

AJIT KUMAR

B.Com (H), FCMA, All
Insolvency Professional

IP Reg. No: IBBI/IPA-003/IP-N00062/2017-18/10548

Date: 20th October, 2023

The Manager, DCS
Bombay Stock Exchange Limited
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai – 400001

Dear Sir/Madam,

Ref: Scrip Code: 514221

Sub: Legal Update under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2018.

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015, please find attached herewith the order pronounced by Hon'ble NCLAT vide Company Appeal (AT) (Insolvency) No. 404 of 2021.

In the said order, Hon'ble NCLAT referred the matter pertaining to inclusion of thirteen parties as a part of CoC members back to the Adjudicating Authority to decide afresh. (Please find attached the copy of original order by the NCLAT in the matter).

Kindly take the same on record.

Thanking you.

Yours faithfully,

For K-Lifestyle & Industries Limited (In CIRP)

For K-LIFESTYLE & INDUSTRIES LIMITED
(UNDER CIRP)

IRP/RP

Ajit Kumar,

Resolution Professional,

IBBI/IPA-003/IP-N00062/2017-2018/10548

E mail: cirp.klifestyle@gmail.com

IRP: Sun Resolution Professionals Private Limited (IPE REG NO: IBBI/IPE/0064)

Delhi Office: 83, National Media Center, Shankar Chowk, Nr Ambiance Mall, Gurugram -122022.

Regd Office: 9B Vardan Tower, Nr.Vimal House, Lakhudi Circle, Navrangpura, Ahmedbad-380014.

Regd Address with IBBI: 1A, Sanskriti Apartment GH-22, Sector 56, Gurugram, Haryana 122 011.

Tele (Fax):0124-4240887 | Email: cmaajitjha@gmail.com, info@sunresolution.in

Ahmedabad - Bangalore - Chandigarh - Chennai - Delhi - Hyderabad - Indore - Jaipur - Kolkata - Mumbai - Surat - Vadodara

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

10881

2nd & 3rd Floor,
Mahanagar Doorsanchar Sadan,
(M.T.N.L. Building)
9, CGO Complex, Lodhi Road,
New Delhi-110 003.
Dated : 17.10.2023

To,

1. The Registrar National Company Law Tribunal, 6 th Floor, Block-3, CGO Complex, Lodhi Road, New Delhi - 110 003.	2. The Registrar National Company Law Tribunal, Anand House, Ground 1 st & 2 nd Floors, SG Highway, Thaltej, Ahmedabad - 380 054
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Sub: In the matter of – Company Appeal (AT) (Insolvency) No. 404 of 2021 - [Mr. Ajit Kumar, RP of K-Lifestyle & Industries Limited Versus M/s. Alpha (India) Properties Pvt. Ltd. & Ors.] – Company Appeals filed U/s 61 of the Insolvency and Bankruptcy Code, 2016.

Sir,

A copy of the order of the Appellate Tribunal dated 04.10.2023 on the above subject matter is forwarded herewith under Section 61 of the Insolvency and Bankruptcy Code, 2016. The Registrar, NCLT, New Delhi is requested to place the aforesaid order before the Hon'ble President, National Company Law Tribunal, New Delhi.

Yours faithfully,

(Sujata Kumari)
Assistant Registrar/IC

Encl: As above.

Copy to:

A-1	Mr. Ajit Kumar, RP of K-Lifestyle & Industries Limited, Office At : 83, National Media Centre, Shankar Chowk, Near Ambience Mall, DLF Cyber City, Gurugram - 122 002	R-1	M/s. Alpha (India) Properties Pvt. Ltd. Gala No. 105, Everest Industrial Estate, Near 66 KVA Power Substation, Amlı, Silvassa- Dadar & Nagar Havelı - 396 230
R-2	M/s. Amex Infrastructure Pvt. Ltd. Gala No. 108, Everest Industrial Estate, Near 66 KVA Power Substation, Amlı, Silvassa- Dadar & Nagar Havelı - 396 230	R-3	M/s. Bodal Conpro Pvt. Ltd. Gala No. 107, Everest Industrial Estate, Near 66 KVA Power Substation, Amlı, Silvassa- DNH-396 230



R-4	M/s. Clematis Trading Company Pvt. Ltd. 404, Silvassa Complex, Behind Dan & Popular Hotel, Tokarkhada, Silvassa- DNH- 396 230	R-5	M/s. Conart Conpro Pvt. Ltd. Gala No. 108, Everest Industrial Estate, Near 66 KVA Power Substation, Amlı, Silvassa- Dadar & Nagar Havelı - 396 230
R-6	M/s. Cranes Real Estate Pvt. Ltd. Gala No. 108, Everest Industrial Estate, Near 66 KVA Power Substation, Amlı, Silvassa- Dadar & Nagar Havelı - 396 230	R-7	M/s. Kausar Textile Pvt. Ltd. RM - 81, Sudarshan Nagar, MIDC Phase-II, Dombivalı (E), Thane - 421 201
R-8	M/s. Madhu Crimpers Pvt. Ltd. Office No. 127, 18t Floor, Paras Centre A, Tata Road, No.2, Opera House, Mumbai - 400 004	R-9	M/s. Royal Compservices Pvt. Ltd. RM-81, Sudarshan Nagar, MIDC Phase-II, Dombivalı (E), Thane - 421 201
R10	M/s. Taban Real Estate Pvt. Ltd. Unit No.6, Ground Floor, Karnath Industrial Estate, Opp. Siddhi Vinayak Temple, Prabhadevi- Mumbai - 400 025	R11	M/s. Tanvish Trading Pvt. Ltd. Office No. 127, 1st Floor, Paras Centre A, Tata Road, No.2, Opera House, Mumbai- 400 004
R12	M/s. Vignaharta Corrugators Pvt. Ltd. RM - 81, Sudarshan Nagar, MIDC Phase-II, Dombivalı (E), Thane - 421 201	R-13	M/s. WellWorth Apparels Pvt. Ltd. RM-81, Sudarshan Nagar, MIDC Phase-II, Dombivalı(E), Thane - 421 201



NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 404 of 2021

IN THE MATTER OF:

MR. AJIT KUMAR,
Resolution Professional
of K-Lifestyle & Industries Limited,
Having Its Office At-83, National Media Centre,
Shankar Chowk, Near Ambience Mall,
DLF Cyber City, Gurugram-122002

...Appellants

VERSUS

1. M/S. ALPHA (INDIA) PROPERTIES PVT. LTD.

Gala No. 105, Everest Industrial Estate,
Near 66 KVA Power Substation, Amlı,
Silvassa- Dadar & Nagar Havelı - 396230

2. M/S. AMEX INFRASTRUCTURE PVT. LTD

Gala No. 108, Everest Industrial Estate,
Near 66 KVA Power Substation, Amlı,
Silvassa- Dadar & Nagar Havelı - 396230

3. M/S. BODAL CONPRO PVT. LTD.

Gala No. 107, Eyerest Industrial Estate,
Near 66 KVA Power Substation, Amlı,
Silvassa- DNH-396230

4. M/S. CLEMATIS TRADING COMPANY PVT. LTD.

404, Silvassa Complex,
Behind Dan & Popular Hotel,
Tokarkhada, Silvassa- DNH- 396230

5. M/S. CONART CONPRO PVT. LTD.

Gala No. 108, Everest Industrial Estate,
Near 66 KVA Power Substation, Amlı,
Silvassa- Dadar & Nagar Havelı - 396230

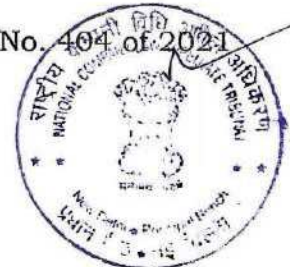
6. M/S. CRANES REAL ESTATE PVT. LTD.

Glala No. 108, Everest Industrial Estate,
Near 66 KVA Power Substation, Amlı,
Silvassa- Dadar & Nagar Havelı - 396230

7. M/S. KAUSAR TEXTILE PVT. LTD.

RM - 81, Sudarshan Nagar, MIDC Phase-II,
Dombivalı (E), Thane - 421201

Comp. App. (AT) (Ins) No. 404 of 2021



8. M/S. MADHU CRIMPERS PVT. LTD.

Office No. 127, 18th Floor, Paras Centre A,
Tata Road, No.2, Opera House,
Mumbai 400004

9./M/S. ROYAL COMPSERVICES PVT. LTD.

RM-81, Sudarshan Nagar, MIDC Phase-II,
Dombivali (E), Thane - 421201

10. M/S.TABAN REAL ESTATE PVT. LTD.

Unit No.6, Ground Floor, Karnath
Industrial Estate, Opp. Siddhi Vinayak
Temple, Prabhadevi- Mumbai - 400025

11.M/S. TANVISH TRADING PVT.LTD.

Office No. 127, 1st Floor, Paras Centre A,
Tata Road, No.2, Opera House,
Mumbai 400004

12. M/S. VIGNAHARTA CORRUGATORS PVT. LTD.

RM - 81, Sudarshan Nagar, MIDC Phase-II,
Dombivali (E), Thane - 421201

13./M/S. WELLWORTH APPARELS PVT. LTD.

RM-81, Sudarshan Nagar, MIDC Phase-II,
Dombivali(E), Thane - 421201

Present:

- For Appellants** : Mr. Abhishek Anand, Mr. Karan Kohli & Lubhanshi Rai, Advocates
- For Respondent** : Mr. Krishnendu Datta, Sr. Adv. With Mr. Prateek Gupta, Ms. Varsha Himatsinghka, Advocates for 1,2,9,12,13
Mr. Lokesh Malik & Raghav Tiwari, Advocates for R7,8,10 & 11.
Mr. Vaihav Tyagi, Advocate for R3, 4, 5, & 6.

J U D G M E N T**Per: Justice Rakesh Kumar Jain:**

This appeal is directed against the order dated 15.04.2021, passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court No. I) by which an application bearing I.A. No. 69 of 2021 filed in CP (IB) No. 625/7/NCLT/AHM/2018 by thirteen Applicants (Respondents

Comp. App. (AT) (Ins) No. 404 of 2021



No. 1 to 13 herein) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (In short 'Code') has been allowed.

2. In brief, an application under Section 7 of the Code, filed by UCO Bank bearing CP (IB) No. 625/7/NCLT/AHM/2018 against M/s K-Life Style & Industries Limited (Corporate Debtor) was admitted on 05.02.2020 and the application filed under Section 7 of the Code by Respondents No. 1 to 13 against M/s K-Life Style & Industries Limited became infructuous but liberty was granted to lodge their claim before the Interim Resolution Professional (in short 'IRP').

3. Ajit Kumar (Appellant herein) was appointed as IRP of the Corporate Debtor and was then confirmed as Resolution Professional (in short 'RP').

4. It is alleged that pursuant to the publication of Form A in the newspaper by the IRP on 19.02.2020, inviting claims from the Financial Creditors by 03.03.2020, the Respondents No. 1 to 13 submitted their claims in Form-C to the IRP. It is stated that the RP has accepted their claim towards the principal amount but treated them as related party, did not make them part of the Committee of Creditors (in short 'COC') and did not allow them to participate in any of the meetings of the CoC.

5. The Respondents No. 1 to 13 have thus filed this application under Section 60(5) of the Code before the Adjudicating Authority seeking direction to the IRP to admit their claim in full, not to treat them as a related party of the Corporate Debtor and assign voting rights in respect of Corporate Insolvency Resolution Process (in short 'CIRP'). The application has been allowed by the Adjudicating Authority after recording its findings in Para 10 to 15 of the impugned order. The findings recorded by the Adjudicating

Comp. App. (AT) (Ins) No. 404 of 2021



Authority in the aforesaid paragraphs needs to be highlighted and therefore, the same are reproduced as under:-

"10. Having discussed the legal background, it is absolutely clear whether the applicant financial creditors are relative or not but they have got a right to join the meetings of COC. Thus, action of IRP in not allowing them to participate in COC meetings even after accepting their claims to the extent of principal amount is against the provisions of law and arbitrary. Thus, we reverse the same and direct IRP to include them into COC with immediate effect.

11. Now, coming to the aspect whether they are, in fact, relative or not, it is noted that originally RP relied on Clause 2(q) of SAST(SEBI) Regulation to hold that they were a related party under Section 5(24) of IBC, 2016. However, no specific clause of Section 5(24) of IBC, 2016 has been involved to do so whereas during the course of hearing, the learned senior counsel Mr. Rashesh Sanjanwala, appearing on behalf of the Resolution Professional, has relied on Clause 5(24)(m) to justify this action of RP. He specifically pointed out that following parties fall under the provisions of this Clause:

Sr. No.	NAME OF THE DIRECTOR	PAGE NO.	APPLICANT COMPANY SR. NO. (Commonality in the entities)
17.	Kulwinder Kumar Nayyar	178	CD, TG** AND 10
20.	Farindra Bihari Bhuneshwar Rai	187	CD, TG, 8
29.	Mahendra kumar Gopikrishna Aggarwal	204	TG**, 3, 5
30.	Madhusudan Dinabandhu Paul	205	CD, TG** AND 3

In this regard, it is noted that the basis for such action remains the order of SAT in the case of Tayal Industries vs. Securities and Exchange Board of India dated 11.02.2014. On the other hand, it has been strongly countered by the learned senior counsel Mr. Navin Pahwa appearing on behalf of the applicants. We have also noted that no reply by RP has been given on the report of External Expert dated 24.10.2020 submitted by the applicants to

Comp. App. (AT) (Ins) No. 404 of 2021



him on 29.10.2020 wherein it has been already stated that applicants are not a related party. The applicants-financial creditors have also placed reliance on the decision of Hon'ble Supreme Court in the case of Phoenix ARC Private Limited vs. Spade Financial Services Limited & Ors. dated 01.02.2021 wherein it has been categorically held that if parties were a related party at the some point of time but thereafter they did not remain so in the normal course i.e. without having intention or design to alter or extinguish this relationship to dominate the CIRP or otherwise derail insolvency resolution of a corporate debtor then such parties could not be considered as a related party for all times. In the present case, there is nothing on record show that such relationship, if any, has been converted into a situation of no relationship with this purpose or object. It is also noted that no material has been brought on record except general observations given by the RP on the basis of said order of SAT that these parties are related parties but no exercise has been done to substantiate its case. The letters from some of the ex-directors have been produced subsequent to our directions, however, in our opinion do not serve any purpose as far as related party issue is concerned. Further, legal aspects relating to application of SEBI Regulation vis-a-vis Section 5(24) of IBC, 2016 have already been dealt by us in IA 953 of 2020 and IA 13 of 2021 and those findings are squarely applicable here. In view of above discussion, we are of the view that even on facts and in the background of applicable legal position as narrated here-in-before, applicants cannot be considered as a related party. Accordingly, this decision of the RP is also reversed. Accordingly, we hold that these parties will get proportionate voting rights according debt owed by the corporate debtor to such applicant-financial creditors.

12. One issue which remains is what should be the quantum of their debt owed by the corporate debtor to them. Initially, the RP relying on provisions of Section 186 of the Companies Act, 2013 and Section 372 of Companies Act, 1956 as that such transactions were void ab-initio, however, subsequently the Resolution Professional has himself admitted the principal amount. Hence, this stand of the RP stands contradicted by its own conduct. One reason for not allowing the interest which is outstanding on these loans and payable for each Financial Year is that same is not reflected in the Financial Statements of both the sides i.e. financial creditor as well as corporate debtor. Even Form-26AS has not been produced either by applicants or corporate debtor. TDS certificate, if any, has also not been

Comp. App. (AT) (Ins) No. 404 of 2021



produced by applicants-financial creditors. The company is bound to maintain its account on accrual basis of accounting, hence, provision of such interest in the books of account is mandatory and non-provision thereof needs qualification from the statutory auditors. No such qualification has been brought to our notice. In this background, we are of the view that no conclusive view can be taken by us because it requires some further verification. Hence, we direct RP as well as applicant-financial creditors to do the needful exercise in this regard within fifteen (15) days from the date of receipt of this order. In case, the applicant-financial creditors fail to submit necessary documentary evidences or otherwise justify their claim of interest, we hold that the claim of interest amount shall not be considered while calculating amount of debt owed by corporate debtor to the applicant-financial creditors.

13. Although, we are not very much convinced with the approach of IRP in not allowing the applicant-financial creditors to participate in the first COC meeting itself and the manner in which they have been not so allowed as evident from averments/minutes of meetings provided to us by RP, we are not replacing him because he has given opportunity of hearing to the applicant-financial creditors before declaring them as a related party and reply by them has not been given within the scheduled time. The reply of applicant-financial creditors has been given after lapse of three or four months. However, we advise him to act in a fair and balanced manner without getting influenced by the conflicting interests of the secured financial creditors.

14. In view of above discussion and applicable legal position, this IA69 of 2021 in CP (IB) 625 of 2018 stands allowed in terms of directions given as above.

15. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities."

6. Attacking the finding recorded in Para 10 of the impugned order, Counsel for the Appellant has submitted that the Adjudicating Authority has committed a patent error in law in making observation that whether or not the Respondent No. 1 to 13 (Financial Creditors) are related parties, they have got a right to join the meetings of the CoC and therefore, the action of the IRP for not allowing them to participate in CoC meeting even after

Comp. App. (AT) (Ins) No. 404 of 2021



accepting their claims to the extent of principal amount is against the provisions of law and arbitrary. On this premise, the IRP was directed to include them into CoC immediately.

7. In this respect, Counsel for the Appellant drew our attention to Section 21(2) proviso of the Code which is reproduced as under:-

“(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 (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors”

8. Counsel for the Appellant has submitted that the finding recorded in para 10 of the impugned order is palpably illegal and erroneous being contrary to the provisions of Section 21(2) proviso and is liable to be set aside.

9. Counsel for Respondents No. 1 to 13 candidly conceded that they can support the finding recorded by the Adjudicating Authority in para 10.

10. As a consequence thereof, we have no hitch in holding that the finding recorded in para 10 of the impugned order by the Adjudicating Authority is patently illegal and therefore, the same is hereby set aside.

11. It is further submitted that the Adjudicating Authority has erred in observing that originally RP relied upon Clause 2(q) of the SEBI Regulations to convass that Respondents No. 1 to 13 are the related parties under Section 5(24) of the Code without referring to any specific clause of the same and thereafter, referred to clause 5(24)(m) of the Code for that purpose. It is further submitted that the Adjudicating Authority has also referred to a

Comp. App. (AT) (Ins) No. 404 of 2021



table (chart) of the parties who fall in the category of related parties but without making any further reference to it in the impugned order and observed that no material has been brought on record by the Appellant except the order of the SAT without further doing the exercise to substantiate its case. It is further submitted that the Adjudicating Authority has followed the order passed in earlier litigation between other parties in I.A. No. 953 of 2020 and I.A. No. 13 of 2021 in relation to the application of SEBI Regulation vis a vis Section 5(24) of the Code.

12. Counsel for the Appellant while referring to the order of the Security Appellate Tribunal dated 11.02.2014 has submitted that 14 appeals were filed by 118 persons consisting of 9 public limited companies, 93 private companies and 16 individuals who are non-executive chairman/directors in some of above companies to challenge common adjudication order dated 14.02.2013 whereby penalties have been imposed against all those persons under various provisions of Securities and Exchange Board of India Act, 1992. It is submitted that some time in November, 2009, SEBI received a reference from RBI wherein the observations were made that:-

- a. There were incorrect disclosures made by Bank of Rajasthan ('BOR' for short) regarding its shareholding held by Promoters group led by Mr. Pravin Kumar Tayal and Others.
- b. Though promoters of BoR reported certain reduction in their stake in BoR as mandated by RBI in its Guidelines dated February 28, 2005, it appeared that they had increased their stake in BoR simultaneously through surrogate acquisition.
- c. There were inter-corporate transfer of funds to the accounts of other corporate bodies who had purchased the stake in BOR.
- d. Most of those companies have contact details same as that of various Tayal group companies.
- e. Some of the directors were common in the said corporate bodies and Tayal group companies."

Comp. App. (AT) (Ins) No. 404



13. Thereafter, he has referred to Para 11 of the said order in which it has been observed that:-

“11. Based on evidence on record, AO has held that above four group entities were inter-connected with each other by having common addresses, common directors as also by transfer of shares and transfer of funds within the group as more particularly set out in the impugned order. It is further held in the impugned order that promoters of BOR in connivance with other group entities have cancelled correct information from investors regarding their shareholding in BOR and their act culminated into fraud on investors and securities market and thus Tayal family as also four group entities have violated PFUTP Regulations, 2003 and some entities violated SAST Regulation, 1997 and hence were liable for monetary penalty.”

14. He has further referred to the reasons recorded by the SAT for dismissing the appeals in Para 33 of the said order. Para 33 (a) to (b) are reproduced as under:-

“33.....

a) Although 44 appellants in Appeal No. 83 of 2013 are distinct legal entities duly registered under Companies Act 1956, for sake of convenience AO has considered all these appellants as Silvassa group because all these 44 entities are situated at Silvassa. Fact that these Silvassa group entities were connected with Promoter/Tayal group is established from following facts:

i) Most of Silvassa group entities were incorporated after RBI circular dated February 28, 2005 which required every promoter of banking company to reduce its shareholding in that company to the extent specified there in.

ii) Out of 44 entities in Silvassa group, 35 entities had addresses at various flats in Silver Park, Plot No. 5 of survey no. 6, Vanmali Park, Silvassa Khanvel Main Road, Samarvani, Silvassa 396230. Investigation conducted by SEBI revealed that those flats in which 35 appellants are supposed to have their offices were residential premises of the employees of Krishna Mill which is owned by Krishna Knitwear Technologies Ltd., a Tayal group company (see para 22 of impugned order). This fact is not disputed by appellants. Moreover, in their reply to show cause notice, appellants have merely stated that they are unable to offer

Comp. App. (AT) (Ins) No. 404

