



**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI BENCH, COURT II**

**INTERLOCUTORY APPLICATION. No. 5075 OF 2023**

**In**

**CP(IB) No. 145/MB/C-II/2023**

**Application under Section 60(5) of the Insolvency  
and Bankruptcy Code, 2016 read with Rule 11 of  
the NCLT Rules, 2016.**

*In the matter of*

**Lotus Beauty Care Products Pvt. Ltd.**

124, Udyog Kshetra, Mulund Goregaon Link Road,  
Mulund West, Mumbai-400080.

**...Applicant**

**Vs.**

**1. Mr. Vinod Radhakrishnan Nair,**

**Resolution Professional of Goli Vada Pav Private  
Limited,** Having his residential address at: A-107  
/108, Om Rachana CHS Ltd., Sector-17, Vashi,  
Navi Mumbai-400 703.

**2. Goli Vada Pav Private Limited,**

Now represented through Respondent No.01.

**...Respondents**

**In the matter between:**

**Vista Processed Foods Pvt. Ltd.**

**.... Operational Creditor**

**Versus**



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**Goli Vada Pav Pvt Ltd.      ...Corporate Debtor**

**Order Pronounced on: - 16.10.2024.**

***Coram:***

**Shri. Anil Raj Chellan                      : Member (Technical)**

**Shri. Kuldip Kumar Kareer                : Member (Judicial)**

***Appearances (in Physical mode):***

**For the Applicant:** Sr. Counsel Mr. Vikram Nankani a/w H.G. Dharmadhikari  
i/b. Ayush J. Rajani and Khushboo Shah Rajani.

**For the Respondent:** Adv. Amir Arsiwala.

**ORDER**

***Per: Coram.***

1. This is an application under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ('the Code') filed by the Applicant against the Respondent seeking following reliefs:

- (i) To set aside the impugned Order dated 26.09.2023 and 19.10.2023 passed by the Interim Resolution Professional;
- (ii) To direct the Interim Resolution Professional to admit the Applicant being Financial Creditor in the Committee of Creditors.



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2. Essentially, the Applicant is partially aggrieved by the decision of the Respondent No.01 wherein the said Respondent, though admitted the claim of the Applicant, but refused to admit the Applicant into the Committee of Creditors ('CoC') of the Corporate Debtor on the ground that the Applicant is a related party to the Corporate Debtor and, therefore, as per first proviso to Section 21(2) of the Code, the Applicant shall not have any right of representation, participation or voting in a meeting of the CoC. Whereas, according to the Applicant, it is not a related party, as defined under the provisions of Section 5(24) read with Section 21(2) of the Code. Hence, the Applicant has preferred the above-captioned application impugning the decision of the Applicant inasmuch as the Applicant has not been included in the CoC by the Respondent.

**Case of the Applicants in brief:**

3. The Corporate Debtor was admitted into the Corporate Insolvency Resolution Process ('CIRP') pursuant to the Order dated 05.09.2023 which was passed on a petition filed by the Operational Creditor u/s 9 of the Code. By virtue of the admission Order dated 05.09.2023, the Respondent



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No.01, namely, Mr. Vinod Radhakrishnan Nair, was appointed as the Interim Resolution Professional ('IRP') of the Corporate Debtor.

4. The Applicant company is a partner in Clarion Health Food LLP and one of the directors of the Applicant company is nominated as designated partner of Clarion Health Food LLP. Clarion Health Food LLP is a major shareholder holding 63.64% of the total shareholdings in the Corporate Debtor. The said designated partner till January 2020 was a director of the Corporate Debtor but was neither having any relation with any of the directors of the Corporate Debtor nor was holding any absolute decision-making power of the Corporate Debtor. The Applicant pleaded in its application that none of the directors of the Corporate Debtor were the director(s) of the Applicant company on the insolvency commencement date.
5. The Applicant company under an Inter-Corporate Deposit Agreement dated 05.12.2020 with Goli Vada Pav Pvt. Ltd had provided an inter-corporate deposit of INR 1,50,00,000/- upon the terms and conditions as stated in the agreement and against the execution of demand promissory note dated 05.12.2020.



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6. On 10.09.2023, the Applicant came across a news item in e-journal named Money Control regarding CIRP of the Corporate Debtor. Therefore, after verifying the Order dated 05.09.2023 from the website of NCLT, the Applicant immediately submitted its claim of Rs. 1.5 crores along with interest of Rs. 13,32,468/- to the IRP on 14.09.2023 under Regulation 8 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the '**CIRP Regulations**').
7. The Interim Resolution Professional ('IRP') vide its reply letter sent on email dated 26.09.2023 admitted the claim of the principal amount of Rs. 1.50 crores and as regards interest, the IRP asked the Applicant to furnish details showing calculation of interest of INR 13,32,468/-. However, the Respondent/IRP, vide his Reply dated 26.09.2023, refused to admit the Applicant into the Committee of Creditors ('CoC') of the Corporate Debtor on the ground that the Applicant is a related party to the Corporate Debtor in terms of Section 5(24) of the Code and, therefore, as per first proviso to Section 21(2) of the Code, the Applicant shall not have any right of representation, participation or voting in a meeting of the CoC.



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8. Thereafter, the Applicant through its director, vide e-mail dated 9.10.2023, informed the Respondent/IRP that the Applicant company does not agree to the opinion that it is a related party to the Corporate Debtor and would submit sufficient evidence in this regard within a week. After re-verifying the legal provisions of Section 5(24) of the Code with its legal consultant, the Applicant got re-assured that it is not a related party to the Corporate Debtor and submitted the same to the Respondent/IRP vide email dated 18.10.2023. Thereafter, the IRP vide his email dated 19.10.2023 stood with his earlier order on 26.09.2023 and rejected the right of representation, participation or voting of the Applicant in a meeting of the CoC of the Corporate Debtor.
9. The IRP vide its letter dated 26.09.2023 and further confirming email dated 19.10.2023 has held that the Applicant is a holding company of Clarion Health Food LLP and having a majority shareholdings and partner with controlling interest in Clarion Health Food LLP. Therefore, the Corporate Debtor is a subsidiary of Clarion Health Food LLP. The director of the Applicant company at some point in the past were also directors of the Corporate Debtor and the director of the Applicant company is nominated



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as designated partner of Clarion Health Food LLP. Clarion Health Food LLP having majority shareholding was driving the decision making and were exercising governing influence on the Corporate Debtor and therefore, under this reasoning, the Respondent held that the Applicant is a related party of the Corporate Debtor.

10. Feeling aggrieved by the rejection of right of representation without correctly appreciating legal provisions, the Applicant has preferred the captioned application impugning the erroneous conclusion reached by the Respondent.
11. **Reply of the Respondents:** The IRP has placed on record his affidavit-in-reply. The contents of the said affidavit by the Respondents are briefly summarised hereunder:
  - i. The claim of the Applicant was admitted by the Respondent to the tune of Rs. 1.50 crores and for the interest of Rs. 13,32,468/-, the Applicant was asked to furnish calculations.
  - ii. The Corporate Debtor is a subsidiary of Clarion Health Food LLP ('Clarion') in which the Applicant is a Partner with controlling interest. Therefore, from the above information, it is evident that the Corporate



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Debtor is a step-down subsidiary of the Applicant and thus, a related party.

- iii. Mr. Yogesh Korani is a director and a key managerial person in the Applicant company owning 2,70,000 shares. Mr. Yogesh Korani is also a designated partner of Clarion and he was also one of the directors of the Corporate Debtor. The Respondent states that Mr. Yogesh Korani signed the audited financial statement of the Corporate Debtor on 29.10.2019. The general meetings of the Corporate Debtor were also attended by Clarion. Thus, if Mr. Yogesh Korani is a key decision maker in Clarion, then his decisions also affect the workings of the Corporate Debtor, as Clarion has 63.64% shares in the Corporate Debtor.
- iv. The Applicant has also in its audited financial statements for year ending on 31.03.2021 declared Goli Vada Pav Pvt Ltd (i.e. the Corporate Debtor) as its step-down subsidiary.
- v. Even though related parties may have claims against the Corporate Debtor and may even file for triggering its insolvency resolution process, however, such parties cannot drive the insolvency resolution process of the Corporate Debtor, as that would be rife with conflict of interest. Hence, in view of the above, the captioned application may be dismissed.

12. **Rejoinder of the Applicant:**

- i. The Applicant is not a related party of the Corporate Debtor and, therefore, deserves a right of participation in CoC meetings.





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- ii. The Applicant and the Corporate Debtor have no interest in each other and, therefore, there is no mutuality of interest in the affairs of the Corporate Debtor vis-à-vis the Applicant company. Clarion Health Food LLP ('Clarion') is a limited liability partnership and thus, there is no question of Applicant's shareholding in it. Hence, Respondent's reference to Clarion as a subsidiary of the Applicant is erroneous. Therefore, the contention of the Respondent that the Corporate Debtor is a step-down subsidiary of the Applicant is not tenable.
- iii. Mr. Yogesh Korani and Mr. Kalpathy Lakshmanan were minority directors of the Corporate Debtor and the control of the Corporate Debtor always lied with its managing director named Mr. Venkatesh Iyer. The significant influence of the Applicant on Clarion does not mean that such influence gets penetrated in the Corporate Debtor. It is an admitted position that Mr. Yogesh Korani resigned from the directorship of the Corporate Debtor on 09.01.2020 and therefore, as on insolvency commencement date, there were no common directors between the Applicant and the Corporate Debtor making them a related party in terms of Section 5(24)(m) of the Code.
- iv. Though Clarion held a majority shareholding over 63% in the Corporate Debtor, but Clarion was not represented on the board of directors of the Corporate Debtor for the period from 2020 to 2023 continuously for 3 years and the control of the Corporate Debtor during the said period was in the hands of its MD & CEO Mr. Venkatesh Iyer and his late wife Mrs. Asha Venkatesh Iyer. Therefore, the Applicant has no control or



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shareholding in the Corporate Debtor to term it as a related party. Merely because Mr. Yogesh Korani was a director of the Corporate Debtor in the past does not establish that he was in control of the affairs of the Corporate Debtor.

**ANALYSIS AND FINDINGS**

13. We have heard the learned Counsel for the Applicant as well as the Respondents and we have also perused the pleadings and documents placed on record.
14. There can be no dispute as regards the filing of a claim relating to a financial debt by the Applicant with Respondent No.1 which was admitted by Respondent No.1 without the right to be a member of CoC and participate/vote in the meetings of CoC on the ground that the Applicant is a related party of Corporate Debtor as per Section 5(24) of the Code. The Ld. Counsel for the Applicant contends that it does not fall in any of the sub-clauses of Section 5(24) of the Code which defines 'related party' and hence entitled to participate in CoC meetings and exercise its voting rights. Thus, the issue involved in the present Application is whether the Applicant is entitled to participate and exercise the right to vote in the CoC or not.



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15. Before we proceed to consider the rival contentions of the parties, we may notice the relation between the Applicant and the Corporate Debtor. The Applicant is a private company registered under the Companies Act, 1956 on 01.12.2003. Shri K.N. Lakshmanan and Shri Yogesh Korani were the original subscribers to the Memorandum of Association and the first directors of the Applicant. It is informed that the said Shri K. N. Lakshmanan and Shri Yogesh Korani presently hold 30% and 31.76% respectively of the shareholding in the Applicant. The Applicant along with KLV Family Trust formed a limited liability partnership named Clarion Health Food LLP (hereinafter 'Clarion LLP') in the year 2017 wherein the Applicant is represented by Mr. Yogesh Korani and KLV Family Trust is represented by Mr. Ramkrishnan Lakshmanan. It is also brought to our notice that Applicant has contributed 99.96% of the total capital in Clarion LLP. The Clarion LLP holds 63.64% shareholding in the Corporate Debtor.
16. The contention of Respondent No.1 for treating the Applicant as a related party of the Corporate Debtor is that the Applicant falls within the sub-sections (h), (i), (l) and (m) of Section 5(24) of the Code. It is, therefore, necessary to notice aforesaid provisions of the Code;



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*Section 5(24) – “related party” –in relation to a corporate debtor, means-*

.....

.....

- (h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;*
- (i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;*

.....

.....

- (l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;*
- (m) any person who is associated with the corporate debtor on account of—*
  - (i) participation in policy making processes of the corporate debtor; or*
  - (ii) having more than two directors in common between the corporate debtor and such person; or*
  - (iii) interchange of managerial personnel between the corporate debtor and such person; or*
  - (iv) provision of essential technical information to, or from, the corporate debtor;”*

17. Learned Counsel appearing for Respondent No. 1 vehemently argued that by virtue of the holdings structure, the Applicant is an ‘associate



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company' and, therefore, it is covered under Section 5(24)(i) of the Code. This is, however, strongly refuted by the Ld. Counsel for the Applicant.

18. It is observed that the term “associate company” is not defined under the Code. Words and expressions used but not defined in the Code, as per section 3(37) of the Code, will derive their meaning from other statutes referred therein which include, the Companies Act, 2013. Thus, we may have to advert to the definition of “associate company” u/s 2(6) of the Companies Act, 2013 which is reproduced hereunder:

*Section 2(6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary of the company having such influence and includes a joint venture company.*

*Explanation- For the purpose of this clause, -*

(a) *the expression “significant influence” means **control** of at least twenty percent of total voting power, or control of or participation in business decisions under an agreement:*



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(b) *The expression “joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.*

19. It is true that the Applicant Company has no direct shareholding or voting power in the Corporate Debtor. However, one cannot be oblivious of the fact that the link between the Applicant and the Corporate Debtor is Clarion LLP in which the Applicant is stated to have 99.96% interest. It is also pertinent to note that a director of the Applicant viz., Mr. Yogesh Korani was nominated by Clarion LLP as a director of the Corporate Debtor, though he resigned on 09.01.2020. It is contended by the Counsel for the Applicant that the director Mr. Yogesh Korani resigned way back before the initiation of CIRP and hence, former directorship has no relevance for the purpose of considering the related party under the Code. Even if we consider that past directorship is of no significance today, what is material is the relationship that exists between the Applicant and the Corporate Debtor. The relationship or arrangement that enabled the nomination of Mr. Yogesh Korani as a director in the Corporate Debtor by Clarion LLP appears to exist even today without any change.



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20. In this context it is necessary to refer to Annexure 'E' to the affidavit-in-reply at Page 131, wherein it is noted that as per the related party disclosures under Accounting Standard (AS-18) made by the Applicant company in its audited standalone financial statements for the period from 01.04.2020 to 31.03.2021, Clarion LLP is shown as an enterprise on which the Applicant has significant influence. Correspondingly, the audited financial statements of Clarion LLP for the year ending 31.03.2021, a copy of which has been annexed by the Respondent No.1 at Exhibit 'G' to the affidavit-in-reply, states that Applicant Company is a related party. Thus, there is an unequivocal admission regarding related party relationship between the parties above named.

21. We further notice that the capital contribution of the Applicant company in Clarion LLP is INR 13,75,00,000/- out of the total Partner's Capital Contribution of INR 13,75,50,000/-, which constitutes 99.96% (almost 100%) of the total capital of Clarion LLP. We further see that the capital contribution of the Applicant company in Clarion LLP has risen by Rs. 2 crores from Rs. 11.75 crores to Rs. 13.75 crores during the period between 31.03.2020 and 31.03.2021. While the capital contribution establishes significant influence and



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control of the Applicant over Clarion LLP, the Applicant has not produced the copy of the LLP Agreement or any other evidence to prove otherwise.

21. Thus, in view of the foregoing, we are fully satisfied that the Applicant company exercises a significant influence and control over Clarion LLP which undisputedly has a majority shareholding of 63.64% in the Corporate Debtor. Even otherwise, the Applicant company in its standalone audited financial statements has disclosed that the Corporate Debtor is its step-down subsidiary.

22. Accordingly, we hold that the Applicant company and the Corporate Debtor are associate companies as defined u/s 2(6) of the Companies Act, 2013. An associate company very well falls within the definition of a related party under subsection (i) of Section 5(24) of the Code.

23. Yet another reason stated by the Counsel for Respondent No.1 for classifying the claim of Applicant as a related party claim is that Mr. Yogesh Korani is a designated partner of Clarion LLP and he is also one of the directors and key managerial personnel of the Applicant as he is a whole-time director. He was a director of the Corporate Debtor who signed its financial statements as at 31.03.2019 on 29.10.2019, though he subsequently resigned as a director





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on 09.01.2020. While there cannot be any denying the fact that Mr. Yogesh Korani has been a key decision maker in Applicant as well as in Clarion LLP, there is nothing on record to establish that Mr. Yogesh Korani has participated in policy making process of the Corporate Debtor.

24. As per Section 5(24) (j), if any person controls more than twenty percent of voting rights in the corporate debtor on account of ownership or a voting agreement, it falls within the definition of related party. The Counsel appearing for the Applicant vehemently argued that the Applicant does not own or cannot exercise any voting rights in the Corporate Debtor. A plain reading of the above sub-section makes it clear that what is specified is direct or indirect control of over twenty percent of voting rights in the Corporate Debtor. The holding structure, described above, clearly shows that the Applicant is in indirect control of over twenty percent of voting rights in the Corporate Debtor. Furthermore, clause (l) of Section 5(24) goes one step further to state that any person who **can control** the composition of the board of directors would be sufficient to establish related party relationship. Thus, the capability to control the composition of the board is sufficient and is not necessary that the Applicant should actually control the composition of the board of directors of the Corporate Debtor. Looking at the structure, we have no doubt that the Applicant can control the composition



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of the board of directors of the Corporate Debtor. Thus, on this count also, the Applicant meets the criteria of a related party.

25. The object of excluding a related party from participating and voting in the CoC meetings is to keep the corporate insolvency resolution process of the corporate debtor free from any bias or conflict of interest. Therefore, even though related parties may have claims against the corporate debtor and may even file a petition to trigger its insolvency resolution process, such parties cannot be allowed to drive the CIRP of the corporate debtor as that would be rife with conflict of interest.

26. In view of the foregoing discussions, it could be seen that there is an admission by the Applicant as per its own books of accounts that it is a related party as per the Companies Act, 2013. If the Corporate Debtor is a related party under a narrower definition of related party under the Companies Act, there is no scope for argument that it does not fall within the wider definition of related party under the Code. Even on an independent analysis, we find that the Applicant company and the Corporate Debtor are associate companies as defined u/s 2(6) of the Companies Act, 2013, and the Applicant, by virtue of its indirect holding of a majority shareholding in the Corporate Debtor through



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Clarion LLP, it can control the composition of the board of directors of the Corporate Debtor. Thus, we are of the considered view that the Applicant squarely falls within the sub-section (i), (j), and (l) of Section 5 (24) of the Code. As held above, since the Applicant is a related party of the Corporate Debtor, the Respondent was fully justified in law in not including the Applicant as a member of the Committee of Creditors of the Corporate Debtor in view of the first proviso to Section 21(2) of the Code. Hence, we find no infirmity in the impugned orders dated 26.09.2023 and 19.10.2023. **Accordingly, we hereby dismiss I.A. No. 5075/2023** being devoid of any merit, leaving parties to bear their own costs.

Sd/-

ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)