. Respondent No.21/ Resolution Professional (RP) filed his reply. He has also denied the allegations made in the application. Resolution Plan in respect of the corporate debtor has already been approved by the CoC in its meeting dated 13.09.2021 with 75.09% majority. The application is filed with ulterior motive to derail the process of CIRP. In pursuant to the publication of Form-H, claims from all the financial creditors were examined in compliance of Regulation 13 and also on the issue of related party. The respondent reduced amount of claims in 12 cases and kept claims of 2 unsecured financial creditors on hold as the same were appearing to be related party. The respondent engaged an expert / practicing company secretary for conducting due diligence in respect of all the unsecured financial creditors on the issue of related party. In their report, it is categorically mentioned that none of the unsecured financial creditors are related party to the corporate debtor. An auditor appointed by the applicants was without

any authority. The documents sought were privileged documents which cannot be supplied to a third party. In respect of admitted claims, which are available in his office, can be inspected by the applicants. The applicants were present in all the CoC meetings and had ample opportunities to discuss the issue of related party amongst the members of CoC. None of the financial creditors are related party to the corporate debtor in view of the provisions of IBC. Any common directorship between the financial creditors would not come under the purview of related party. The applicants failed to prove that Respondent Nos.1 to 20 are not the financial creditors and are not entitled to vote in CoC. No documents are placed on record to support their allegations. Voting rights derive amount of claim admitted and the IRP/RP has no role to decide the same. Hence, prayed for dismissal of the application.

8. Perused the rejoinder, written submissions and additional written submissions filed by the parties.
9. According to the applicants, due to wrongfully admitting Respondent Nos.1 to 20 as members of CoC they are holding 67.55% voting share in the CoC. The applicants, therefore, alleged that these respondents are related parties of the corporate debtor on account of their shareholding or managerial personnel between these respondents.
10. To find out whether the respondents are related parties to the corporate debtor, it is necessary to reproduce the definition of related party given in Section 5(24) of IBC. It is as under:-

(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;*

11. Applicants have also placed on record the following citations on the ground of lifting of the Corporate Veil, when the corporate personality is found to be against the public interest. The corporate veil has to be lifted to prevent unjust and fraudulent act and look into realities behind the legal facade. The duty is coasted upon the Tribunal to break up this shell of the company and to seek who is actually benefited by this curtain.

- i. Judgment dated 06.05.1996 passed by the Hon'ble Supreme Court in SLP No.21000 of 1993 in the matter of Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. & Another.*
- ii. Order dated 04.10.2018 passed by the Hon'ble Supreme Court in Civil Appeal Nos.9402-9405 of 2018 in the matter of Arcelormittal India Private Limited Vs. Satish Kumar Gupta & Ors.*
- iii. Order dated 09.05.2022 passed by National Company Law Tribunal, New Delhi Bench, in IA 3172/ND/2021 and 3113/ND/2021 in the matter of UTM Engineering Private Limited*

12. Applicants have also placed on record the order dated 11.02.2014 passed by the Hon'ble Securities Appellate

Tribunal, Mumbai, in Appeal No. 68 of 2013, in the matter of *Sanjay Kumar Tayal Vs. Securities and Exchange Board of India*, along with other Appeals. It was held that the four groups of entities, i.e., Tayal Group, Silvassa Group, Yadav Group and Promoter Group of Bank of Rajasthan (BoR) were connected with each other by having common addresses, common directors as also by transfer of shares and transfer of funds within the group.

13. The applicants heavily relied upon the judgment given by the Hon'ble Securities Appellate Tribunal dated 11.02.2014 (supra). The applicants submitted that in view of this judgment, the promoter group of BoR, Tayal Group of companies, Silvasa Group of companies and Yadav Group of companies are all interconnected entities and PACs of each other. The applicants further relied upon the observations in this judgment as under:-

"It is of pertinence to note that majority of these members had common directors, cross shareholdings, common registered addresses and common email addresses. It was therefore claimed that the web of companies, wherein some companies have common directors, common registered addresses and common e-mail address are definite pointers to the fact that these companies are part of one group of companies which are enmeshed with each other through shareholding stake, common directors, common registered address and common e-mail address. It was submitted by the Appellants that these facts show that there is one 'controlling mind' who is directing all the actions and activities in the matter, and the presence of such a 'controlling mind' comes out clearly in connections and cross connections we between members of the CoC and the corporate debtor".

It was further observed that *“by definition of clause(f) of Section 5(24-A), the companies that have been members of CoC are ‘related parties’ of the corporate debtor and hence their position as members of CoC and to be represented, participate and vote in the meetings of the CoC is completely untenable and infringes the first proviso of Section 5(24) of IBC”*.

Relying upon this judgment, applicants submitted that Respondent Nos.1 to 20 are related parties and constitution of CoC is vitiated as the decisions taken in the CoC meetings are null and void. The facts of above case are identical to the facts of the present case, according to the applicants.

14. The Adjudicating Authority held that all these four groups of entities were interconnected with each other by having common addresses, common directors, by transfer of shares and transfer of funds within the group. The Hon’ble SAT observed that Yadav group and Silvassa group entities have collided with Promoter group. It was further observed that both Yadav group and Promoter groups were controlled by Tayal family. They are persons acting in concert of Promoter group. The applicants co-related these observations with present Respondent companies as all 3 groups of companies are interconnected entities. It is pertinent to note that Respondent Nos.1,2, and 10 are from these three groups.
15. Applicants have also placed on record order dated 09.01.2023 passed by the Hon’ble National Company Law Appellate Tribunal, in Company Appeal (AT) (Insolvency) Nos. 42 and 43 of 2022 in the matter of Hindalco Industries Ltd. Vs. Hirakud

Industrial Works Ltd. & Ors. and in Company Appeal (AT) (Insolvency) No.52 and 53 of 2022 in the matter of H.I.W Workers Union Vs. Nandakini Contractors Pvt. Ltd. & Ors. It was observed as under:

“90. Additionally, the following emerges from the examination of the charts submitted by the Appellant HIL (regarding shareholding of various corporate entities: -

- (i) Enormous Nivesh and Divya Mercantile both have more than 20% shareholding in Adishwar Nivesh and they are 'related parties' of Adishwar Nivesh which is the holding company of the corporate debtor through Indo Wagon.*
- (ii) Adishwar Nivesh, along with its shareholders (which are Sheetal Exports, Enormous Nivesh, Fragment Nivesh, Goldman Stocks and Divya Mercantile) control major shareholdings in at least four CoC members. Thus, Gain E-commerce, Subhlaxmi Compusis, Dahisar Traders, Miller Traders, Luni Housing and Developers and Mekong Rubber all are closely inter-connected through shareholdings with Adishwar Nivesh, which is the holding company of Indo Wagon which is the holding company of the corporate debtor.*
- (iii) Miller Traders, Gain E-commerce, Subhlaxmi Compusis, Mekong Rubber, Luni Housing &*

Developers and Dahisar Traders, which constitute six of the seven members of the CoC are intricately connected with Adishwar Nivesh, which controls the corporate debtor. Therefore, these six corporate entities as members of the CoC are closely connected parties of the corporate debtor.

91. *We also note that, in addition, the same directors are present in the boards of many companies in the CoC. As painted out earlier, taking just one illustrative example of Mr. Sujit Dutta Roy, who is a director of the corporate debtor, is also a director in Subhlaxmi since 31.3.2019. He is also a director in Varsha Fabrics/Purbanchal Power (which is connected with the corporate debtor as one of the original three companies that bought the corporate debtor after disinvestment) and five of the CoC members, namely, Miller Traders, Nandakini, Gain E-Commerce, Subhlaxmi Compusis and Dahisar Traders along with being present in Divya Mercantile, Sheetal Exports, Enormous Nivesh and Goldman Stocks & Share Brokers. Interestingly Mr. Sujit Dutta Roy is also a director of Successful Resolution Applicant Regus Impex. While this is clearly an infringement of clause (f) of section 5(24), whereby Mr. Sujit Dutta Roy has a say in the corporate debtor, CoC as well as Successful Resolution Applicant Regus Impex by virtue of being director of these companies.*

92. *The inter-connections between the corporate debtor, the financial creditor Nandakini, members of the CoC and the holding companies of the Successful Resolution Applicant through common directors sitting on the board of more than one company, different levels of shareholdings and common registered addresses and working-email IDs thus adds strength to the argument that they belong to the same group of companies working towards common objective insofar as the CIRP in the instant case goes.*
93. *Therefore, looking at the events in this case from the lens of the nature, involvement and conduct of the companies, we find the inference inescapable that these companies were acting 'in concert' and being guided and led by a 'controlling mind as part of a fraudulent project to defraud the creditors of the corporate debtor by misusing the instrumentality of the IBC, completely against its objectives and spirit and such actions, which are infringing the provisions of the IBC cannot be condoned or overlooked."*
16. The applicants have given list of 96 companies and 14 entities of all 3 groups i.e. Tayal, Yadav and Silvassa. The applicants have also given links of interconnectedness of Respondents and PACs of connected group companies. The detailed relations given by the applicants are not denied by any of the respondents. The applicants relied upon financial information available on the Ministry of Corporate Affairs' website regarding the companies who are members of CoC shows that they belong to the same group of companies. The applicants

given charts showing the shareholding status of members of the CoC and their interconnectedness through shareholdings to show how these entities are connected with each other. Applicants also given detailed information regarding common directors, cross shareholdings, common registered addresses, etc. The relationship of respondents as narrated by the applicants is reproduced herein below for ready reference:-

- (a) Respondent Nos. 1 and 2 are Silvassa group company as per order of Hon'ble SAT. Thus, Respondent Nos. 1 and 2 are related parties of the corporate debtor.
- (b) Respondent No.3 has the same registered office address as Respondent No.10. Respondent No.10 is in turn Tayal group of company as per order of Hon'ble SAT.
- (c) 100% shares of Respondent No.4 are owned by two Silvassa group of companies, i.e. Amex Infrastructure Pvt. Ltd. and Ele Pvt. Ltd. Thus, it is the related party of the corporate debtor.
- (d) One of the directors of Respondent No.5 is also a director of Respondent No.1, who is a Silvassa group of company. Respondent No.5 is also interconnected with other respondents i.e. Respondent Nos.6 and 15 by holding shares. 50% shares of Respondent No.5 were hold by Athwart Trading Pvt. Ltd. who is under the control of Respondent No.5. Therefore, Respondent No.5 has control over Respondent No.15. Respondent No.15 becomes subsidiary company of Respondent No.5.

Respondent No.5 also has common director with Respondent No.7 and common registered office address as of Respondent No.15. Thus, it is also related party of the corporate debtor.

- (e) Respondent No.10 is a company from Tayal group of company as per order of Hon'ble SAT. Therefore, it is also a related party of the corporate debtor.
- (f) Respondent Nos.5 and 15 have same registered office address. Respondent No.5 is interconnected with Silvassa group through common directorship. Respondent No.15 is an interconnected company and related party to the corporate debtor.
- (g) Respondent No.15 holds 50% shares in Respondent No.8. As Respondent No.15 is a related party, Respondent No.8 also becomes a related party to the corporate debtor. Moreover, Respondent No.8, Respondent No.4 and Respondent No.16 have common director. Respondent No.4 is a related party, therefore, all becomes related party to the corporate debtor.
- (h) Everlong Trading Pvt. Ltd. is controlled by Respondent No.8 as it is having 50% shares in Respondent No.8. Respondent No.12 has same registered office as Respondent No.8. As Respondent No.15 and Respondent No.8 are related companies Respondent No.12 also comes under connected group of companies and related to the corporate debtor.
- (i) Respondent No.18 has same registered office as

Respondent No.8 and Respondent No.12. Hence, it also a connected entity and related to the corporate debtor.

- (j) Respondent No.6 holds 13% shares to corporate debtor. Respondent No.8 holds 50% shares in Respondent No.6. While Everlong Trading Pvt. Ltd. holds remaining 50% of shares in Respondent No.6. Everlong Trading Pvt. Ltd. is controlled by Respondent No.8, so it becomes related party. So also directors of Respondent Nos. 6,12 and 18 are common, Respondent No.6 also becomes a connected entity and related to the corporate debtor.
- (k) Respondent No.18 holds 50% of shares in Respondent No.7. Glute Traders Pvt. Ltd. holds remaining 50% shares in Respondent No.7. Respondent Nos.6 and 7 have same registered office. Respondent No.12 is controlling Glute Traders Pvt. Ltd. who itself is a PCA of connected groups. Further, Respondent Nos. 7 and 5 have a common director. Also one director is common for Respondent No.7, Respondent No.2 and Respondent No.4. As Respondent Nos.7,4 and 6 are connected groups, Respondent No.7 is also connected group of companies and related to the corporate debtor.
- (l) 50% shares of Respondent No.17 are held by Solid Vision Pvt. Ltd. who is sharing one director common with Respondent No.8 and one with Respondent No.15. Respondent Nos.8 and 15 are connected groups and related to the corporate debtor. Everlong Traders Pvt. Ltd. is a common shareholder in Respondent Nos.17, 6 and 12 and is controlled by Respondent Nos. 8 and 12.

Thus, 100% shares of Respondent No. 17 are under the control of connected group. Hence, Respondent No.17 is also connected group company and related party to the corporate debtor.

- (m) Respondent Nos. 13,14 and 19 have same registered office as Respondent No.17. Respondent No.14 has common director as of Respondent No.6. Respondent No.17 holds 50% shares in Respondent No.14. Respondent No.13 also consists of common director as in Respondent No.17 and Respondent No.19. Thus, they all are connected groups and related parties to the corporate debtor.
- (n) Respondent No.11 consists of a director who is also a director in Respondent No.1 which is a Silvassa group company. Respondent No.19 also holds 50% shares in Respondent No.11. Hence, it is connected group of company and related to corporate debtor.
- (o) Respondent No.9 consists of a director, who is also a director in Respondent No.1, i.e. Silvassa group companies. Hence, it is connected group company and related party to the corporate debtor.
- (p) Respondent No.16 consists of one of the directors common between it and Respondent No.9 while other between it and Respondent Nos.4 and 8. Thus, 100% management decisions of Respondent No.16 are under the control of connected group companies i.e. Respondent Nos. 4 and 8. Hence, it is connected group

companies and related party to the corporate debtor.

(q) Respondent No.20 : One of the directors of Respondent No.20 is also a director in Respondent No.9. Hence, Respondent No.20 is also connected with group company and related party to the corporate debtor.

17. Applicants further submitted that Respondent Nos. 1 to 20 being related to corporate debtor by virtue of control of a single controlling mind being the connected groups viz. Tayal group, Silvassa group and Yadav group, over all the Respondents as well as the corporate debtor (through various elements such as common shareholders, common directors, same registered offices, etc.) have acted in a co-joint manner in order to commit fraud and gain unlawful gains by pushing the corporate debtor into CIRP.
18. None of the respondents have denied the shareholding of one respondent with the other or their common directorship, etc. According to them, the applicants have failed to show that they are related parties in view of Section 5(24) of IBC. They have further submitted that the applicants' claim joint shareholdings of the respondents. Independently, none of the respondents is having more than 20% shareholdings. They have further submitted that the applicants clubbed shareholding of respondents falsely implicating them as the related parties. They have further submitted that any interchange in the managerial personnel without the involvement of corporate debtor will not fall under the provisions of Section 5(24)(m)(iii) of IBC. According to

respondents, if such an interpretation is accepted then all shareholders together, irrespective of their voting share become related party of the corporate debtor. With respect to bank certificates, annexed by unsecured creditors regarding transfer of amounts to corporate debtor, the respondents submitted that it was only issued by Assistant General Manager of the bank whose identify is not disclosed, thus allegations are baseless. Regarding insufficiency of stamp duty on loan agreements, some of the respondents relied upon the ruling in *Vistra ITCL India Limited Vs. Satra Properties (India) Limited* in CP (IB) 1632/MB/2019 (Emphasis is not supplied). With respect to certificate issued by Chartered Accountant, the respondents submitted that the certificate issued by them was issued by M/s. Rishi Sekhri and Associates, mentioning their membership number. Hence, the allegations against them are also baseless.

19. The applicants have annexed copy of details of shareholding of Respondent Nos. 1 to 20 and the corporate debtor as well as their directors, which are reproduced as under:-

S.No.	Claimant	CIN No.	Directorship as of ICD-09.11.2020		Shareholder as of ICD-09.11.2020	
			DIN No.	Director	Shareholder	% of Holding
R1	Alpha (India) Properties Limited	U70100DN2006 PLC000194	02169511	Shailesh Kashinath Thakur	Acrow Constructions Private Limited	20%
			08197592	Archana	Elpro Properties Private Limited	20%
			08148591	Someshwar Naktuji Nagdevte	Avery Procon Private Limited	20%
					Avazy Realcon Private Limited	10%

					Axtel Properties Private Limited	10%
					Elnet Conpro Private Limited	10%
					Amex Infrastructure Private Limited	10%
R2	Acrow Construction Private Limited	U45202DN2007 PTC000230	08194454	Pratap Singh	Amex Infrastructure Private Limited	50%
			08148591	Someshwar Naktuji Nagdevte	Capman Conpro Private Limited	50%
R3	Archana Syntex Private Limited	U18100MH1992 PTC066805	01216102	Jodha Ram Dunga Ram Dhaka	Advik Textile & Realpro Private Limited	88%
			01455458	Shivprasad Kuwarbahadur Shrivastav	Jakhi Properties Private Limited	12%
R4	Avazy Realcon Private Limited	U45200DN2006 PTC000205	08194454	Partap Singh	Amex Infrastructure Private Limited	50%
			08195099	Nisha Umesh Prajapati	Elnet Conpro Private Limited	50%
R5	Clematis Trading Company Private Limited	U51900DN2010 PTC000316	08199942	Vilas Nusheshwar Kothe	Eloquent Traders Private Limited	50%
			08199948	Ankit Subhash Mulak	Systematic Trading Private Limited	50%
R6	Eloquent Traders Private Limited	U51900DN2010 PTC000319	08199800	Pawan Kumar Sharma	Everlong Trading Private Limited	50%
			08449353	Prabhu Ramesh Rao Kalaskar	Glean Trading Private Limited	50%
R7	Eremurus Trading Company Private Limited	U51900DN2010 PTC000317	08199942	Vilas Nusheshwar Kothe	Glut Traders Private Limited	50%
			08445259	Ravi Sukhdeo Kove	Udit Textiles Private Limited	50%

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R8	Glean Trading Private Limited	U51900DN2010 PTC000323	08199936	Dinesh Suresh Bhivgade	Eremurus Trading Company Private Limited	50%
			08199948	Ankit Subhash Mulak	Systematic Trading Private Limited	50%
R9	Heavy Steel Private Limited	U74999MH2009 PTC196402	08153235	Gurpreet Singh	Adon Textiles Private Limited	50%
			08157943	Anand Kumar Santu Ray	Asmita Textiles And Real Estate Private Limited	50%
R10	Jyotsana Developers Private Limited	U45200MH2006 PTC159010	08148589	Ganesh Ishwarji Harkande	Jalaram Cultivators Private Limited	50%
			08197152	Amarlal Kallulal Gour	Jayshree Petrochemicals Private Limited	50%
R11	Kausar Textiles Private Limited	U17120MH2009 PTC196397	08161241	Pawan Kumar	Nivruti Tradex Private Limited	50%
			08161275	Hari Ram	Vignaharta Corrugators Private Limited	50%
R12	Raves Trade Private Limited	U51900DN2010 PTC000326	08445259	Ravi Sukhdeo Kove	Systematic Trading Private Limited	50%
			08449353	Prabhu Ramesh Rao Kalaskar	Everlong Trading Private Limited	50%
R13	Royal Compservices Private Limited	U72900MH2009 PTC194395	08194411	Durga Devrao Krupal	Samay Advisory Solutions Private Limited	50%
			08159381	Nirmal Singh	Shanti Synthetics & Processors Private Limited	50%
R14	Super Financial Advisory Solutions Private Limited	U67190MH2009 PTC194871	08194473	Dilbag Singh	Unique Warehouse Private Limited	50%
			08195095	Sardool Singh	Samay Advisory Solutions Private Limited	50%

R15	Systematic Trading Private Limited	U51900DN2010 PTC000318	08199800	Pawan Kumar Sharma	Clematics Trading Company Private Limited	50%
			08199801	Raju Raghuvir Gour	Athwart Trading Private Limited	50%
R16	Tanvish Trading Private Limited	U51109MH2009 PTC196078	08153235	Gurpreet Singh	Aaban Apparels And Realcon Private Limited	50%
			08153189	Pawitter Singh	Adon Textiles Private Limited	50%
R17	Unique Warehouse Private Limited	U74990MH2009 PTC196366	08194411	Durga Devrao Krupal	Solid Vision Private Limited	50%
			08194455	Sangita Suresh Gour	Everlong Trading Private Limited	50%
R18	Udit Textiles Private Limited	U17120DN2009 PTC000300	08199800	Pawan Kumar Sharma	Super Financial Advisory Solutions Private Limited	50%
			08449353	Prabhu Ramesh Rao Kalaskar	Shanti Synthetics & Processors Private Limited	50%
R19	Vignaharta Corrugators Private Limited	U74990MH2009 PTC196826	08161873	Sital Singh	Satellite Consultancy And Services Private Limited	50%
			08159381	Nirmal Singh	Kaushal Logistics Private Limited	50%
R20	Wellworth Apparels Private Limited	U17120MH2009 PTC194116	08197130	Vishal Domaji Gedam	Vervain Trade And Mercandise Private Limited	50%
			08203038	Vicky Gulabrav Wankhede	Cyra Capital Private Limited	50%
CD	KG Corporation Limited (Corporate Debtor)	U40100DN2005 PLC000185	05309693	Manasi Indrajit Wadkar	Krishna Knitwear Private Limited	10%
			05240052	Trivendra Shambhu Singh	Ksl And Industries Limited	10%
			01717979	Narayan Ramchandra	Bridge Infra Private Limited	13%

				Ghumatkar		
		06923797	Bhanu Pratap Singh	Glut Traders Private Limited		13%
				Elpro Properties Private Limited		6%
				Kanishka Infra Private Limited		13%
				Eloquent Traders Private Limited		13%
				Cyra Capital Private Limited		6%
				Jyotsana Developers Private Limited		16%

20. Thus, directors who are common for two or more entities in the members of the CoC is in a position to control the corporate debtor and also in a position to advise their own companies. Thus, these companies became related parties of the corporate debtor as per Section 5(24) of IBC. Being related parties, their decision as members of CoC and to participate and vote in the meetings of the CoC is untenable. As some of the members of the CoC are related parties the constitution of CoC becomes influenced. The applicants specifically submitted that they have brought these facts to the notice of the RP but the RP neither made enquiry nor considered their request. The details given by the applicants regarding relations between Respondent Nos.1 to 20 clearly show their interconnections, either as connected to Tayal Group and or Silvasa Group, Same Directors or same addresses. Being related parties which complies with Sec 5(24) of IBC, they can influence the functioning of the members of CoC. Thus, it is clear that the corporate debtor through related parties is in a position to

influence many members of CoC and running the process of CIRP through the RP. As pointed out earlier, some of the directors are common. The interconnections between the corporate debtor, the common directors sitting on the board of more than one company, different levels of shareholding, common registered addresses, etc. add strength to the argument of the applicants that they belong to the same group of companies working towards common objectives and to defraud creditors like applicants. They are misusing the instrumentality of the IBC completely against its objective.

21. The documents produced by the applicants are in public domain regarding shareholding pattern of the companies, their registered addresses and emails, explained the intricate web of interconnections between the corporate debtor and some members of the CoC i.e., Respondent Nos. 1 to 20. These interconnections and shareholdings have not been disputed by the Respondents. Thus, it is clear that constitution of CoC with related parties of the Corporate Debtor participating in the CoC as a majority vitiates the decisions taken. The Corporate Debtor is, thus, influencing decisions in the CoC through members of CoC who have shareholdings and related parties. Thus, decisions that are taken in the CoC meetings are not in accordance with the provisions of IBC.
22. Section 227 of the Companies Act provides that control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or person acting individually or in concert directly or

indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. So also, the SEBI Regulations 2011, provides the regulatory framework for the direct and/or indirect acquisition of shares or rights in, or control over, an Indian Company listed in Stock Exchange, the term control defined under Regulation 2(1)(e) of the Take Over Regulations. The shareholding pattern explained by the applicants intricate wave of interconnections between companies. The interconnections explained by way of shareholdings is not disputed by the respondents which shows that CoC was constituted with the collusion of financial creditors who are related parties and are acting in concert. By having a seat in CoC certainly the voting share is changed and influence in decision making in CoC meetings. Some of the respondents also have common directorship as seen from the information submitted by the applicants also influences the decision of CoC.

23. According to Respondent No.21, he has obtained due diligence report in respect of all unsecured financial creditors i.e. Respondent Nos. 1 to 20 from the expert. In the said report of PCS, it is confirmed that none of the respondents are related to the corporate debtor. According to him, in a mischievous manner the applicants have clubbed the holding of two financial creditors to show the breach in the level of holding of 20%. Nowhere the RP also denied the shareholding pattern of Respondent Nos.1 to 20 narrated by the applicants. His only grievance is about clubbing of two or more respondents to

complete 20% of shareholding to bring them under the purview of Section 5(24) of IBC. The diligence report of BMB & Associates obtained by the RP states that the unsecured creditors cannot be termed as a related party as per the tests carried out by them. At some places of the said report, it is mentioned that

“ Eloquent Traders P. Ltd. (UFC 6) holds 6,25,000 Equity Shares and 8,00,000 Redeemable Preference Shares in KG Corporation Limited (CD) (Earlier known as Tayal Energy Ltd.) as on 31st March,2019. However, CD does not become the Associate of UFC. Jyotsna Development P. Ltd. (UFC 10) holds 7,81,250 Equity Shares and 8,00,000 Redeemable Preference Shares in KG Corporation Limited (CD) (Earlier known as Tayal Energy Ltd.) as on 31st March, 2019. However, CD does not become the Associate of UFC”.

When they have holding equity shares in the corporate debtor still they are not mentioned as associates of corporate debtor. The RP did not make any meaningful attempt to enquire into the allegations of the applicants regarding involvement of related parties and their inter-relationship.

24. From this report, it also appears that the shareholding available on the MCA portal, which is relied upon by the applicants is not considered by the BMB & Associates. This report is old dated 10.3.2021 and the RP has not done a fresh verification through another agency after raising objections by some creditors. The applicants have given clear-cut

relationship between the Respondents and Financial Creditors with the sharing pattern of their shareholding as well as common directorship and common addresses. It appears that these facts are not considered by BMB & Associates as well as by the RP. The RP has not applied its mind independently to the facts and position given by the applicants. He has only relied upon the report of expert which he has sought from BMB & Associates. No documents which were scrutinised in terms of Companies Act or relevant IBC provisions have not been explained in his reply by affidavit submitted on 8.11.2023. No explanation is given by the RP about the combined shareholding of some of the Respondents with other Respondents. The RP has not even considered the observations made by the SEBI and Hon'ble SAT. On the face of shareholding of corporate debtor direct names of atleast '3' Respondents are seen, i.e Respondent Nos. 1,2 and 10. The RP simply stated in his written submission that the allegations of related party do not satisfy the tests under Section 5(24) of IBC. The RP has not taken any decision on the point raised by the applicants. The RP choose to get the report of BMB & Associates only.

25. Thus, by virtue of connections narrated above, Respondent Nos. 1 to 20 becomes related to the corporate debtor by virtue of control through connected groups as well as corporate debtor through various elements such as common shareholder, common directors and same registered addresses. The Respondents only disputed the jointness of respondents to have more than 20% shares. The relation and shareholding

given by the applicants are sufficient to show that they can be joined together to find out percentage of their shareholdings and control over each other.

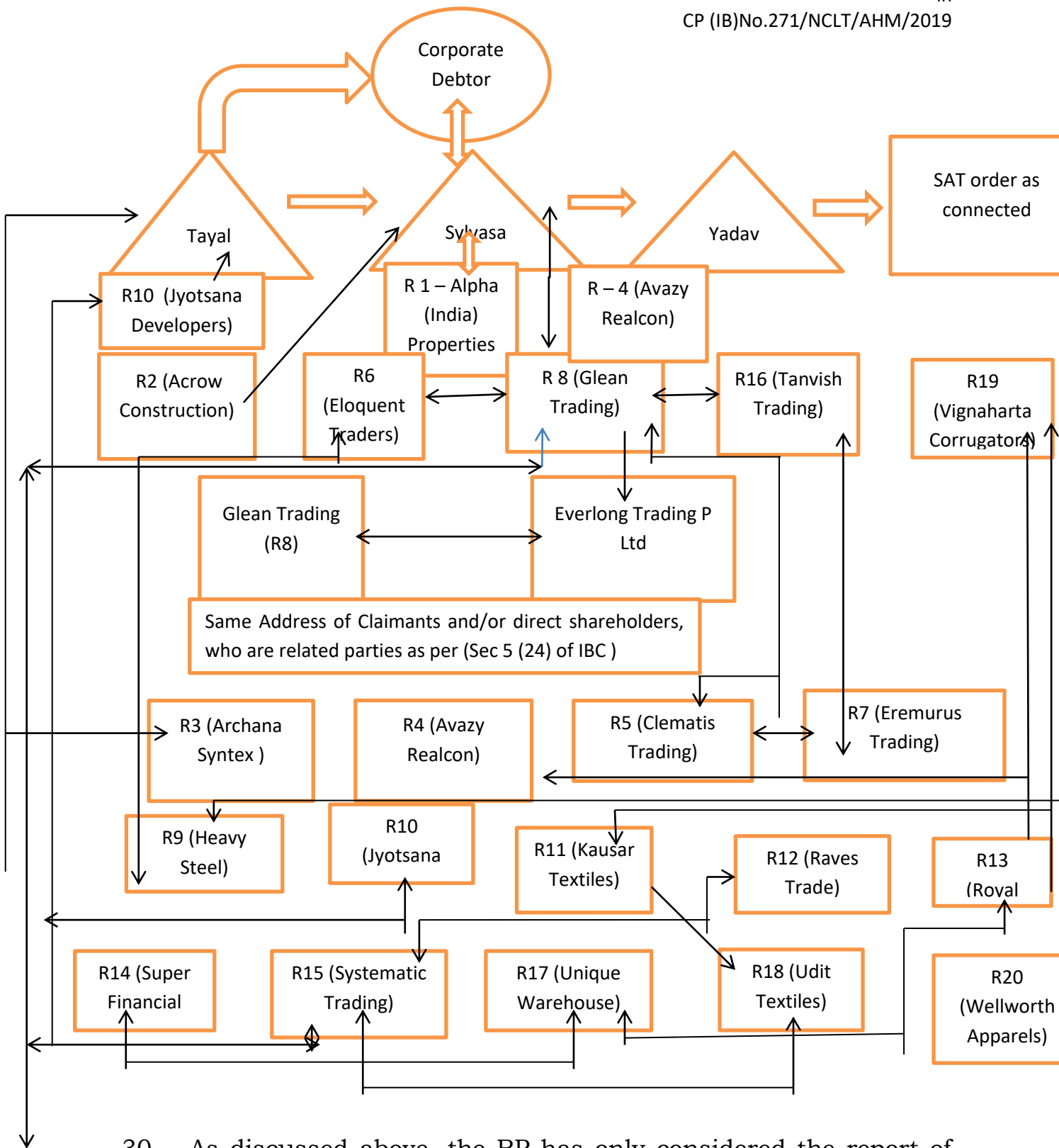
26. As the applicants have proved that Respondent Nos.1 to 20 are related parties, decisions taken by Committee of Creditors (CoC) including Respondent Nos.1 to 20 will be null and void. The CoC constituted including Respondent Nos.1 to 20 is not in accordance with the provisions of law. In such circumstances, it is necessary that the Committee of Creditors should be reconstituted taking into consideration the provisions of IBC. The applicants submitted that they have brought this fact to the notice of Respondent No.21, i.e. Resolution Professional (RP), that Respondent Nos.1 to 20 are related parties to the corporate debtor. It appears that RP has not made proper and deep inquiry regarding relations between Respondent Nos.1 to 20 and the corporate debtor. It also appears that the RP has not considered the Judgment of Hon'ble SAT declaring Tayal group, Silvassa group and Yadav group as interconnected PCAs. Without considering relationship between Respondent Nos. 1 to 20 and corporate debtor, voting rights of more than 66% and place in CoC was given to them. According to the applicants, Respondent No.21 with malafide intention has acted in collusion with other Respondents and cause severe prejudice to the Corporate Insolvency Resolution Process of the corporate debtor. Due to wrongful grant of voting of rights to Respondent Nos.1 to 20, there was impact of decision making power of CoC. The applicants further submitted that RP has miserably failed to

act in accordance with Section 21 of IBC, despite being brought to his knowledge that these respondents are related parties of the corporate debtor. He has also denied inspection of claim documents to the applicants.

27. From the above discussions, it is clear that Respondent Nos.1 to 20 falls under the category of related party in relation to the corporate debtor under various clauses of Section 5(24) of the IBC. Hence, it is hereby declared that Respondent Nos. 1 to 20 are related parties of the corporate debtor. The decisions taken by the CoC were influenced by the voting of Respondent Nos. 1 to 20 also being members of CoC. As Respondent Nos. 1 to 20 are related parties to the corporate debtor they should be removed from the CoC. In such circumstances, it is necessary to re-constitute the CoC of the corporate debtor. In reaching the above conclusion, we have followed the observations made by the Lordship, Hon'ble National Company Appellate Tribunal in the matter of Hindalco Industries Ltd. (supra).
28. The applicants vehemently submitted that though they have brought this fact of related party of Respondent Nos. 1 to 20 to the notice of the RP and not to allow them to be a part of Committee of Creditors as per Section 21 of the Code, the RP had not only refused to act in accordance with law but deliberately not recorded this fact in the minutes of first meeting of CoC. As per the allegation of applicants, the RP has not taken their objections in the meeting but the RP is now saying that the applicants did not avail the opportunity to take objection regarding issue of related party in the meeting. So

also, the RP has refused the applicants to give inspection and copy of claim documents submitted by the respondents without assigning satisfactory reason. A letter was written by Ld. Counsel for the applicants to the RP vide email dated 4th March 2021 seeking certain details which were crucial for the applicants to examine various documents. The RP has not given any reply nor given any support to the secured financial creditors. However, in the reply to this application, the RP submitted that all documents in respect of admitted claims are available in the office of the respondent and the applicants can inspect the same.

29. There are three categories of unsecured creditors who are related either through the three groups, namely, Tayal Group, Silvassa Group and Yadav Group who have been identified based on the documents submitted of SAT that they are related entities. The second group comprises of same shareholders and directors and the third group comprises of those operating from the same addresses. The applicants to the main petition and the claimants who are unsecured creditors are related and acquired majority in CoC to take decisions. We also examined various other submissions, argument, claims and documents produced to analyse and decide further in the matter. A chart has been made to analyse the submissions by the applicants to verify the inter-linkage between these unsecured creditors and promoters which reveal that they are related party/entity as per Section 5(24) of the IBC.



30. As discussed above, the RP has only considered the report of BMB & Associates to find out whether there is any relationship between Respondent Nos. 1 to 20 and corporate debtor but he has not independently applied his mind to the shareholding

pattern, common directorship, etc. brought to his notice by the applicants. Thus, RP has not acted in accordance with the provisions regarding his duties enumerated in IBC and CIRP Regulations. The CoC may recommend to IBBI regarding collusion between RP and Corporate Debtor along with Respondent Nos. 1 to 20.

31. Keeping in view of the seriousness of the matter, it is necessary to convene a fresh meeting of CoC, comprising of all members other than the members, i.e., Respondent Nos. 1 to 20, on or before 24.02.2024. The affairs of the corporate debtor and the inter-linkage entities who have filed the claims needs to be re-assessed and and proceeded upon legally with role of RP.
32. Hence, we pass the following order:

ORDER

- i) The application, i.e. IA 338/NCLT/AHM/2021 in CP(IB) 271/NCLT/AHM/2019, is allowed.
- ii) It is hereby declared that Respondent Nos. 1 to 20 are related parties to the corporate debtor.
- iii) Respondent No.21 is directed to re-constitute the Committee of Directors of the Corporate Debtor afresh and seek approval for his continuance.
- iv) Earlier decisions taken by the existing members of CoC are set aside.
- v) Respondent No.21 is directed to permit inspection to the

applicants or their representative(s) to verify the claim documents submitted by Respondent Nos. 1 to 20.

- vi) The RP is directed not to do any other work in the corporate insolvency resolution process until constitution of fresh CoC.
- vii) The newly constituted CoC is directed to submit a report regarding further development within 15 days from the date of this order.
- viii) The newly constituted CoC will look into all the issues including claims of all other creditors that may be omitted or added and start afresh procedure.

33. The application is disposed off accordingly.

Sd/-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

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