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

I.A. 3793 ND 2024
IN
C.P. IB 446 (ND) OF 2023

IN THE MATTER OF:

MR. ASHOK KUMAR GUPTA

...Applicant

Versus

IDBI TRUSTEESHIP SERVICES LIMITED

...Respondent No.1

DUCTURUS RESOLUTION PROFESSIONAL PRIVATE LIMITED

...Respondent No.2

KAUTILYA FINANCE BV

...Respondent No.3

KAUTILYA REAL ESTATE FUND

...Respondent No.4

AND IN THE MATTER OF:

IDBI TRUSTEESHIP SERVICES LIMITED

...Financial Creditor

Versus

DSS INFRASTRUCTURES PRIVATE LIMITED

...Corporate Debtor

Order Pronounceed on: 10.07.2026

CORAM:

SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

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

For the RP : Mr. Abhirup Das Gupta, Mr. Rahul Gupta, Mr. Rahul

Dadhich, Ms. Vagisha Tiwari, Mr. Rajat Juneja Advocates.

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

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

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

> *"(i) Delete Respondent No. 3 and Respondent No. 4 from the COC of the Corporate Debtor for being related parties to the Corporate Debtor;*
> *(ii) Direct the Respondent No. 2 not to hold further COC meetings of the Corporate Debtor till the Hon'ble Supreme Court decide Civil Appeal No. 6288/2022 and Civil Appeal No. 6273/2022 filed against the decision of the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) Insolvency No. 356 of 2022; oz*
> *(iii) Pass such other order(s), directions(s), relief(s) as deemed fit and proper by this Hon'ble Tribunal in the fact and circumstances of the present case and in the interest of justice."*

2. **SUBMISSIONS OF THE APPLICANT:**

i. This Adjudicating Authority vide order dated 07.05.2024 initiated CIRP of the Corporate Debtor and appointed Respondent No. 2 as the Interim Resolution Professional.

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

iii. Corporate Debtor is a wholly owned subsidiary of the Principal Borrower and is the full and absolute titleholder of Project Land. Corporate Debtor had unconditionally and irrevocably transferred the Development Rights over the Project Land in favour of the Principal Borrower.

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

v. The Respondent No. 1 was appointed as Security Trustee vide Debenture Trust Deed 14.06.2016 ("First DTD") for the debentures issued to Respondent No. 3 in terms of the DSA for financing the Project. Under the First DTD, Respondent No. 1 was the sole signatory to the Utilization Escrow Account and Project Revenue Escrow Account.

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

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

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

ix. Due to change in policy by the Government of Haryana under Deen Dayal Jan Awas Yojna ("DDJAY"), the Corporate Debtor and Principal Borrower was entitled to amend the sanctioned plans and an additional tower could be constructed in place of the existing planned EWS tower.

x. As a result, the Principal Borrower was in need of additional funds to get the approvals and also to complete the construction and development. In this regard, Corporate Debtor, Principal Borrower and Respondent No. 1 agreed to revise the terms of the First DTD and therefore, the parties entered into and executed Debenture Trust Deed dated 02.02.2021 ("Second DTD") whereunder the Principal Borrower issued and allotted 135 (One Hundred Thirty Five) number of senior, unlisted, fully secured, redeemable, transferable, interest bearing, non-convertible Series B Debentures of face value of INR 10,00,000 /- (Rupees Ten Lakhs only) each, aggregating upto

13,50,00,000 /- (Rupees Thirteen Crore Fifty Lakh Only) to Respor:-dent No. 4 ("2nd Debenture Holder").

xi. Even under the Second DTD, Respondent No. 1 was the sole signatory to the Utilization Escrow Account and Project Revenue Escrow Account. Thus, Respondent No. 3 and Respondent No. 4 were not only lenders of the Corporate Debtor and Principal Borrower but were in fact, acted as co-promoters having "controlling power" over the affairs of the Project and were involved in all the decisions of the Project including but not limited to cash flow, sales etc.

xii. The Corporate Debtor and Principal Borrower was obliged to obtain 'Approved Instructions' from Respondent No. 1 related to 'Reserved Matters' as provided in Schedule 20 of the First DTD and Second DTD.

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

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

WhatsApp group. Notably, these instruments/ cheques along with booking/ application forms were circulated by the representatives of Respondent No. 3 and Respondent No. 4 itself after receiving the same from the customers.

xv. The participation of Respondent No. 3 and Respondent No. 4 in the COC constituted for the Corporate Debtor ought not be allowed since Respondent No. 3 and Respondent No. 4 in essence, are related parties of the Corporate Debtor as defined under Section 5(24) of Code. Respondent No. 3 and Respondent No. 4 had control not only over the Escrow accounts in relation to the Project but also over the Project account opened with Haryana Real Estate Regulatory Authority and also, on the payments made by the customers.

xvi. As such, Respondent No. 3 and Respondent No. 4 being related parties of the Corporate Debtor cannot become part of the COC of the Corporate Debtor as the same is against the settled provision of law. Reliance is placed on Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors.', (2019) 2 SCC 1 and IDBI Trusteeship Services Limited v. Mr. Abhinav Mukherji & Ors., Company Appeal (AT) Insolvency No. 356 of 2022 (pending before Hon'ble Supreme Court).

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

3. <u>SUBMISSIONS OF THE RESPONDENT NO. 1, 3 & 4 :</u>

i. The Applicant, by deliberate design have framed the present Application without disclosing the status of DSS in context of the Code. The following facts are relevant to decide on the question of whether the issue of "related party" even arises in the present case:

a. The debt by way of issuance of nonconvertible debentures has been undertaken by Shree Vardhman Buildprop Pvt. Ltd. ("SVBPL") in terms of Debenture Trust Deed dated 14.06.2016 ("First DTD") and Debenture Trust Deed dated 02.02.2021 (hereinafter referred to as "Second DTD").

b. The entity that is obligated to execute the Project is SVBPL. In this regard, Recital 1 of the First DTD dated 14.06.2016 defines SVBPL as the "Company" who has undertaken to execute the Project.

c. Conversely, DSS is merely the land-owner and corporate guarantor in the transaction between SVBPL and DSS on one hand and the Respondents on the other hand.

d. Therefore, the relationship of DSS with the Respondents herein is regulated by way of the Corporate Guarantee Agreement dated 22.07.2016 which a contract independent of the DTDs dated 14.06.2016 and 02.02.2021.

e. Though the obligation to make repayment towards the Respondents applies to DSS in the same manner as it applies to SVBPL, this is the effect and operation of the terms of the Corporate Guarantee Agreement dated 22.07.2016. The same cannot be considered to equate the roles of DSS and SVBPL under the DTDs dated 14.06.2016 and 02.02.2021.

f. The Applicant herein has failed to annex the Corporate Guarantee Agreement dated 22.07.2016 along with the present Application.

g. CIRP has been initiated against DSS only on the basis of the failure of DSS to fulfil obligations under the Corporate Guarantee Agreement dated 22.07.2016.

h. The CoC as it relates to the Respondents has been done, not on the basis of the DTDs dated 14.06.2016 and 02.02.2021, but on the basis of the Corporate Guarantee Agreement dated 22.07.2016.

i. Admittedly, the Corporate Guarantee Agreement dated 22.07.2016 contains not a single provision that reflects any purported "control" of the Respondents over the affairs of DSS.

j. Even the Articles of Association of DSS make it apparent that every single purported "Reserved Matter" is only in relation to the actions of SVBPL considering that DSS is neither the executor of the Project, nor the borrower in terms of the DTDs dated 14.06.2016 and 02.02.2021.

k. All the bank accounts (i.e., the Project Revenue Escrow Account and Utilisation Escrow Account) that the Applicant refers to only relates to SVBPL and not DSS.

l. The sole reason why DSS has obligations qua homebuyers is because the right to construct on the Project land for Tower Q was illegally transferred by SVBPL to DSS without the mandatory no-objection certificate of the Financial Creditors. This is not a position reflected by a single transaction document executed between SVBPL and DSS on one hand and the Respondents on the other hand. The Applicant, by way of the present Application is merely seeking to benefit from an illegality committed by him.

ii. The question of "related party" under Section 5(24) of the IBC cannot arise when DSS is not even obligated to execute the Project.

iii. The Reply filed in I.A. 3699 of 2024 in C.P.(I.B.)No. 445 of 2025 has been adopted by the Respondents.

iv. The Respondents submitted that the promoter/suspended director has no locus to challenge the related party status of the Respondents. In terms of the Order dated 07.05.2024 whereby CIRP was initiated against the Corporate Debtor and an IRP was appointed by this Adjudicating Authority. From the said date, the powers of the Applicants herein in relation to the Corporate Debtor stood suspended.

v. The Applicant, being merely participants in a CoC, herein have no locus to interfere with a CIRP, specifically by making a challenge to the composition or distribution of voting rights of members of the CoC. Reliance has been placed on ***Ravi Shankar Vedam v. Tiffins Barytes Asbestos & Paints Ltd. & Ors., Civil Appeal No.5516 of 2023, Gurdeep Singh Sahani v. Burger Paints India Ltd., 2017 SCC Online NCLAT 437 Ramesh Kesavan v. CA Jasin Jose & Anr., Civil Appeal No. 4419 of 2024, Vijay Kumar Jain v. Standard Chartered Bank, (2019) 20 SCC 455***.

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

a. In the reply dated 06.09.2023 to CP (18) No. 446(ND)/2023.

b. The same issue was also raised by the Corporate Debtor during the course of arguments at the stage of admission.

vii. The argument alleging that the Financial Creditors are "related parties" of the Corporate Debtor stands impliedly rejected vide the Admission Order dated 07.05.2024.

viii. Mr. Bijender Jain (a director of the Corporate Debtor along with the Applicant) also challenged the Admission Order dated 07.05.2024 before the Bijender Jain v. IDBI Trusteeship Services Limited bearing CA (AT) (Ins) 1055 of 2024 vide order dated 24.04.2025 wherein the NCLAT expressly rejected the contention as raised by the Applicant.

ix. The issue of "related parties" was not raised even once before the CoC of the Corporate Debtor.

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

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

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

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

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

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

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

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

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

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

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

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

4. <u>SUBMISSIONS OF THE RESPONDENT NO. 2:</u>

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

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

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

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

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

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

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

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

ix. It a well-established industry practice that whenever a debt is restructured or restated, the lender, (Respondent no. 3 and Respondent no. 4 herein) seeks to exercise financial oversight through control mechanisms such as the establishment of a Trust and Retention Account (TRA). This is a prudent and standard measure designed to protect the lender's exposure and ensure that cash flows are monitored effectively. In the present case, though an Escrow Account was already in existence, its purpose was limited and distinct i.e., it was specifically intended for the incurrence of construction related expenses strictly in accordance with the provisions of the Real Estate (Regulation and

Development) Act, 2016 (RERA). Consequently, the Escrow Account did not serve the broader purpose of controlling the inflow _and outflow of funds related to debt servicing, which necessitated the creation of a TRA as stipulated under the Restated DTDs.

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

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

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

xiii. Mere representation on the PMC would not in any manner mean that the financial creditors have substantive control over the entirety of the affairs of the Corporate Debtor. The PMC was constituted only for the limited reason of bringing transparency to the execution of the housing project funded by

Respondent No.3 and 4, the PMC did not in any manner supplant the board of directors of the Corporate Debtor.

5. **FURTHER SUBMISSIONS OF THE APPLICANT:**

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

ii. The illegality in the constitution of Committee of Creditors can be raised by any stake holder since it is in derogation of a statutory bar provided by t11c statute itself and such il1cga1 constitution of CoC vitiates the CIRP itself. It is incorrect on part of the Respondents to contend that issue is one of voting rights only. In the present case, it is inclusion of Debenture Holders which is in contravention of proviso to section 21 (2) of the Code which has resulted in Debenture Holders claiming a super majority of more than 95 % of voting rights.

iii. The constitution of the CoC is the foundation to the corporate insolvency resolution process and any illegality in its constitution goes to the very root of the proceedings. Materially, the suspended-director, being privy to the affairs of the Corporate Debtor and having knowledge of the relationships between the parties, is in a position to point out violation of statutory provisions regarding related parties.

iv. The inclusion of such Reh=tted Party Financial Creditors, especially the ones in the present case with majority voting rights, goes to the root of the matter since it directly affects the manner in which the entire process is run including, inter-alia) the manner in which Prospective Resolution Applicants are selected and a Resolution plan, if any, is approved or rejected by the CoC.

v. The Respondents have wrongly alleged that similar grounds were taken by Applicant before the Hon'ble NCLAT in Company Appeal (AT)(Ins.) No. 1055 of 2024 and Company Appeal (AT)(Ins.) 1026 of 2024 (filed by erstwhile promoters of Shree Vardhman Buildprop Private Limited) filed against Admission Orders dated 07.05.2024 and 29.04.2024 respectively. The appeals before the Hon'ble NCLAT were against the Admission Orders, and no challenge to the constitution of CoC was raised therein. As such, the issue of related party disqualification under Section 21 (2) of the Code ,was never raised or decided either by this Adjudicating Authority or in appeal by the Hon'ble NCLAT.

vi. It is submitted that the issue pending before this Hon'ble Adjudicating Authority and those that travelled before the Hon'ble NCLAT in Company Appeal (AT) (Ins.) No. 1026 of 2024 and Company Appeal (AT) (Ins.) 1055 of 2024 are distinct and independent. The captioned Application before this Adjudicating Authority seeks determination of the legality of the CoC's composition, a matter which only arises post-admission and which could not have been challenged before the Hon'ble NCLAT at the stage of challenging the admission order.

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

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

viii. The objections to the constitution of CoC can be raised prior to approval of Resolution Plan by this Adjudicating Authority. Moreover, the present Application was filed long before the approval of Resolution Plan by the CoC during its 20th meeting dated 20.03.2025. Therefore, the submission of Respondents that the present Application is filed at a belated stage, is entirely misconceived, erroneous and therefore, liable to be rejected.

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

x. As opposed to the Applicant, it is the Respondents who have wilfully suppressed the true nature and purport of the First DTD. As such, the Respondent Nos. 3 and 4 have always been in "control" towards disbursal of funds from Project Revenue Escrow Account to Project Operating Account.

xi. Reliance is placed on the following judgements by the Applicant:

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

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

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

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

e. IDBI Trusteeship Services Limited v. Mr. Abhinav Mukherji & Ors., Company Appeal (AT)(Ins.) No. 356 of 2022.

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

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

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

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

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

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

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

m. Telangana State Trade Promotion Corporation vs. A.P. Gems & Jewellery Park Private Limited & Anr. (Company Appeal (AT)(CH) (Ins.) No.54 of 2021-NCLAT, Chennai).

6. **ANALYSIS AND FINDINGS:**

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

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

iii. The principal grievance of the Applicant is that Respondent Nos. 3 and 4 have been wrongly included in the Committee of Creditors constituted in the CIRP of the Corporate Guarantor. While the Applicant dispute their entitlement to participate in the CoC, the Respondents submit that their claims arise from the Corporate Guarantee executed by the Corporate Guarantor securing the financial facilities extended to the Principal Borrower.

iv. The execution of the Corporate Guarantee by the Corporate Guarantor is not disputed. A contract of guarantee creates an independent and co-extensive liability of the guarantor. Consequently, upon default by the Principal Borrower, Respondent Nos. 3 and 4 became entitled to invoke the Corporate Guarantee and submit their claims in the CIRP of the Corporate Guarantor. The Resolution Professional has admitted their claims on the strength of the financing documents and the Corporate Guarantee, and we find no illegality or procedural infirmity in the admission of such claims.

v. It is the case of the Applicant that Respondent Nos. 3 and 4 are disqualified from participating in the Committee of Creditors as they are allegedly related parties of the Corporate Debtor. We note that this challenge is founded on the very same allegations concerning the Debenture Subscription Agreement, Debenture Trust Deeds, escrow arrangements, reserved matters, Project Management Committee and alleged control over the affairs of the Corporate Debtor, which formed the subject matter of adjudication in the connected I.A. No 3699 of 2024 in CP IB 445 ND 2023 i.e. in case of the Principal Borrower.

vi. This Adjudicating Authority in I.A. 3699 OF 2024, vide order dated 10.07.2026 has, after an elaborate consideration of the pleadings, contractual documents and statutory provisions, held that Respondent Nos. 3 and 4 do not fall within the ambit of "related party" under Section 5(24) of the Code and are not disqualified from participating in the Committee of Creditors under Section 21(2) of the Code.

vii. Once this Adjudicating Authority has held, in the CIRP of the Principal Borrower, that Respondent Nos. 3 and 4 are not related parties within the meaning of Section 5(24) of the Code, the said finding would apply with equal force to the present proceedings concerning the Corporate Guarantor. We, therefore, adopt the reasoning and conclusions recorded in the said order, which shall form an integral part of the present order, and hold that the challenge to the constitution of the Committee of Creditors is liable to be rejected.

viii. In view of the foregoing discussion, the present Application bearing **I.A. 3793 OF 2024** is accordingly **dismissed**.

No order as to costs.

-SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

-SD/-

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)

<u>IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI</u>
<u>COURT-IV</u>

ITEM No. 404
<u>IB/446/ND/2023</u>
IA (Plan)/25/ND/2025

<u>IN THE MATTER OF:</u>

Idbi Trusteeship Services Limited .... Applicant/Petitioner

Vs.

Dss Infrastructure Private Limited .... Respondent

<u>Under Section 7 of the Insolvency and Bankruptcy Code, 2016.</u>

<u>Order delivered on 10.07.2026</u>

<u>CORAM:</u>
SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

<u>HYBRID HEARING (PHYSICAL & VC)</u>

<u>PRESENT:</u>

For the Financial Creditor	:	Adv. Pranjit Bhattachary, Adv. Nitya Prabhakar, Adv. Shalini Basu
For the Suspended Directors	:	Adv. Abhishek Anand, Adv. Sakshi Kapoor
For the RP	:	Adv. Abhirup Das Gupta, Adv. Rahul Gupta, Adv. Vagisha Tiwari, Adv. Rahul Dadhich

<u>ORDER</u>

IA (Plan)/25/ND/2025

List on **06.08.2026**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)

Anurag