

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (Ins) No. 1206 of 2022 &
I.A. No. 3657, 3658, 3659 of 2022 & 4766 of 2023

(Arising against the impugned order dated 23.09.2022 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench in I.A. No. 390 of 2022, part of C.P. (IB) (KB) No. 204 of 2021)

IN THE MATTER OF:

Hari Vitthal Mission

a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at "3, Middle Road, Hastings, Kolkata 700022

...Appellant

Versus

Ravi Sethia

Resolution Professional of Suasth Healthcare Foundation (undergoing Corporate Insolvency Resolution Process) and having his office at Building No. 10, Tower C, 8th Floor, DLF Cyber City, Phase II, Gurgaon, Haryana 122022.

...Respondent No. 1

Committee of Creditors

of Suasth Healthcare Foundation (undergoing Corporate Insolvency Resolution Process) through Yes Bank, Yes Bank Tower, Indiabulls Finance Centre, Elphinstone West, Mumbai 400013.

...Respondent No. 2

Axis Bank,

Axis House, 7th Floor,
C-2, Wadia International Centre,
Pandurang Budhkar Marg, Worli,
Mumbai 400025.

...Respondent No. 3

Present:

For Appellant: Mr. Akshay Ringe, Ms. Megha Mukherjee & Mr. Dhananjay Gupta, Advocates.

For Respondents: Mr. Sunil Fernandes, Sr. Advocate, Mr. Deep Roy, Ms. Rajshree Chaudhary, Ms. Diksha Dadu, Mr. Rony O John & Mr. Dhaval Savla, Advocates for R1.

Cont'd..../

**Mr. Gopal Jain, Sr. Advocate, Mr. Raunak Dhillon,
Ms. Isha Malik & Ms. Niharika Shukla, Advocates for
R-2/ CoC.**

J U D G M E N T
(5th November, 2024)

INDEVAR PANDEY, MEMBER (T)

This appeal arises from the Order dated September 23, 2022, passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata, in I.A. No. 390 of 2022, part of C.P. (IB) (KB) No. 204 of 2021. This Order rejected Hari Vitthal Mission' (Appellant) application challenging the Resolution Professional's (Respondent No. 1) decision to classify the Appellant as a "related party" of the Suasth Healthcare Foundation (Corporate Debtor), which led to the Appellant's removal from the Committee of Creditors (CoC) of Corporate Debtor (CD).

2. The brief facts of the case are as follows:

- (i) In October 2017, Suasth Healthcare Foundation (CD), approached Hari Vitthal Mission /Appellant to raise Rs. 44,20,00,000/-. The request was made to support the construction of a hospital aimed at providing free and affordable medical care to the public. This project was aligned with the charitable objectives of Appellant, which was engaged in providing healthcare relief to the poor. Consequently, an agreement was signed on 10th October 2017 between CD and Appellant. According to the agreement, Appellant committed to provide financial assistance of Rs. 44.2 crore to the CD. In return, the CD agreed to reserve 100 hospital beds for

Appellant, to be used for treating underprivileged patients free of cost. The CD further committed to complete the hospital's construction by December 2018 and making it fully operational by April 2019.

(ii) To ensure this, Appellant provided Rs. 50 crore as an interest-free refundable security deposit. A clause in the agreement stipulated that if the hospital was not operational by the December 2018 deadline, the full deposit would become payable with 10% interest. The CD defaulted on its obligations as the project could not be completed on time. By July 2021, the CD was in default which led to termination of the agreement.

(iii) In view of the default, the CD filed an application under Section 10 of the IBC, 2016, seeking to initiate a voluntary insolvency resolution process. On 31st August 2021, the NCLT, Kolkata Bench, admitted CD's application and initiated the CIRP process. Mr. Arun Kumar Khandelia was appointed as the Interim Resolution Professional (IRP).

(iv) Shortly after his appointment, the IRP issued a public announcement on 3rd September 2021, in accordance with Sections 13(2) and 15 of the Insolvency and Bankruptcy Code, inviting creditors to submit their claims against the Corporate Debtor. The Appellant, as a financial creditor, submitted its claim of Rs. 62,16,33,563 on 15th September 2021. This claim was verified by the IRP and duly admitted. Following the verification, the IRP constituted the Committee of Creditors (CoC), with Appellant as one of its members.

- (v) In the second CoC meeting held on 8th October 2021, the members passed a resolution to replace the IRP with Mr. Ravi Sethia as the Resolution Professional (RP). This decision was approved by a majority of the CoC members, and the NCLT formally appointed Mr. Ravi Sethia as the RP on 15th November 2021. At this point, Appellant continued to be a member of the CoC, attending the meetings and exercising its rights as a financial creditor.
- (vi) On 31st December 2021, the Resolution Professional, Mr. Ravi Sethia, sent an email to the appellant and its key managerial personnel, informing them that the Appellant had been identified as a related party of the Corporate Debtor. The RP's notice was based on an internal review of documents and a legal opinion. The email requested Appellant to show cause by 3rd January 2022 as to why it should not be excluded from the CoC, given its alleged status as a related party under Section 5(24) of the IBC. The Resolution Professional's contention was that Appellant had a connection with Kanoria Foundation (KF), which purportedly had indirect control over the Corporate Debtor through a series of entities, including SREI Infrastructure Finance Limited (SIFL) and Trinity Alternative Investment Managers Limited (TAIML). The RP asserted that this connection made appellant a related party, as defined under the IBC.
- (vii) On 11th January 2022, after reviewing available information and documents, and relying on legal counsel, the RP formally declared

appellant as a related party to the CD. The RP initially invoked Section 5(24)(i) of the IBC, which defines a related party as a holding, subsidiary, or associate company of the CD. Later, during the course of legal arguments, the RP also cited Sections 5(24)(h), (j), and (l), which cover entities that exert control over the CD or its management. The RP argued that Kanoria Foundation controlled CD through SREI and TAIML, and further appellant was a subsidiary of Kanoria Foundation, it was deemed a related party.

(viii) The appellant submitted a detailed reply on 22nd January 2022, disputing the RP's declaration. The Appellant argued that Kanoria Foundation, being a trust, could not be classified as a holding company under corporate law. Further, any alleged control by Kanoria Foundation over the CD had ceased when SREI entered CIRP on 6th October 2020. The appellant emphasized that it held no shares in Suasth Healthcare Foundation, had no voting rights, and exerted no control over the CD. Additionally, the Appellant pointed out that the resolution passed in the second CoC meeting in October 2021 had recognized appellant as a legitimate financial creditor.

(ix) The RP however rejected the arguments made by the appellant in a letter dated 7th February 2022, reaffirming the decision to classify it as a related party and excluding it from the CoC. The RP argued that Kanoria Foundation indirectly controlled CD through its subsidiaries, and since

appellant was affiliated with Kanoria Foundation, it was subject to the related party provisions under the IBC.

(x) Following this decision, appellant filed I.A. No. 390/KB/2022 before the NCLT, Kolkata Bench, on 19th April 2022, seeking to quash the RP's decision and reinstate the Appellant as a member of the CoC. The Appellant argued that the RP had overstepped his authority by adjudicating the status of appellant as a related party. The Appellant further contended that the RP had failed to provide any concrete evidence supporting the claim that appellant was a related party. Moreover, the Appellant claimed that being one of the largest financial creditors, it had a significant stake in the resolution process and should not be excluded from CoC participation.

(xi) On 23rd September 2022, the Adjudicating Authority (AA) dismissed I.A. No. 390/KB/2022, upholding the decision of the RP. The Tribunal held that the appellant was rightly classified as a related party due to its association with Kanoria Foundation and its indirect influence over the CD. As a result, appellant remained excluded from the CoC.

(xii) Aggrieved by the Adjudicating Authority's decision, appellant has filed the present appeal before this Tribunal on 27th September 2022, challenging the legality of the NCLT's ruling. The Appellant argues that the RP acted beyond his powers by determining its related party status, and the exclusion from the CoC was unjustified. Furthermore, Appellant claims

that Kanoria Foundation, as a trust, cannot be classified as a holding company and that it had no control over the CD after SREI entered CIRP.

Submission of the Appellant

3. The counsel for the appellant submits that it is challenging the order dated September 23, 2022, passed by the National Company Law Tribunal (NCLT), Kolkata, which excluded the appellant from the Committee of Creditors (CoC) of the Corporate Debtor, Suasth Healthcare Foundation, on the grounds of being classified as a "related party." The appellant asserts that this classification, and its subsequent exclusion from CoC is erroneous both in fact and law. This exclusion has deprived the appellant of its legal right to participate in the resolution process and vote on crucial decisions, severely prejudicing its interests as a financial creditor.

4. The counsel for the appellant further submits that after the exclusion of SREI Infrastructure Finance Limited from the CoC, the appellant's voting share increased to 20.37% from an earlier 9.61%, on the strength of its admitted claim of Rs. 62.16 crores. The exclusion of the appellant from the CoC resulted in a significant reduction of its ability to influence the resolution process, despite the legitimate size of its claim. He submitted that the exclusion of the appellant from the CoC was unjustified and disproportionate, particularly given its substantial financial stake in the Corporate Debtor.

5. He further stated that the AA reasoned that the appellant is a "related party" of the Corporate Debtor, based on Section 5(24)(j) of the Insolvency and

Bankruptcy Code, 2016 (IBC). This conclusion was drawn due to the purported connection between the appellant and Kanoria Foundation, which holds 99.9% of the appellant's shares. The AA opined that this ownership link established control over the Corporate Debtor, rendering the appellant a related party and warranting its exclusion from the CoC.

6. The counsel for the appellant submits that the AA has misinterpreted the relationship between the appellant and Kanoria Foundation. The appellant is a public charitable trust, and its link to Kanoria Foundation does not translate into any form of control over the Corporate Debtor, as erroneously concluded by the AA. The organogram relied upon in the judgment illustrates that the Kanoria Foundation controls the appellant, not the other way around. This distinction is crucial, as control by Kanoria Foundation does not establish control by the appellant over the Corporate Debtor. As such, the AA's conclusion that the appellant is a related party under Section 5(24) of the IBC is unsustainable.

7. The counsel argued that Kanoria Foundation is a trust and not a company as defined under Section 2(46) of the Companies Act, 2013. Section 5(24)(i) of the IBC pertains to relationships between holding and subsidiary companies, which do not apply in this case. Since Kanoria Foundation is not a corporate entity, it cannot be classified as a holding company, and consequently, the appellant cannot be considered a related party under this provision. The appellant submits that the NCLT's reliance on this provision is fundamentally flawed. He further stated that Kanoria Foundation, being a public charitable

trust, cannot be equated to a commercial enterprise with shareholding and voting rights similar to those of corporate entities. This legal nuance was entirely overlooked by the NCLT when determining the appellant's status as a related party.

8. The counsel argued that the AA's ruling also erroneously conflates the concept of de facto control. The appellant submits that it does not exercise any form of direct or indirect control over the Corporate Debtor. The AAs reliance on Trinity Alternate Investment Managers Ltd. (TAIML) as being in control of the Corporate Debtor is misplaced. TAIML is merely an investment manager of SREI Alternate Investment Trust, which itself is governed by trustees. According to the well-established principles of trust law, only the trustees hold the legal control over the trust assets. In this regard he cited the Supreme Court's decision in *W.O. Holdsworth & Ors v. The State of Uttar Pradesh* [1958 (1) SCR 296], which categorically holds that trustees are the legal owners of trust property, and mere investment managers cannot be held as controllers of a trust's assets. Therefore, the appellant's relationship with TAIML or the Corporate Debtor, even if tenuous, does not meet the threshold of control as required to be classified as a related party under Section 5(24)(h) and (j) of the IBC.

9. The counsel for the appellant submits that the appellant's exclusion from the CoC has caused significant prejudice, both procedurally and substantively. Procedurally, the appellant was deprived of its right to participate in the decision-making process, including deliberations on the Resolution Plan. This exclusion

mirrors the denial of notice to a creditor, which was deemed a fatal procedural defect by the Hon'ble Supreme Court in Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr., 2024 (6) SCC 767. In that case, the Supreme Court set aside the resolution plan for failing to include a financial creditor who had been excluded without justification, similar to the present scenario.

10. He further argued that on a substantive level, the exclusion from the CoC deprived the appellant of any meaningful opportunity to have its claims considered in the Resolution Plan, resulting in its financial claim of Rs.62.16 crores being completely ignored. This exclusion violates the principles of natural justice and fairness in insolvency proceedings, as laid down by the Supreme Court in Sri Parmeshwari Prasad Gupta v. Union of India, 1973 (2) SCC 543. In that case, the Supreme Court held that a resolution passed without due notice to all relevant parties is null and void.

11. Counsel for the appellant further submitted that the Resolution Plan, which was approved by the CoC and implemented, was done so without the appellant's participation, despite the appellant having a 20.37% voting share. This raises significant concerns about the fairness of the process. Furthermore, any delay in the judicial process should not prejudice the appellant. The Hon'ble Supreme Court, in Committee of Creditors of Essar Steel v. Satish Kumar Gupta & Ors., 2020 (8) SCC 531, invoked the principle of "Actus curiae neminem gravabit", meaning that an act of the court shall prejudice no man. The appellant

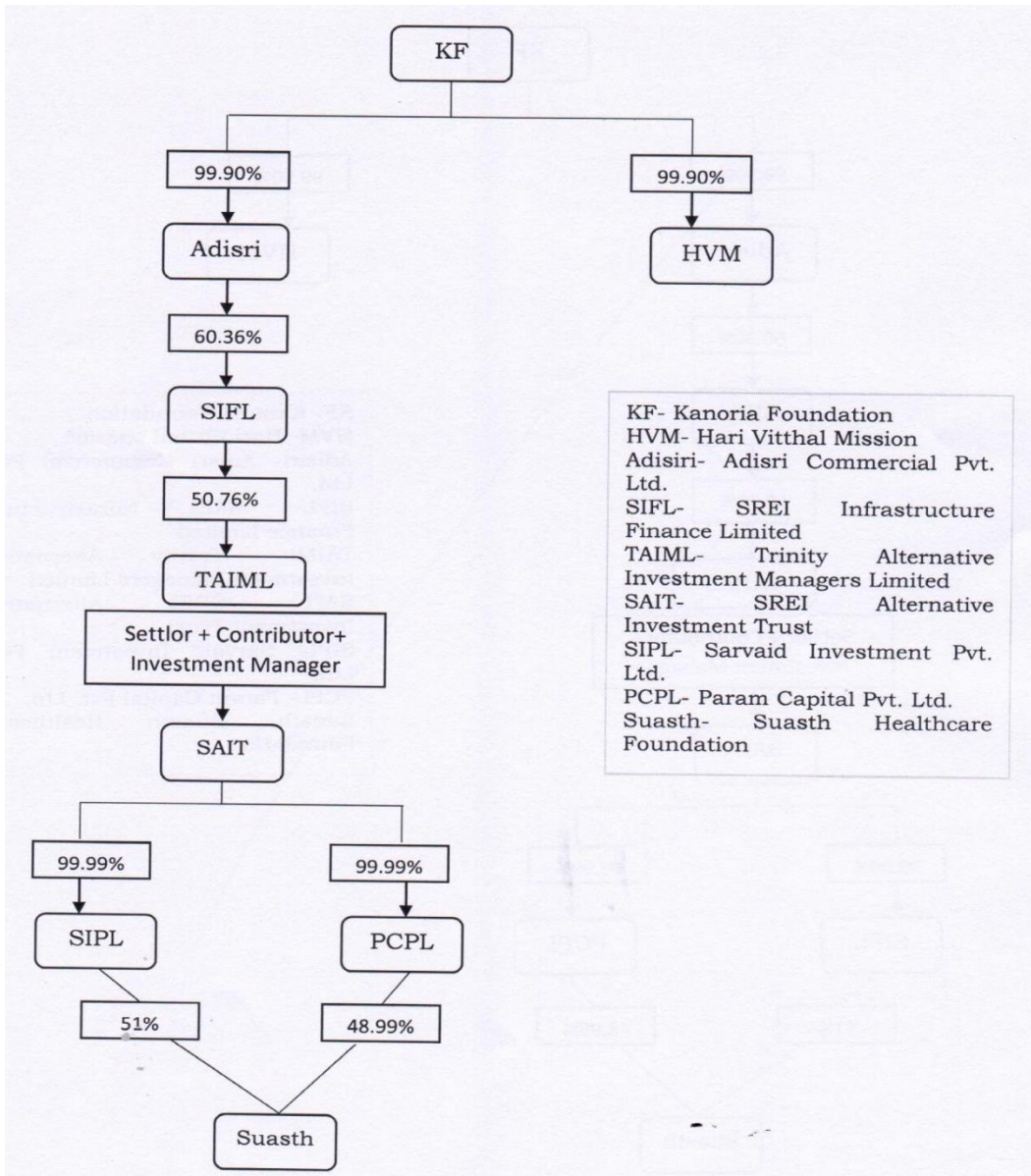
submits that the continued exclusion from the CoC, while the present appeal is pending, would further prejudice its interests.

Submission of the Respondent No.1

12. The counsel for Respondent No. 1 has submitted that the Impugned Order meticulously deals with the issues at hand and returns cogent and reasonable findings which do not warrant any interference of the Tribunal in its Appellate Jurisdiction. The instant appeal too does not disclose any ground that would warrant any interference.

13. The short question before this Tribunal is whether the Appellant - Hari Vitthal Mission is a 'Related Party' of the CD. The CD only has two shareholders: (a) Sarvavid Investment Pvt Ltd (SIPL)-51% shareholding; and (b) Param Capital Pvt Ltd (PCPL) 49% shareholding. This Hon'ble Tribunal may kindly appreciate that the Kanoria Family, through the Kanoria Foundation ("KF") controls the Appellant, which in turn is a 'Related Party' of the CD.

14. He submitted that the Organogram referred to at Para 12 of the Impugned Order (which has been reproduced below) reveals the following:



- Kanoria Foundation, owned by Kanoria Family, owns 99.90% shareholding in the Appellant and another entity, namely Adisri Commercial Pvt Ltd ("Adisri").
- Adisri in turn owns 60.36% in SREI Infrastructure Finance Ltd ("SREI Infrastructure").

- SREI Infrastructure holds 50.76% in Trinity Alternate Investment Managers Lad ("TAIML")
- TAIMI, is the Settlor Contributor/ Manager of a trust called SREI Alternate Investment Trust (SAIT)
- SAIT in turn holds 99.99% each in SIPL and PCPL thereby clearly establishing the Appellant as a 'Related Party' of the CD.

15. He submitted that the AA passed the Admission Order against the CD on 31.08.2021. The Interim Resolution Professional was replaced by the present RP in the 2th COC Meeting dated 8.10.2021. The COC Members inquired from the present RP with regard to the Related Party status.

16. At this stage, the COC consisted of

(a) Yes Bank-19.87%

(b) Axis Bank-19.45%

(c) SREI-51.07%

(d) Hari Vitthal Mission -19.61%

17. The RP conducted a comprehensive verification exercise to inquire about the Related Party status of the Appellant. The RP sought information from the Appellant to which he did not receive any response/ reply. In this regard the

counsel invited attention to RP's email dated 31.12.2021 and RP's Letter dated 31.12.2021.

18. The RP, vide his letter dated 11.01.2022 concluded that the Appellant is a 'Related Party' and consequently would have no right of representation and voting on the COC in terms of Section 21(2) of IBC. It is also pertinent to note that SREI Infrastructure was also declared as a related party, which is also controlled by the Kanoria Foundation. SREI Infrastructure accepted these findings and did not agitate further.

19. It is the aforesaid decision of the RP which was challenged by the Appellant before the Ld. NCLT, the dismissal of which by the Impugned Order has lead to the institution of the present appeal.

20. During the course of oral arguments before this Tribunal, the Appellant has highlighted one singular link in the Organizational Chart/ Organogram contending that TAIML does not control SAIT. The counsel for Respondent No. 1 stated that TAIML is the settlor, contributor as well as the Investment Manager of SAIT. TAIML as a Contributor, alongwith other contributors, can remove or discharge a Trustee or appoint new Trustees. As the appointed Investment Manager, TAIML has the power to manage the investment of SAIT, exercise powers of the shareholder as well as nominate directors in the portfolio companies.

21. Therefore, under Section 5(24) (h), TAIML gives advice/directions/instructions on which the directors of the CD act. Under Section 5(24) (j) of IBC, TAIML controls 100% voting rights on the shares of the Corporate Debtor which translates to 31% control of KF. Section 5(24)(l) of IBC, TAIML controls the composition of the Board of Directors in the CD. Such control can be direct or indirect. In this regard he referred to Section 2(27) of the Companies Act, 2013 and paragraph 47 of Hon'ble Supreme Court's Judgment in Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors reported at (2019) 2 SCC 1).

22. He submitted that the companies/trusts mentioned in the Organogram are all directly or indirectly controlled by KF. It is also undisputed that Kanoria Foundation has 99.9% shares in the Appellant. It is therefore the Kanorias" who are controlling both the Appellant as well as the CD. This is further apparent from the fact that Mr. Sanjeev Kanoria (beneficiary of KF) was the director of the CD till 20.04.2019. Further, Mr. Hariprasad Kanoria (Trustee of KF) was also a director of the CD till 28.11.2019.

23. He further submitted that the Appellant's claim that "chain" is broken due to there being a trust in the middle (SREI Trust) also deserves to be rejected. He cited this Tribunal Judgment in the case of SREI Infrastructure Finance Ltd. v. Shri Ashish Chhawchharia (Company Appeal (AT)(Ins) No. 1407 of 2019 which has already dealt with the same issue and held in favour of the holding company

of the "Investment Manager" of the Trust would be a related party to the companies held by the Trust.

24. The counsel stated that the Resolution Plan of CD was placed before the COC in the 15th COC Meeting dated 21.09.2022. The COC approved the Resolution Plan on 6.10.2022 with 100% majority. Consequently, IA 1381/KB/2022 was filed by the RP under Section 30(6) read with Section 31 of IBC, which was approved by the Ld. NCLT on 18.12.2023. The Successful Resolution Applicant, which is a consortium of Nishkala Healthcare Pvt Ltd and Ujin Pharma Chem, has already implemented the Plan as on 24.07.2024. Even if the Appellant was not to be disqualified as a Related Party, it would have held approximately 19.61% voting rights in the COC and it would not have been in the position to determine the Successful Resolution Applicant.

25. In the end, the counsel submitted that there is no merit in the instant appeal and the same deserves to be dismissed with heavy costs.

Submission of Respondent No.2

26. The counsel for Respondent No. 2 submits that the appeal filed by the Appellant has been rendered infructuous due to the successful implementation of the Resolution Plan. The Corporate Debtor's resolution process has concluded with 100% approval by the erstwhile CoC, and the plan was implemented on July 26, 2024, placing the Corporate Debtor under new management. The Appellant has already received INR 10 lakhs as part of the Resolution Plan, leaving no live controversy that requires judicial intervention. Hence, the reliefs

sought by the Appellant are no longer relevant as the resolution process has been successfully concluded. The counsel for Respondent No. 2 further submits that even if this Tribunal were to decide in favor of the Appellant, such a decision would not impact the approved and implemented Resolution Plan. The Appellant, holding a 19.6% voting share as a financial creditor, cannot overturn the 100% unanimous approval of the CoC. Any interference with the order dated September 23, 2022, passed by the NCLT Kolkata in I.A. 390/2022 in C.P. (IB) No. 204/2021, would reopen a successfully concluded CIRP, which would be contrary to the objectives of the Insolvency and Bankruptcy Code, 2016 (IBC) and detrimental to all stakeholders.

27. The counsel for Respondent No.2 supported the contention of the Respondent No.1. He further gave detailed justification as to how the appellant has been held as a related party of the Corporate Debtor in terms of Section 5 (24) of the Code. The Kanoria Foundation being the master mind at the helm of affairs of both the appellant and the CD has been clearly shown by the organogram relied upon in the impugned order. The manner of control of the appellant and CD by Kanoria foundation can be seen in following manner:

a) Chain of Control Through Shareholding Structure

- (i) Kanoria Foundation holds 99.9% of the shares in the Appellant;
- (ii) Kanoria Foundation also holds around 99.9% shareholding of Adisri Commercial Private Limited (Adisri).

- (iii) Adisri, in turn, holds 60.36% of the shares in SREI Infrastructure Finance Limited (SIFL). SIFL, along with Sunil Kanoria (0.04%), Hari Prasad Kanoria (0.04%), and Hemant Kanoria (0.04%), holds 50.88% of the shares in Trinity Alternative Investment Managers Limited (TAIML).

This multi-tier shareholding structure establishes a clear chain of control from the Kanoria Foundation down to the Corporate Debtor, with the Appellant falling within this chain of control.

(b) Chain of Control Through Contractual Arrangements

- (i) Further, the counsel for Respondent No. 2 submits that in addition to the shareholding control, a chain of control through contractual arrangements also exists between the Appellant and the Corporate Debtor. The chain of control from TAIML to the CD by Contractual Arrangement can also be established.
- (ii) TAIML is the settlor and contributor of SREI Alternative Investment Trust (“SAIT”) (a trust settled by Trinity Alternative Investment Managers Limited, erstwhile SREI Venture Capital Limited and SREI Alternative Investment Managers Limited) in terms of the Trust Deed dated 29.08.2012 (“Trust Deed”) and has the right to appoint and remove trustees in SAIT as is evident from Clauses 4.2, 5.5.2 and 5.5.2.3 of the Trust Deed.
- (iii) Further, TAIML is also the investment manager of SAIT and in terms of Clause 8 and Clause 26,28,29 in Schedule A of the Amended

Investment Agreement dated 10.3.2012 (“Amended Investment Agreement”) has the right to manage affairs and appoint directors in the portfolio companies of SAIT.

(iv) SAIT through its scheme IRF, holds 99.99% of the shareholding of its portfolio companies, being SIPL and PCPL. As stated hereinabove, TAIML by way of the Amended Investment Agreement has the right to manage affairs of portfolio companies of SAIT i.e. SIPL and PCPL as well as appoint directors therein.

(v) Subsequently, PCPL and SIPL hold 99.99% shareholding in the Corporate Debtor.

Thus, the chain of control from TAIML to the Corporate Debtor is also evidently established by way of contractual arrangements as stated hereinabove.

(c) In view of the aforesaid shareholding pattern as well as contractual arrangements, the Appellant squarely falls under the definition of ‘Related Party’ in terms of Section 5(24)(i)(j) and (h) of the Code for inter alia the following reasons:

(i) The Appellant is a subsidiary of a holding company i.e. Kanoria Foundation, of which the Corporate Debtor is a subsidiary. Thereby, provisions of Section 5(24)(i) of the Code clearly stand attracted.

(ii) Further the Kanoria Foundation is the holding company of the appellant having 99.9% shareholding in the same. Further,

Kanoria Foundation by way of the shareholding pattern as explained above also exercises direct control over Adisri, SIFL and TAIML. The effective shareholding of Kanoria Foundation in TAIML is 31% as can be seen from organogram.

(iii) TAIMIL in turn exercises de facto control over SAIT as well as SIPL and PCPL by having the right to,

- appoint and remove trustees in SAIT in terms of Clauses 4.2, 5.5.2 and 5.5.2.3 of the Trust Deed and
- manage affairs and appoint directors in the portfolio companies of SAIT, being SIPL and PCPL in terms of Clause 8 and Clause 26,28,29 in Schedule A of the Amended Investment Agreement.

28. The counsel further cited the Judgment of Hon'ble Supreme Court in the case of *Arcellor Mittal (India) (P) (Ltd.) v Satish Kumar Gupta* (2019) 2 SCC 1, (Para 47,48), that having the right to appoint directors in an entity, amounts to de facto control. Thus, by virtue of TAIML having the right to appoint trustees/directors in SAIT and SIPL/PCPL respectively, evidently exercises de facto control in the same. Further, SIPL and PCPL in turn exercise control over the Corporate Debtor by having 99.99% shareholding in the same. Thus, a chain of control is evidently established from Kanoria Foundation to the Corporate Debtor.

29. In view thereof, the Appellant is a subsidiary of a holding company i.e. Kanoria Foundation, of which the Corporate Debtor is a subsidiary, attracting the provision of Section 5 (24) (i) of the Code and warranting classification of the

Appellant as a 'Related Party' in terms thereof. Kanoria Foundation is the entity on whose advice, directions or instructions, both the Appellant as well as the Corporate Debtor are accustomed to act and thus, Section 5 (24) (h) of the Code clearly stands attracted.

30. The counsel stated that in view of the aforesaid shareholding pattern as well as contractual arrangements, it is evident that the Kanoria Foundation through a series of layered sequencing as elaborated in the table extracted in the Impugned Order (calculated on the basis of the shareholding percentage of the each of the entities, starting from Kanoria Foundation, in the subsequent entity) exercises approx. 31% control over the Corporate Debtor. Accordingly, the threshold of 20% of the voting rights in the corporate debtor stipulated under Section 5 (24) (j) of the Code is attracted in the present case.

31. Lastly, the counsel for Respondent No.2 stated that any technical objections raised by the Appellant to state inter alia that (a) Section 5(24) of the Code cannot be applied to 'trusts' or (b) Kanoria Foundation may be a related party to the Corporate Debtor however that does not make the Appellant a related party, ought to be rejected on the basis that, (i) Section 5(24) of the Code ought to be given a purposive interpretation, keeping the overall intent of the said provision in mind, which has been introduced for the purpose of excluding a related party of the corporate debtor from the committee of creditors, to obviate conflicts of interests which are likely to arise in the event that a related party is allowed to become a part of the committee of creditors. In this regard he placed reliance on *Phoenix Arc Private Limited v. Spade Financial Services Limited*,

2021 3 SCC 475, paragraphs 98-99); and (ii) the Judgment of this Tribunal in SREI Infrastructure Finance Limited v. Ashish Chhawchharia, resolution professional of Odisha Slurry Pipeline Infrastructure Limited & Anr, (CA(AT)(Ins) 1407 of 2019 dated 18.01.2022, dealing with a similar fact situation, wherein it was held that the holding company of the “Investment Manager” of the Trust (being the Kanoria Foundation in the present case) would be a related party to the companies held by the Trust (being the Corporate Debtor in the present case).

32. Finally, the counsel submitted that the classification of the Appellant as a related party under Section 5(24) of the IBC is legally sound and supported by the facts, shareholding patterns, and contractual arrangements. The Impugned Order dated September 23, 2022, passed by the NCLT Kolkata, is correct in law and does not warrant any interference. Furthermore, the reliefs sought in the present appeal have been rendered infructuous due to the successful implementation of the Resolution Plan.

Analysis and findings

33. We have heard the Counsels on behalf of the applicant as well as respondents and gone through their written submissions and documents on record in detail.

34. The key issue in this appeal is whether the appellant has been correctly identified as related party of CD. The RP has invoked Section 5 (24) sub-Sections (h), (i), (j) and (l) of the code and held that the appellant is a related party of the CD. This decision of RP was upheld by the AA.

35. The appellant has also raised a question regarding the powers of RP to decide about the 'related party'.

36. Appellant has further raised a question about Kanoria Foundation which is a trust being held on par with a holding company and has stated that the same is not in accordance with Section 5 (24) (i) of the Code and therefore such finding is liable to be set aside by this Tribunal.

37. We first examine whether the RP's competence to decide whether a party in CIRP proceeding is related party or not. The Section 21 of the Code gives the procedure as to how the committee of creditors would be constituted. The relevant sub-Sections (1) & (2) of the Section 21 are reproduced below:

"21. Committee of Creditors. – (1) the interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

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

Provided that a [financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6-A) or sub-section (5) of section 24, if it is a related party of the corporate debtor], shall not have any right of representation, participation or voting in a meeting of the committee of creditors"

38. It is clear from the language of the Section that IRP is responsible for constituting Committee of Creditors. As per the proviso of sub-Section 2 of Section 21 the related party of Corporate Debtor has no right of representation participation or voting in a meeting of Committee of Creditors. It is evident from that IRP has to decide about related party status of creditors of the CD for constituting the CoC as related parties cannot form part of CoC. After

confirmation as RP appointment of IRP as RP the matters relating to CoC continue to be handled by RP as he chairs the CoC meetings.

We, therefore, hold that RP is empowered to decide on the related party status of a creditor.

39. Next we examine the relevant Sections 5 (24) of the Code which defines the related party in relation to the Corporate Debtor as:

(h) any person on whose advice, directions or instructions, and 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 percent of voting rights on account of ownership or a voting agreement.

40. It is also necessary to examine as to how “person” has been defined under the Code. Section 2(23) defines person in the following manner:

(23) “person” includes-

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a trust;

(e) a partnership;

(f) a limited liability partnership; and

(g) any other entity established under a statute;

and includes a person resident outside India;

[Emphasis supplied]

41. It is clear from the definition of person that trust is defined as persons and when we look at the definition of a related party in Section 5 (24) (h) and (j) in all such cases if the CD is controlled by a trust in the manner prescribed by aforesaid Sections of the Code, then the said trust would fall under the category of related party.

42. We now have a look at the determination of appellant as related party of the CD in terms of various clauses of Section 5 (24) of the Code.

43. Regarding Section 5(24)(h), it is seen that Kanoria Foundation at the apex of the organogram shown earlier held 99.9% shares of appellant (Hari Vitthal Mission) which is a Section 8 company. Similarly, Kanoria Foundation controls the CD through a chain of entities. The shareholding of Kanoria Foundation in the CD is approximately 31%. It has also been seen that Dr. Sanjeev Kanoria (beneficiary of the Kanoria Foundation) was the director of the Corporate Debtor till April 20, 2019 and Mr. Hari Prasad Kanoria (trustee of the Kanoria Foundation) was a director at the Corporate Debtor till November 28, 2019. The AA found that Suasth Healthcare Foundation had historically been accustomed to acting on the advice, directions, and instructions of Kanoria Foundation. This satisfied the conditions under Section 5(24)(h) of the IBC, which deals with entities influencing or advising the management of the Corporate Debtor.

We agree with the findings of the AA that even though Hari Vitthal Mission did not directly own or control shares in the Corporate Debtor, the substantial influence exercised by Kanoria Foundation as holding trust over both the

appellant and the Corporate Debtor’s management was sufficient to establish a related party relationship.

44. Next, we turn to Section 5(24)(i), which establishes that a related party may be any body corporate that is a holding, subsidiary, or associate company of the Corporate Debtor, or a subsidiary of a holding company to which the Corporate Debtor is also a subsidiary. In the present case, Kanoria Foundation is the equivalent of the holding company, which owns 99.9% of the appellant (Hari Vitthal Mission). The appellant is a Section 8 company, which, while engaged in charitable work, is still subjected to the same ownership structures that connect it to Kanoria Foundation. On the other Branch the Kanoria Foundation, indirectly controls 31% of Suasth Healthcare Foundation (CD) through entities like SIFL and TAIML. A table showing the shareholdings of Kanoria Foundation in appellant and CD through different entities is placed below:

Entity	Holding	% Held by KF	Entity	% held by KF
KF	100%	99.9%	HVM	99.9%
Adisri	99.90%	99.9%		
SIFL	60.36%	60%		
TAIML	50.76%	31%		
SAIT	100%	31%		
SIPL	99.90%	30.97%		
PCPL	99.90%	30.94%		
SUASTH	51%	16%		
SUASTH	49%	15%		

45. We note that the Kanoria Foundation holds 99.9% of the shares in the Appellant. On the other side Kanoria Foundation holds 99.9% of Adisri Commercial Private Limited (Adisri). Adisri, in turn, holds 60.36% of the shares

in SREI Infrastructure Finance Limited (SIFL). SIFL, along with Sunil Kanoria (0.04%), Hari Prasad Kanoria (0.04%), and Hemant Kanoria (0.04%), holds 50.88% of the shares in Trinity Alternative Investment Managers Limited (TAIML). TAIML is the settlor, contributor and investment manager of SREI Alternative Investment Trust (SAIT). SAIT in turn holds 99.99% of shares in SIPL and PCPL. The contention of the appellant is that the chain is broken on this side of organogram due to presence of a Trust- SAIT in between. However, we have seen, how TAIML as Investment Manager, controls both the subsidiaries of SAIT viz. SIPL and PCPL. SIPL in turn holds 51% in CD and PCPL holds 49% in CD. The investment Manager for SAIT is TAIML which exercises control over CD through SIPL and PCPL. This multi-tier shareholding structure establishes a clear chain of control from the Kanoria Foundation down to the Corporate Debtor, with the Appellant falling within this chain of control.

46. This network of shareholding establishes a clear connection between the Corporate Debtor and Hari Vitthal Mission, with both entities being subsidiaries or affiliates under the broader umbrella of Kanoria Foundation. Given this relationship, Hari Vitthal Mission is not only indirectly linked to the Corporate Debtor, but is effectively part of the same corporate group. Therefore, under Section 5(24)(i), Hari Vitthal Mission qualifies as a related party by virtue of its position as a subsidiary of Kanoria Foundation, the holding company/trust that controls the Corporate Debtor.

47. The appellant has placed reliance on Hon'ble Supreme Court Judgment in ***W.O. Holdsworth & Ors Vs. The State of Uttar Pradesh (1958 (1) SCR 296)***

to assert that, like trustees in Holdsworth, they do not control the Corporate Debtor (Suasth Healthcare Foundation), but simply manage the funds for charitable purposes. Thus, the appellant argues they should not be classified as a "related party" under the Insolvency and Bankruptcy Code (IBC). In Holdsworth, the trustees were managing agricultural income for the benefit of beneficiaries without exercising control over the property itself. The relationship was purely fiduciary, where the trustees' held assets but had no controlling interest in business operations. In Hari Vitthal, however, the trust Kanoria Foundation controls the operations of both the appellant and CD as seen in previous paragraphs. At the level of SAIT, which is a trust is also controlled by TAIML as Investment Manager/ Settlor, which further controls 100% of PCPL and SIPL, which again hold 100% share of Suasth (CD). Hence, the ratio of judgement in Holdsworth supra is not applicable in the present case.

48. We now examine as to how Section 5(24)(j) is attracted in the instant matter. This Section defines a related party as any person or entity that controls more than 20% of the voting rights in the Corporate Debtor. As we have seen earlier the Kanoria Foundation holds 99.9% in the appellant which is the Financial Creditor. On the other side the Kanoria Foundation through a series of entities holds a 31% stake in CD. The control of Kanoria Foundation on CD is through several intermediary entities including Adisri, SIFL, TAIML, SAIT, SIPL and PCPL. This layered ownership has been clearly shown in the organogram and even though there may be intermediary entities between Kanoria Foundation and the Corporate Debtor the overall control through shareholding and

appointment of Directors through the clauses of trust deed and investment agreement is real and substantial. Hari Vitthal Mission which is 99.9% owned by Kanoria Foundation is a subsidiary company of Kanoria Foundation. The holding entity Kanoria Foundation in this case holds more than 20% in both CD and appellant and appellant therefore squarely falls in the definition of related party of CD.

49. Further in this regard our attention is drawn to the amended investment management agreement between SAIT and TAIML dated 10.03.2021 wherein SAIT is defined as the 'Trust' and TAIML is referred to as the 'Investment Manager'. The relevant Clauses 8 of the agreement and Clauses 26, 28 and 29 of Schedule A of the agreement- Powers of the Investment Manager are reproduced below:

“Clause 8: PORTFOLIO ADMINISTRATION The investment manager shall supervise the investment activities of the Trust in accordance with the following principles:

- (a) the Investment Manager shall exercise all rights of nomination, voting, veto, inspection, exit mechanisms etc. as may be available, to the extent necessary, granted to the Scheme under the provisions of the investment / shareholder agreements with the Portfolio Companies;*
- (b) the Investment Manager shall require each Portfolio Company to provide quarterly reports of operating results, financial position and marketing prospects, as well as audited annual statement of accounts from reputable auditing firms; And*

(c) the investment manager shall ensure that the portfolio Companies take all secretarial steps including issue of share certificates, appointment of nominee non-executive directors, amendment of articles of association. etc. to give full effect and protection to the rights of the Scheme.

Schedule A- Clause 26 : *To manage Portfolio Investments by doing or causing to be done all such acts or things as may be necessary to mobilise, invest (according to the decision of the Investment Committee), manage and to collect and receive by installments or otherwise all monies due to the Trust.*

Schedule A- Clause 28 : *To exercise all the rights, powers and privileges of shareholders, capital participants, debenture holders, bondholders and other security holders in such Portfolio Company.*

Schedule A- Clause 29 : *To nominate or get appointed directors on the board of directors of the Portfolio Companies in accordance with the terms and conditions agreed to by the Investment Manager or otherwise to protect the interests of the Trust in any manner it may deem fit.”*

50. The aforesaid Clauses give powers to TAIML as Investment Manager to control SIPL and PCPL in which 99.99% is owned by SAIT, by exercising shareholder rights in portfolio companies, and nominate directors. This clearly shows control through corporate structure by Kanoria Foundation.

51. In this regard, we also take note of Hon'ble Supreme Court's Judgment in **Phoenix Arc Private Limited v. Spade Financial Services Limited (2021) 3 SCC 475**, wherein the court emphasized the necessity of excluding related parties from the CoC to maintain the integrity of the insolvency resolution

process. This underscores the legal rationale for excluding entities like HVM, given the substantial voting rights control held by Kanoria Foundation. Therefore, HVM is classified as a related party under Section 5(24)(j) due to this significant control.

52. The appellant has cited several Judgments of Hon'ble Supreme Court in support of his submissions. We have looked into these Judgments in the subsequent paras.

53. The appellant has invited our attention to the Judgment of Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr (2024 SCC 767)***, The appellant compares their exclusion from the COC in the same manner in which Greater NOIDA as the creditor was not notified of the resolution plan and its rights were subsequently prejudiced. The appellant contends that their exclusion from the COC due to being classified as a related party is similarly unjust and should be reversed. The ratio of Greater Noida Supra is not applicable in the present case, as in the aforesaid matter the resolution plan was set aside due to procedural lapses, specifically the failure to notify the creditor about critical meetings, which violated the principles of natural justice. The creditor in that case was a statutory body and was not a related party; and therefore, its exclusion was a procedural irregularity.

54. The appellant has further cited Hon'ble SC's Judgement in ***Sri Parmeshwari Prasad Gupta Vs. Union of India (1973 (2) SCC 543)*** and argued that their exclusion from the COC without sufficient notice or proper

consideration is similar to the invalidation of a board resolution in Parmeshwari Prasad Gupta (supra), where a resolution was passed without notifying a director. We have seen that in Parmeshwari Prasad Gupta, the Supreme Court dealt with a case where a board resolution was invalidated, because a director was not notified, violating the principle of due process. The case focused on the importance of giving notice to all relevant parties before taking decisions that affect their rights. However, in our case, the exclusion from the COC is not a result of a failure to provide notice or a lack of due process. Instead, it is a consequence of a substantive legal finding that the appellant is a related party under Section 5(24) of the IBC and is therefore excluded from the CoC meeting.

55. Thereafter, the appellant has cited the Hon'ble SC's Judgement in ***Committee of Creditors of Essar Steel vs. Satish Kumar Gupta & Ors (2020 (8) SCC 531***) to argue that delays in the disposal of their appeal should not result in their exclusion being upheld, invoking the principle of "Actus Curiae Neminem Gravabit" (an act of the court shall prejudice no one). They suggest that their exclusion from the COC, which was part of the ongoing insolvency process, should not prejudice their rights because of delays. While the *Essar Steel* case dealt with prioritization of creditor claims and the judicial handling of insolvency timelines, the present case is not related to delays or procedural issues. The doctrine of "Actus Curiae Neminem Gravabit" does not apply here, as the exclusion was based on a well-supported finding of fact, not on procedural delays.

56. The appellant further places reliance on Hon'ble SC's Judgement in ***Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors (2019 (2) SCC 1)*** to argue that, like in *Arcelor Mittal (Supra)*, their exclusion from the COC should be reconsidered because they are entitled to participate, and their exclusion from CoC is akin to disqualification under Section 29A of the IBC, which deals with eligibility of resolution applicants. We have seen that in *Arcelor Mittal (Supra)*, the issue was whether a resolution applicant was disqualified under Section 29A of the IBC due to their association with a non-performing asset. The Supreme Court focused on the eligibility of applicants to submit resolution plans. However, in the present matter the issue is about the appellant's status as a related party under Section 5(24) of the IBC, and consequent disqualification from CoC and not eligibility to submit a resolution plan. Therefore, the ratio laid down in *Arcelor Mittal (supra)* is not applicable in the instant matter.

57. In the end the appellant has cited Hon'ble SC's Judgement in ***Bharat Damodar Kale Vs. State of Uttar Pradesh (2003 (8) SCC 559)*** to argue that procedural issues in the insolvency process should invalidate their exclusion from the COC, similar to how procedural issues affected the application of criminal procedure in the cited case. The aforesaid case dealt with the retrospective application of procedural rules under the Criminal Procedure Code. The Judgment in *Bharat Damodar Kale (supra)* had no connection to insolvency law or the substantive classification of parties under the IBC. By no stretch of imagination the ratio of the aforesaid criminal matter can be applied to the

present case which is covered by IBC, which is a self-contained comprehensive code for insolvency matters.

58. We have seen that the judgments cited by the appellant primarily involve procedural issues or questions of eligibility that do not apply to the facts of *present case*. law and does not address the issue of related party exclusion under the IBC.

59. Based on the discussion in preceding paras, we hold that RP is empowered to decide about the status of a creditor as related party. We endorse the findings of RP and AA wherein the appellant has been held as related party in terms of provisions of Section 5 (24) of the Code. We, therefore, find no infirmity in the order of AA. Accordingly, the appeal is dismissed. Pending I.As if any are closed. There would be no order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

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