

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**

**I.A. No.851 of 2023 in**  
**C.P. (IB)No.12/BB/2021**  
**U/s 60(5) of IBC, 2016 r/w first proviso to**  
**Section 21(2) and Section 5 sub-section 24**  
**of the IBC, 2016 and Rule 11 of the NCLT, 2016**

**In the matter of:**

**PARK VIEW DEVELOPERS PVT LTD**

**Financial Creditor**

**Versus**

**SDU TRAVELS PVT LTD**

**Corporate Debtor**

**In the matter of:**

**Mr. Vipin Kumar Sharma**

Through its Power of Attorney Holder  
Mukesh Kumar Grover,  
13/173, Geeta Colony  
New Delhi – 110031

Applicant

**Versus**

**1) Mr. Sunit Suri,**

Member of Suspended Board of Directors,  
SDU Travels Private Limited  
10, Ashoka Avenue, Fatehpuri Behri,  
Mehrauli, Delhi-110048

Respondent No. 1

**2) Shri Hemant Golchha**

Member of Suspended Board of Directors,  
SDU Travels Private Limited  
P-23, Radha Bazaar Street, Kolkata  
West Bengal- 700001

Respondent No.2

**3) Shri Sanjay Bhakta Mathema**

Member of Suspended Board of Directors,  
112, Baluwatar, 04 Kathmandu, Nepal

Respondent No.3

**4) Akoni Travel Private Limited**

(Through its Directors Respondent No. 1, 2 and 6)  
Plot No. 35, Block-A, FIEE Complex  
Okhla Industrial Area, Phase-2  
New Delhi- 110020

Respondent No. 4

**5) Shri Umesh Hingorani**

Member of Suspended Board of Directors,  
SDU Travels Private Limited  
16/242 Binny Crescent, Benson Cross Road  
Benson Town  
Bangalore- 560046

Respondent No. 5

**6) Smt Nidhi Suri**

Employee/Consultant of Corporate Debtor &  
Wife of the Respondent No.1  
10, Ashoka Avenue, Fatehourri Behri, Mehruli  
Delhi- 110048

Respondent No.6

**7) Shri Ahsan Ahmad**

IRP of M/s SDU Travels Private Limited  
C-108, 3<sup>rd</sup> Floor, Sector-2  
Noida-201301, Uttar Pradesh

Respondent No.7

**Order delivered on: 17/10/2024**

**CORAM:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

For the Applicant : Ms. Kriti S. Javali  
For the R-2, R-3 & R-5 : Shri Theerthesh B. S.

**ORDER**

**Per: K.Biswal, Member(Judicial)**

1. The Present Interlocutory Application is filed on 23/11/2023 by Mr. Vipin Kumar Sharma through its Power of Attorney Holder Shri Mukesh Sharma ('Applicant') under sub-section (5) of section 60 of the Insolvency and Bankruptcy Code, 2016 r/w first proviso to sub-section (2) of section 21 and section 24 of sub- section 5 sub- the IBC, 2016 and Rule 11 of the NCLT, 2016, by *inter alia*, seeking to set aside the constitution of

Committee of Creditors as the Members of the Committee of Creditors are related parties under Proviso to sub-section(2) of Section 21 of the Code and further seeking for a direction to the Insolvency and Bankruptcy Board of India to investigate collusion between the RP on one hand and the Corporate Debtor, the conduct of RP in this matter and to look at all possible acts of commission and omission and take appropriate decision and action in this regard.

2. Brief facts of the case, as mentioned in the Application and written submissions filed by the Applicant, which are relevant to the issue in question, are as follows:
  - i. It is submitted that the Applicant was an erstwhile employee and shareholder of the Corporate Debtor who had initiated various litigations against the Corporate Debtor and its suspended management for recovery of his legitimate dues arising out of his employment and the subsequent breach of contractual obligations by the Corporate Debtor with respect to the Deed of Settlement dated 15.12.2017 and Settlement Agreement dated 15.12.2017.
  - ii. The Corporate Debtor had obtained a loan amounting to Rs.1,87,50,000/- @15.40% p.a. from Canara Bank for which it had approached the Financial Creditor. The Financial Creditor in this regard had furnished guarantee aggregating to Rs.2,50,00,000/-. Thereafter, the Corporate Debtor defaulted on the loan due, on account of which Canara Bank had encashed the said guarantees furnished by the Financial Creditor. The Corporate Debtor therefore committed a default of Rs.2,47,59,552/- as on 29.05.2020.
  - iii. That the Respondent No. 1 is the member of the suspended Board of Directors of the CD and is also a Director of the Respondent No.4 during the period of the fraudulent transactions. The Respondent No. 1 was appointed as the Director on 05.12.2012 on the Board of the CD and was continuing as a Director till the initiation of the CIRP of the CD. It is submitted that Mr. Sunit Suri allegedly resigned as Managing

Director of the CD w.e.f. 22.04.2019 however, his resignation was not accepted by the CD till date.

- iv. The Respondent No. 2 is a Director of the suspended Board of Directors of the CD, and is also a Director of the Respondent No. 4 Company during the period of the fraudulent transaction. The Respondent No. 2 is a shareholder, Director of the Financial Creditor moreover, the Financial Creditor is also a member of the CoC as well, which clearly establishes him to be a related party and thereby confirming the fraudulent CIRP process.
- v. That the Respondent No. 3 is a member of the suspended Board of Directors of the CD and had also been the Director of the Respondent No. 4 during the period of the fraudulent transactions.
- vi. The Respondent No. 4, Akoni Travels Pvt. Ltd. was incorporated on 04.12.2015 under the Companies Act, 2013. As per the Master data downloaded from website of the Ministry of Corporate Affairs, there are/had been four directors, namely Mr. Umesh Hingorani, Mr. Sunit Suri, Mr. Sanjay Mathema, Mr. Hemant Golcha, on the Board of the Respondent No. 4. It is stated that Respondent No. 4 is a related party to the CD and is involved in the related party fraudulent transactions covered under Section 66 of the Code.
- vii. The Respondent No. 5 had been the director of the Respondent No. 4 during the period of the fraudulent transaction. It stated that it is the Respondent No. 5, in collusion and connivance with the other Respondents, has also been responsible for siphoning off the funds of the Corporate Debtor by entering into various transaction covered under Section 66 of the IBC, 2016.

- viii. That the Respondent No. 6 is the wife of the Respondent no. 1 and was employee/consultant of the CD. Further, the Respondent No. 6 is also a member of the CoC, clearly establishing herself to be a related party.
- ix. That the Respondent No. 7, Mr. Ahsan Ahmed is the Resolution Professional of the Financial Creditor.
- x. The Applicant submitted that in terms of the provisions of Section 65 of the IBC, the Applicant states that the CIRP proceedings initiated by Respondent No.2 through the Financial Creditor i.e. Park View developers Ltd. was clearly in collusion with the suspended Directors of the CD and hence is fraudulent and malicious initiation of proceedings.

The details of the existing CoC

<b>Sl.No.</b>	<b>Name of Member of CoC</b>	<b>Voting %</b>
1.	Park View Developers Pvt. Ltd.	38.38
2.	Umrit Exports and Investments Pvt. Ltd.	19.23
3.	Ms. Nidhi Suri	27.39
4.	Bramhall Developers Pvt. Ltd.	14.51
5.	Rupali Golcha	Nil

The glaring instance of 'related parties' of the CD becoming members of the Financial Creditors and Respondent No. 6 being a member of CoC is sufficient to make the constitution of CoC illegal and render all the decisions and resolutions adopted in CoC meetings with participation and voting of the four companies referred above null and void in the eyes of law.

- xi. The Applicant submits that Section 21(2) of IBC, 2016 mandates that, “the CoC shall comprise of all Financial Creditors” except related party. The Applicant refers to the judgment in the matter of *Jayanta Banerjee Vs. Shashi Agarwal & Anr.* [CA(AT)(Insolvency) No. 348 & 720 of 2020] (NCLAT Delhi) which points out, that if the constitution of CoC violates the proviso of section 21(2) of the IBC, the entire constitution of CoC will be tainted and any decision of the

CoC cannot be validated on the pretext of exercise of commercial wisdom and all such decisions taken by the CoC are liable to be quashed. The applicant further refers to the judgments of the Hon'ble Supreme Court in *Phoenix Arc Private Limited v. Spade Financial Services Limited & Ors.*, *S.P. Chengalvaraya Naidu Vs. Jagannath* (1994 AIR 853, 1994 SCC) and *State of A.P. and Anr. Vs. T. Suryachandra Rao* [2005 (6) SCC 149]. Further, he refers to *Hindalco Industries Ltd. vs. Hirakud Industrial Works Ltd. & Ors.* in CA (AT) (Ins.) No. 42 of 2022. The Applicant also relies upon a Order passed by the Hon'ble NCLT in IA No. 611/ND/2021 in Company Petition No. (IB) 1164(ND)/2019 in the matter of M/s Punjabi Accessories Private Limited vs. M/s. Kredo Beauty Private Limited.

xii. It is submitted that the ground taken by the RP for rejecting the legitimate claims of the Applicant which has already been acted upon by the CD with reference to the provisions of Section 66 and 67 of the Companies Act, 2013 are not applicable to the fact and circumstances of the present case. It is further submitted that the RP was wrongly rejected the claims of the Applicant i.e. Form B & D without understanding the specific context of the terms of conditions of the Deed of Settlement dated 15.12.2017 vide his email dated 07.05.2022 and 08.08.2022. The applicant submits that the RP has not made any meaningful attempt to even enquire into the allegations of fraud, collusions, involvement of related parties and interrelationships between all the entities involved in the CIRP.

3. The Respondent Nos. 2, 3 & 5 have filed their replies written submissions vide Diary Nos.2047 dated 01.04.2024 & 4288 dated 22.07.2024 by *inter alia* contending as follows:

i. It is contended that the decision to commence CIRP was based on legitimate grounds and in accordance with the provisions of the IBC and no elements of Section 65 are attracted. Further in the document submitted by the Applicant displaying the master data of the

Financial Creditor, listing the names of 3 directors, the names of the Respondent No.2, 3 & 5 are absent from this list.

- ii. It is submitted that that the involvement of Respondent No.4 company in this application is unrelated to the ongoing CIRP proceedings. The Respondent No.4 neither hold a stake in the matter nor is directly involved in the CIRP proceedings concerning the CD. The focusing on common directorship of Respondent No.4 Company and the CD in the context of the current proceedings would serve to obfuscate the primary issue at hand and could unnecessarily prolong the CIRP.
  - iii. It is submitted that the Applicant's effort to implicate that the actions of the respondents are falling under Section 66 of the IBC is baseless and lacks any factual basis. Further, it is submitted that the Respondent Nos.2, 3 & 4 are not having any sort of connections with the members of CoC to make them as related parties in terms of Section 5(24) of the IBC, 2016.
4. The Respondent Nos. 7 has filed their reply and written submissions vide Diary Nos.1008 dated 14.02.2024 and 4350 dated 22.07.2024 by *inter alia* contending as follows:
- i. It is submitted that that the name of the 1<sup>st</sup> respondent appearing in the Master Data of the CD as the Board of Directors of the CD has not filed requisite e-Form DIR-12 with the RoC, Bengaluru for intimation of cessation of office of directorship of Mr. Sunit Suri w.e.f. 22.04.2019. Therefore, Mr. Sunit Suri is neither a member of CoC nor a director of the CD as on Insolvency commencement date. After sending resignation letter to the CD, in compliance with Section 21(2) of the Code, 27.30% of voting share in the CoC was allocated to Mrs. Nidhi Suri. Since the Mr. Sunit Suri ceased to be the director of the DC w.e.f. 22.04.2019, much prior to insolvency commencement date, accordingly, Mrs. Nidhi Suri, Respondent No.6 is also not a related party in terms of Section 5(24)(a) of the Code

and therefore, Section 21(2) of the Code is not applicable in the case of claim of Mrs. Nidhi Suri.

- ii. It is submitted that the Respondent No.7 has verified the claim including the compliance of Proviso to Section 21(2) r/w 5(24)(a) of the Code and held that Park View Developers Pvt. Ltd. is not a related party in terms of Section 5(24) of the code and therefore, 38.38% voting shares was allocated to Park View Developers Pvt. Ltd. Further, the threshold criteria under Section 5(24) are 20% shareholding, therefore, Park View Developers Pvt. Ltd., member of the CoC, is not a related party in terms of definition of Section 5(24) of the Code.
- iii. It is submitted that Mr. Hemanth Golcha, Respondent No.2 is not a director of Park View Developers Pvt. Ltd. as on commencement of CIRP therefore, he will not be covered under Section 5(24) of the Code. It is stated that as per Section 21(2) of the Code, Mrs. Rupali Golcha has not been given any right of representation, participation or voting in the meeting of CoC. Further, Respondent No.3, Mr. Sanjay Bhakta Mathema is a member of the Suspended Board of Directors. However, not a member of CoC. Moreover, as per Section 21(2) of the Code, Respondent No.4 is also not a member of the CoC.
- iv. It is submitted that Respondent No.5, Mr. Umesh Hingorani, is neither a director nor a shareholder of the CD. Moreover, he is not a member of the CoC and hence the contention of the Applicant that there are related parties is false and misleading.

5. We have perused the material on record and heard the Learned Counsel for both the parties.

- 5.1) For better perusal of the matter at hand, we find it relevant to reproduce the details of COC, as reported by the RP and further affirmed by the Petitioner in their petition herein is as follows:



Sl No	Name of Member of CoC	Voting %
1.	Park View Developers Private Limited	38.38
2.	Umrit Exports and Investments Private Limited	19.23
3.	Ms. Nidhi Suri	27.39
4.	Bramhall Developers Pvt Ltd	14.51
5.	Rupali Golcha	NIL

5.2) It is contended by the Applicant that Respondent No.2, Shri Hemant Golecha, is a Director of the suspended Board of Directors of the Corporate Debtor, and is also shareholder of the Financial Creditor i.e Park View Developers Pvt Ltd, which is a member of CoC. In this regard, it is observed that the Share holding pattern of the Park View Developers Pvt Ltd does reflect the name of Respondent No.2 as the shareholder holding 2.24 % of the shares of the said Company. However, as per Section 5(24)(d), the Ex-Director of the Corporate Debtor should also be the Director of Financial Creditor and hold more than 2% of shares along with his relatives. It is seen that the Respondent No.2, is not a Director of the said Financial Creditor at present or anytime in the past. Hence the contention that the Park View Developer is the related party of the Corporate Debtor is not acceptable.

Further, this Tribunal has verified the various MCA records of all the Companies that are part of CoC for verification if Respondent No.2 has been the Director in any of the companies which are member of the CoC. However, the name of the Respondent No.2 is not reflected as Director in any of the Companies who are included as members of the CoC.

5.3) It is duly alleged by the Applicant herein that Respondent No.1, 3, & 5 were the Directors of the Corporate Debtor and also of the Respondent No.4 during the period of fraudulent transactions. However, on bare perusal of the records it can be seen that, neither are the above mentioned

- Respondents nor the Respondent No.4 i.e Akoni Travels Pvt Ltd are a part of the CoC. For any party to be considered a related party have to satisfy the various conditions laid down in the Section 5(24). It is clarified that firstly, Section 21 is only for the Financial Creditors that are a part of CoC. Secondly simply because a Director/key managerial person of the Corporate Debtor is also Director of another Company, it cannot be termed to be a case of Section 21, when such Company is not at all a party of CoC. Hence, we do not find any merit in such allegation.
- 5.4) Further it is observed that the Respondent No.6, Mrs Nidhi Suri who is a member of CoC, is also the wife of the Respondent No.1, the Director of the Corporate Debtor. This clearly establishes that Respondent No.6 is a related party of Corporate Debtor which is in clear violation of the proviso to Section 21(2) which stipulates that if the financial creditor is a related party of the Corporate Debtor then such person shall not have any right of representation, participation or voting in a meeting of the committee of creditors. It is the contention of the Respondent that the Respondent No.1 resigned w.e.f. 22.04.2019 and hence cannot be treated as a related party. In this regard, the perusal of the Company's Master Data with the ROC and other documents reveal otherwise. Hence, this argument is not acceptable and hold Respondent No.6 as the related party of the Company.
- 5.5) Moreover, and without prejudice to the above, The Hon'ble Apex Court in the case of *Phoenix ARC Private Limited v Spade Financial Services Limited & Ors (Civil Appeal No.2842 of 2020 with Civil Appeal No.3063 of 2020)* has held in paras 94 and 95 of the Judgment that under Proviso to Section 21(2) not only those financial creditors that are related parties presently would be debarred from the CoC; but those former related parties who, under a deliberate act, ceased to be the related party in order to circumvent the disqualification under this Proviso would also be covered under the exclusion granted by this Proviso. The Hon'ble Apex Court held that if this interpretation is not given to the First Proviso

to Section 21(2), then a related party can devise a mechanism so as to remove its categorization as a 'related party' before the CD undergoes CIRP; so as to enable itself to enter the CoC and influence the decision making at the cost of the other Financial Creditors. Hence, even if Shri Sunit Suri; Respondent No.1, has resigned from the Directorship as stated with effect from 22/04/2019, still he shall be liable under Section 21(2) to be treated as a 'related party'.

- 5.6) Keeping in view the principles laid down in *Phoenix ARC Private Limited* (supra) and decision of Hon'ble NCLAT in *Jayanta Banerjee vs. Sashi Agarwal and Anr. in Company Appeal (AT) (Insolvency) No.348 of 2020*, wherein it was explicitly held that when the constitution of the CoC violates the Proviso of Section 21(2) of IBC, 2016, such constitution is nullity in the eyes of Law and vitiates the entire CIRP. This Tribunal holds that the **Respondent No.6 as mentioned is a disqualified** under the First Proviso to Section 21(2), R/w Section 5(24) of the IBC, 2016. Accordingly, it has been held that the constitution of the CoC is erroneous in the eyes of Law and the direction for reconstitution of the CoC has been issued accordingly after exclusion of the related party. Therefore, the prayer instant **IA No.851 of 2023 stands disposed of** accordingly.

**Sd/-**

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(K. BISWAL)**  
**MEMBER (JUDICIAL)**