

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1549 of 2025

(Arising out of order dated 02.09.2025 passed by the National Company Law Tribunal, New Delhi in IA No. 2902 of 2022 in CP (IB) No. 946/ND/2019).

In the matter of:

- 1. Mr. Subbarao Siddabattula**
Ex-Director & Ex-Chairman of CD
312 & 313, Aditya Trade Centre,
Ameerpet, Hyderabad-500038.
- 2. Mr. Ilangoval Thulasimani**
Director of M/s Corsalite Education Services Pvt. Ltd.
And Ex-Director of CD
28, Kuttappalayam Kolanalli,
Erode, Tamil Nadu - 638154
- 3. Ms. Charu Noheria**
Director of M/s Corsalite Education Services Pvt. Ltd.
And Ex-Director of CD
807, Sector-8, Panchkula
Haryana, India— 134109
- 4. Mr. Chaitanya Narra**
Associate of M/s Corsalite Education Services Pvt. Ltd.
And Ex-Director of CD
5504, Panchavathi Apartments,
Pragathi Nagar,
(Opp. Narayana College), Bachupalli,
Hyderabad, Telangana - 500090
- 5. Mr. Nitin Kumar,**
Director of
M/s Corsalite Education Services Pvt. Ltd.
And Ex-Finance Director of CD
Sy. No. 37/A, 37P, Plot No. 6P, 2-91/77/2/ST/2,
2nd Floor, Signature Towers,
Kondapur, Hyderabad (TG) - 500084

...Appellants

Versus

- 1. Radhey Shyam Yadav**
Liquidator of M/s Wave Global
Educational Services Private Limited
1203-1205, Vijaya Building,
17, Barakhamba Road,
Connaught Place, New Delhi — 110001
- 2. Corsalite Education Services Private Limited**
Sy. No. 37/A, 37P, Plot No. 6P, 2-91/77/2/ST/2,
2nd Floor, Signature Towers,
Kondapur, Hyderabad (TG) — 500084
- 3. Mr. Anne Sivaram**
Associate of
M/s Corsalite Education Services Pvt. Ltd.
And Ex-Director of CD
A-21, CCI Colony,
Karankote, KV Rangareddy,
Andhra Pradesh — 501158

...Respondents

Present:

**For Appellant: Mr. Sahil Raveen and Mr. Gowtham Polanki,
Advocates.**

**For Respondents: Mr. Varun Goel, and Mr. Akash Aggarwal,
Advocates a/w Mr. R.S. Yadav- Liquidator.**

J U D G M E N T

(27th, October, 2026)

INDEVAR PANDEY, MEMBER (T)

The present Appeal arises out of the Order dated 02.09.2025 passed by the Ld. National Company Law Tribunal, New Delhi (Adjudicating Authority) in I.A. No. 2902/2022 in C.P. (IB) No. 946/ND/2019, whereby the Ld. Adjudicating Authority allowed the Application filed by the

Liquidator/Respondent No.1 and directed the **Appellants; Respondent No.2/M/s Corsalite Educational Services Private Limited** and **Respondent No.3/Mr. Anne Sivaram** to pay a sum of Rs.3,00,00,000/- payable under the Business Purchase Agreement dated 14.07.2017.

2. Brief facts of the case necessary to decide these Appeals are as under:

i. The Appellant Nos.1 to 3 are the Directors of **M/s Corsalite Educational Services Private Limited/Respondent No.2** and Ex-Directors of **M/s Wave Global Educational Services Private Limited**, the **Corporate Debtor (CD)**. The Respondent No.2 was the purchaser of the Corporate Debtor. Appellant Nos.4 and 5 are the Ex. Directors of the CD and Associates/Director of Respondent No.2. Respondent No.1 is the **Liquidator** of the CD and the Respondent No.3 is ex-Director of the CD and Associate of Respondent No.2.

ii. On 14.07.2017, M/s Wave Global Educational Services Private Limited/Corporate Debtor and M/s Corsalite Educational Services Private Limited/Respondent No.2 entered into a **Business Purchase Agreement ("BPA")**, whereby Respondent No. 2 agreed to acquire the business of the Corporate Debtor for an aggregate consideration of Rs.3 Cr, comprising of Rs.2.35Cr towards liabilities specified in Appendix-A, Rs. 65 Lakhs towards directors' bonus, and an additional Rs.1 Lakh towards acquisition of the shareholding of the promoters. The BPA stipulated that payment of the liabilities enumerated in Appendix-A was to be made from the income generated by the Corporate Debtor after the transfer of the business.

The Agreement further contemplated completion of the transaction ("Closing") on or before 31.07.2017, unless extended by mutual consent, and also contained provisions regarding termination in the event the Closing did not occur within the stipulated period.

- iii. The Appellants were not signatories or parties to the aforesaid Business Purchase Agreement. On the date of execution of the BPA, certain consequential corporate actions, including transfer of the shareholding of the Corporate Debtor in favour of Respondent No. 2 and changes in the management of the Corporate Debtor, were undertaken. The Appellants no. 1-3 who were the Directors of the Respondent No.2 were also appointed as Directors of the CD. In addition, Appellant Nos. 4&5 and Respondent No.3 who were Associates/Directors of Corsalite/Respondent No.2 were also appointed as Directors of CD.
- iv. Thereafter, on 25.08.2018, the Appellant Nos.1 to 3 resigned from the directorship of the Corporate Debtor. Simultaneously, they transferred their respective shareholding in the Corporate Debtor in favour of Ms. Rekha Gautam through duly executed Form SH-4, thereby ceasing to have any role in the management or shareholding of the Corporate Debtor.
- v. The Corporate Debtor was admitted in Corporate Insolvency Resolution Process (CIRP) by the Ld. Adjudicating Authority when it admitted Company Petition (IB) No. 946/ND/2019 under Section 9

of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as '**Code**') vide its order dated 18.11.2019. Respondent No.1 was appointed as the Resolution Professional of the CD and subsequently as Liquidator, as consequent upon the failure of CIRP, the Corporate Debtor was directed to be liquidated by Ld. Adjudicating Authority, vide its order dated 11.08.2021.

- vi. During the liquidation process, Respondent No.1 addressed communications dated 25.06.2020 & 16.09.2020 to Respondent No.2 calling upon it to discharge the liability of Rs.3 Crores under the BPA. This was followed by a legal notice dated 14.09.2021 addressed to Respondent No.2 as well as the Appellant Nos.1-3, to which a reply dated 07.10.2021 was submitted by the concerned Appellants & Respondent. No.2 denying the alleged liability.
- vii. Respondent No.1/Liquidator thereafter, filed I.A. No. 2902/2022 before the Ld. Adjudicating Authority seeking, inter alia, directions against Corsalite/Respondent No.2, and its Directors (the present Appellant Nos. 1-3) for payment of the amount payable under the Business Purchase Agreement. The Ld. Adjudicating Authority, by the Impugned Order dated 02.09.2025, allowed the Application and directed the Appellants and Respondent No.2 and 3 to pay a sum of Rs.3 Cr under the Business Purchase Agreement. Aggrieved by the same, the present Appeal has been preferred.

Submissions of Appellants

3. Ld. Counsel for the Appellants submits that the entire proceedings arise out of the Business Purchase Agreement dated 14.07.2017 ("BPA"), which was admittedly executed, only between the Corporate Debtor and Respondent No. 2, namely, Corsalite Educational Services Private Limited. The present Appellants were neither parties nor signatories to the said Agreement and had not undertaken any contractual obligation thereunder. It is contended that Appellant No.1 had merely signed the BPA in his capacity as an authorised representative of Respondent No.2 and not in his personal capacity. Appellant Nos.4 and 5, as well as Respondent No.3, were not even Directors of Respondent No.2 at the relevant point of time. It is, therefore, submitted that no contractual liability could have been fastened upon the Appellants.

4. He submits that even in I.A. No. 2902/2022 filed by the Liquidator before the Ld. Adjudicating Authority, no averment was made seeking lifting of the corporate veil or explaining the legal basis for imposing personal liability upon the Directors of Respondent No.2. It is pointed out that the Application merely alleged liability on the part of the purchaser company, namely Respondent No.2, and no specific case was pleaded against the Appellants. Likewise, in the written submissions filed before the Ld. Adjudicating Authority, Respondent No.1 did not advance any argument regarding lifting of the corporate veil or fastening personal liability upon the Appellants.

5. It is submitted that the Impugned Order itself records the objection raised by the Appellants, that they were not parties to the BPA and could not be held liable thereunder. However, despite noticing the said objection, the Ld. Adjudicating Authority proceeded to direct the Appellants to pay the alleged contractual amount without recording any finding as to how such liability could arise in law. It is submitted that the Impugned Order neither refers to any clause of the BPA nor to any independent agreement or undertaking whereby the Appellants assumed personal liability.

6. Ld. Counsel submits that it is a settled principle of company law that a company is a separate juristic entity distinct from its shareholders and Directors. In the absence of any finding regarding fraud, misuse of the corporate form or any circumstance warranting lifting of the corporate veil, the Directors cannot be held personally liable for the contractual obligations of the company. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Balwant Rai Saluja v. Air India Ltd. & Ors., (2014) 9 SCC 407**, to contend that the doctrine of lifting the corporate veil can be invoked only in exceptional circumstances, none of which have either been pleaded or established in the present case.

7. He further submits that the Ld. Adjudicating Authority lacked jurisdiction to adjudicate the present dispute while exercising powers under Section 60(5) of the Code. It is argued that the claim raised by the Liquidator arises exclusively from a pre-CIRP commercial contract and involves disputed questions relating to interpretation of contractual clauses, fulfilment of reciprocal obligations and determination of liability under the

BPA. Such issues, according to the Appellants, are outside the summary jurisdiction contemplated under Section 60(5) of the Code.

8. Ld. Counsel contends that the liability under the BPA had been specifically disputed by Respondent No.2 as well as the Appellants even prior to initiation of the interlocutory proceedings, as evident from the reply dated 07.10.2021 to the legal notice of the Liquidator. It is submitted that adjudication of such disputed contractual claims necessarily requires appreciation of evidence and interpretation of contractual provisions, particularly when the BPA itself contains an arbitration clause providing for resolution of disputes through arbitration. It is argued that such issues could not have been determined in summary insolvency proceedings.

9. Reliance has been placed by Appellants upon the judgment of this Appellate Tribunal in ***Arkay Logistics Ltd. v. Abhijit Guhathakurta, Company Appeal (AT) (Insolvency) No. 836 of 2024***, decided on 29.11.2024, wherein it has been held that proceedings under Section 60(5) of the Code cannot be utilised as a substitute for recovery of contractual dues and that the Resolution Professional or Liquidator must avail appropriate civil remedies. Further reliance has been placed upon the decision of this Tribunal in ***Amier Hamsa Ali Abbas Rawther v. Chairman-cum-Managing Director, NLC India Ltd., Company Appeal (AT) (CH) (Ins.) No. 213 of 2025***, decided on 30.04.2025, wherein it has been held that the forum under the Code cannot be converted into a substitute for adjudication of disputed contractual claims requiring detailed examination of facts and evidence.

10. Ld. Counsel further submits that even assuming the BPA created enforceable obligations, the same were exclusively between the Corporate Debtor and Respondent No. 2. According to the Appellants, before fastening liability upon any person, the Ld. Adjudicating Authority was required to determine whether Respondent No. 2 itself had incurred any liability under the terms of the BPA. However, no such exercise has been undertaken in the Impugned Order.

11. It is submitted that the Ld. Adjudicating Authority completely overlooked Clause 2(d) of the BPA, which specifically provides that the liabilities mentioned in Appendix-A were to be discharged only from the income generated by the Corporate Debtor after completion of the transaction. According to the Appellants, since the Corporate Debtor did not generate the requisite revenue and the conditions contemplated under the Agreement were never fulfilled, the payment obligation itself never arose. It is further contended that the Ld. Adjudicating Authority has failed to examine, whether the business assets contemplated under the BPA were ever transferred, whether the conditions precedent under the Agreement stood satisfied, or whether any amount had in fact become due and payable.

12. Appellant submits that the Ld. Adjudicating Authority failed to appreciate and consider the Settlement Agreement dated 14.01.2019 executed between the Corporate Debtor and Respondent No. 2, Corsalite Education Services Private Limited, which is a material and vital document having direct bearing upon the controversy. Under the said Settlement Agreement, the Corporate Debtor expressly acknowledged receipt of an

unsecured loan of Rs.1,25,46,804/- and outstanding invoices amounting to Rs.24,53,196/-, aggregating to Rs.1.50 Crores, from Respondent No. 2. The said acknowledgment clearly demonstrates the financial liability of the Corporate Debtor towards Respondent No. 2 and not vice versa. However, the Learned Adjudicating Authority failed to consider the said document and proceeded to accept the Liquidator's claim without properly examining the admitted financial arrangement between the parties.

13. Ld. Counsel submits that without first determining the contractual liability of Respondent No. 2, the Ld. Adjudicating Authority could not have directly imposed liability upon the Appellants, who were admittedly not parties to the Agreement. The Impugned Order, according to the Appellants, completely bypasses the contractual framework governing the rights and obligations of the parties.

14. Summing up, Ld. Counsel submits that the Impugned Order suffers from manifest legal infirmities inasmuch as (i) the Appellants were not parties to the Business Purchase Agreement; (ii) no reasons have been assigned for fastening personal liability upon them; (iii) the Learned Adjudicating Authority exercised jurisdiction under Section 60(5) of the Code to adjudicate a disputed pre-CIRP contractual claim which lay outside its jurisdiction; and (iv) even the liability of the contracting party, namely Respondent No. 2, was never determined in accordance with the terms of the Agreement. He, therefore, prayed that the Impugned Order be set aside and the present Appeal be allowed.

Submissions on Respondent No.1/Liquidator

15. Per contra, Ld. Counsel appearing for Respondent No. 1/Liquidator supported the Impugned Order and submitted that the order dated 02.09.2025 passed by the Ld. Adjudicating Authority is well reasoned, based on the pleadings and documentary evidence available on record, and warrants no interference by this Appellate Tribunal in exercise of jurisdiction under Section 61 Code.

16. He submitted that the Impugned Order rightly directs payment of the consideration payable under the BPA dated 14.07.2017, which admittedly remained unpaid despite transfer of the business and management of the Corporate Debtor. According to the Ld. Counsel, the present Appeal does not raise any substantial question of law but merely seeks re-appreciation of findings of fact already recorded by the Ld. Adjudicating Authority.

17. It is submitted that the appellate jurisdiction under Section 61 of the Code is limited to examining legality, jurisdictional error or patent perversity in the order under challenge. It is contended that the findings recorded by the Learned Adjudicating Authority are based upon documentary evidence, financial records and pleadings of the parties, and the Appellants have failed to demonstrate either any jurisdictional error, violation of any statutory provision or perversity warranting interference by this Appellate Tribunal.

18. Ld. Counsel submitted that the material placed on record establishes that pursuant to execution of the BPA on 14.07.2017, the Appellants

assumed complete management and control of the affairs of the Corporate Debtor. It is submitted that Appellant No.1 assumed charge as Chairman, Appellant No.3 became a Director of the Corporate Debtor and the Appellants thereafter exercised complete financial and operational control over the Corporate Debtor.

19. Ld. Counsel further submits that Clause 8 of the BPA specifically records that the purchaser accepted the assets of the Corporate Debtor on an "as is where is" basis after due inspection. Having accepted the assets after carrying out due diligence, it is contended that the Appellants and Respondent No.2 cannot now dispute the condition of the assets or the liabilities under the Agreement so as to avoid their contractual obligations.

20. Ld. Counsel submits that after the execution of the BPA, the shareholding of the Corporate Debtor ultimately came to vest in Appellant Nos. 1 to 3 personally. During the period they remained in control, fresh equity shares were issued and, on the basis of a valuation report dated 25.01.2018 which valued the shares of the Corporate Debtor at Rs.14,400/- per share, pursuant to which substantial funds aggregating to nearly Rs. 4 Crores were raised. According to Liquidator, these transactions clearly establish that the Appellants exercised complete control and ownership over the management and financial affairs of the Corporate Debtor and cannot now distance themselves from liabilities arising during their tenure.

21. Ld. Counsel further submits that during the period when the Appellants were in management of the Corporate Debtor, a new coaching

centre was established at Janakpuri, Delhi, substantial corporate funds were utilised for expansion of business and the Corporate Debtor entered into an agreement for acquisition of 70% shareholding in Axis Tutorials Private Limited, whereafter more than Rs.1 Crore was paid from the Corporate Debtor's account towards the said acquisition. It is also pointed out that Appellant No.3 became a Director in the said company. These transactions, demonstrate that the Appellants actively controlled and managed the affairs of the Corporate Debtor and derived the benefit thereof, but now they are trying to evade financial accountability.

22. Ld. Counsel further submitted that the Appellants resigned from the management of the Corporate Debtor on 25.08.2018 and 31.08.2018, simultaneously transferring their shareholding to another individual. The timing and manner of such resignation and transfer indicate an attempt to avoid future liability. It is submitted that resignation from the office of Director cannot absolve a person of liabilities incurred during the period when he exercised management and control over the affairs of the company.

23. Ld. Counsel submits that the Ld. Adjudicating Authority has categorically recorded findings that monies remained payable to the Corporate Debtor under the BPA and that recovery of such amounts was necessary for augmentation of the liquidation estate and protection of the interests of the creditors. It is contended that these findings are based upon the documentary record and no material has been placed before this Appellate Tribunal to demonstrate that the same are either unsupported by evidence or otherwise perverse.

24. On the issue of jurisdiction, Ld. Counsel submits that the Liquidator was fully competent to institute the proceedings before the Ld. Adjudicating Authority. He submits that Section 35(1)(d) of the Code, empowers the Liquidator to take all necessary steps for protection and preservation of the assets of the Corporate Debtor, and the Regulation 39 of the IBBI (Liquidation Process) Regulations, which casts an obligation upon the Liquidator to realise the assets and recover all monies due to the Corporate Debtor. He further submitted that Section 60(5) of the Code confers wide residuary jurisdiction upon the Ld. Adjudicating Authority to entertain and dispose of all questions arising out of or in relation to the insolvency resolution or liquidation proceedings. According to the Respondent, the direction for recovery of unpaid consideration under the BPA squarely falls within the ambit of such jurisdiction.

25. Ld. Counsel further submits that the Ld. Adjudicating Authority was justified in fastening liability upon the Appellants by lifting the corporate veil. It is contended that Respondent No. 2 company was merely used as a vehicle by the Appellants to acquire the business of the Corporate Debtor, whereafter the Appellants themselves assumed directorship, acquired personal shareholding and exercised complete financial and operational control over the Corporate Debtor. In such circumstances, it is submitted that the Appellants constituted the real controlling minds behind the transactions and could not be permitted to evade liability by taking shelter behind the separate legal personality of Respondent No.2. The order of Ld.

Adjudicating Authority is based on factual determination and does not warrant interference.

26. It is further submitted by the Respondent No.1 that the conduct of the Appellants throughout the proceedings demonstrates an attempt to delay recovery of amounts due to the Corporate Debtor. It is pointed out that despite the application having been filed in May 2022, replies were filed belatedly, resulting in imposition of costs by the Ld. Adjudicating Authority. It is also submitted that the Appellants did not lodge any claim during the liquidation process and the present Appeal constitutes yet another attempt to delay realisation of the assets of the Corporate Debtor and frustrate the liquidation proceedings.

27. Summing up his arguments, Ld. Counsel submits that the Insolvency and Bankruptcy Code is a time-bound legislation intended to maximise the value of the assets of the Corporate Debtor and protect the interests of creditors. According to the Respondent, permitting the present Appeal, which raises no substantial question of law, would defeat the very object of the liquidation process. It is, therefore, prayed that the Appeal be dismissed with costs and the Impugned Order dated 02.09.2025 be affirmed.

Analysis and Findings

28. We have heard Ld. Counsels for parties at length and gone through the records. The principal questions arising for consideration in the present Appeal are:

- (i) Whether the Learned Adjudicating Authority possessed jurisdiction under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 to entertain the Application filed by the Liquidator?
- (ii) Whether the amount payable under the Business Purchase Agreement constitutes an asset receivable by the Corporate Debtor recoverable during the liquidation?
- (iii) Whether the Appellants along with Respondent No.2 are liable to make payments arising under the Business Purchase Agreement?

29. The first issue raised by the Appellants concerns the jurisdiction of the Adjudicating Authority. According to them, the dispute arises out of a commercial contract and therefore could only be adjudicated before a Civil Court or Arbitral Tribunal.

30. In this regard, we take note of the Section 35(1)(d) and Regulation 39 of Liquidation Regulations which are extracted below: -

Section 35 Powers and duties of liquidator. — (1) *Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: —*

..... (d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

Liquidation Regulations, 2016

Regulation 39- Recovery of monies due

The liquidator shall endeavour to recover and realize all assets of and dues to the corporate debtor in a time-bound manner for maximization of value for the stakeholders.

31. In this regard, we note that Section 35(1)(d) of the Code casts a statutory obligation upon the Liquidator to take custody and control of all assets, actionable claims and recoverable dues belonging to the Corporate Debtor. Regulation 39 of the Liquidation Process Regulations, 2016 also obligates the Liquidator to realise every asset and recover all monies due to the Corporate Debtor.

32. The unpaid consideration under the Business Purchase Agreement undoubtedly constitutes a receivable forming part of the liquidation estate. Recovery thereof is directly connected with augmentation of the assets available for distribution amongst creditors. Such proceedings therefore arise "out of" and are "in relation to" liquidation proceedings within the meaning of Section 60(5)(c) of the Code.

33. The jurisdiction conferred upon the Adjudicating Authority under Section 60(5) is of wide amplitude and extends to all questions having a direct nexus with insolvency or liquidation proceedings. Recovery of monies admittedly forming part of the assets of the Corporate Debtor cannot be relegated to independent civil proceedings merely because the liability originates from a contract.

34. The decisions relied upon by the Appellants in ***Arkay Logistics Ltd. and Amier Hamsa Ali Abbas Rawther (Company Appeal (AT) (Insolvency) No. 836 of 2024)*** are distinguishable on facts. Those decisions dealt with purely contractual disputes requiring independent adjudication between third parties. In the present case, the Liquidator seeks recovery of

consideration admittedly agreed under the Business Purchase Agreement for maximisation of value of the liquidation estate. Such recovery falls squarely within the statutory functions entrusted to the Liquidator under the Code.

35. In our view, the Learned Adjudicating Authority's jurisdiction under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 has very wide amplitude and it has exercised its powers duly vested on it by the provisions of IBC. It is the only competent authority to adjudicate matters of this nature relating to liquidation proceedings.

36. The factual narration of the events is crucial to decide issue nos. 2 & 3. It is admitted that consequent to Business Purchase Agreement dated 14.07.2017 management and operational control of the Corporate Debtor stood transferred to Respondent No.2 and thereafter came under the effective control of the Appellants. The contemporaneous corporate records demonstrate that immediately after execution of the Business Purchase Agreement, the Appellants assumed management of the Corporate Debtor, inducted themselves into its affairs, controlled its finances, expanded its business and exercised complete control on the Corporate Debtor for more than a year.

37. It is also borne out from the record that fresh equity was issued, substantial funds were mobilised, additional business centers were established and investments were made in other entities during the period the Appellants remained in control. These facts unmistakably establish that

the benefits flowing from the Business Purchase Agreement were fully appropriated.

38. The documentary record demonstrates that immediately upon execution of the BPA, complete operational, managerial and financial control over the Corporate Debtor was transferred to the Appellants. Clause 8 of the BPA expressly records that the Buyer had undertaken complete due diligence and accepted the assets on an "AS IS, WHERE IS" basis, thereby acknowledging full knowledge of the Corporate Debtor's assets and liabilities. Clause 8 of the said agreement is extracted below.

“8. Delivery and Condition of the Purchased Assets.

i. Immediately upon completion of the Closing, the Seller shall be deemed to have fully and completely transferred to the Buyer all his rights, title and interest, if any, in as well as possession, custody and control of the Purchased Assets. The Seller shall not be liable or responsible for any liabilities or obligations of any kind or nature whatsoever arising out of, under, or related to the Purchased Assets from and after the Closing.

*ii. The Buyer agrees that it is purchasing and shall take possession of the Purchased Assets in their **AS IS., WHERE IS** condition and acknowledges that it has previously been given the opportunity to and has conducted such investigations and inspections of the Purchased Assets as it has deemed necessary or appropriate for the purposes of this Agreement.”*

(Emphasis Supplied)

39. We further note from the records that the Appellant no.1 vide his letter dated 13.07.2017 offered the position of Chief Executive officer to

Rajiv Kumar Prasad who was the ex-Promoter and 67% Shareholder in the Corporate Debtor, which was accepted by him on 14.07.2017. Similarly, the other promoter Bimal Kumar who held 33% of the shareholding was offered the position of Director (Academic). Both these offers were made by the Appellant No.1 in his capacity as Authorised signatory of Corporate Debtor. This was done even before the shares were transferred in favour of the buyer (Corsalite). This shows that appellants had taken over the control of Corporate Debtor even prior to transfer of shares. The appointment letter of Shri Rajeev Kumar Prasad is extracted below:

**“WAVE GLOBAL
MEDICAL/IIT-JEE/CBSE TUTORIALS Powered by Corsalite**

DATE: 13th July 2017

Dear Rajeev Kumar Prasad

On behalf of Wave Global (the Company) we are pleased to extend you an offer for the position of Chief Executive Officer. we feel that you will be great addition and look forward to you joining our team on terms of your new position with the Company are as set forth below:

1. Position:

Your position title will be Chief Executive Officer. You will report to the chairman of the Company. We look forward to having you join our team on 14th July 2017.

2. Compensation:

a. You will be paid an annual salary of Rs 60,00,000/- (Details are provided in Annexure 1) your salary and other perquisites will be payable pursuant to company payroll policy.

b. Further to compensation mentioned above in clause 2(a), 50% of 10% share of the profit from wave global operations to be proportionately for the first two years from the date of joining. This will be paid on annual basis based on Audited Financials and within 6 months from the end of the financial year.

“Profit” Means “to be computed as per generally accepted accounting principles in India and as per The companies Act, 2013 and understood as “Profit after Taxes”.

c. Additional 2 Cr commission amount to be paid in 8 equal installments starting from April, 2018. Employee to achieve revenue targets as outlined in Appendix B to this offer letter. If the employee exceeds the aggregate of the agreed revenue targets as outlined in appendix B by April 31st, 2018, the percentage revenue achieved over and above the set aggregate will be added to the agreed to the commission amount. In case the performance of the employee comes short of the set aggregate by April 31st 2018 the percentage revenue under achieved below the aggregate will be deducted from the commission.

d. You will be eligible to participate in Employee Stock Options as per the company policy.

e. Your travel allowance and other expenditure resulting out of your job duties will be reimbursed according to regular company reimbursement policy.

3. Variable Pay

Variable pay has two components as explained below:

a) Individual Performance Linked Pay:

Individual Performance Linked pay forms part of compensation package of the employee aims at monitoring, assessing and reviewing individual performance against stated goals & objective. It will be paid annually based on achievement of targets and fulfilling the plans as set out, this varies between 0% and 120% which is based on individual performance.

b) Company performance Incentive:

Company performance Incentive is based on the performance of the company in a particular year in terms of the top line revenue. This will be paid annually. It varies between 0% and 120%

The payment will be prorated from the date of joining, the payment will be effected as and when notified by the management, and will be along with payroll in Month of March. To be eligible for pay out, you will need to be employed with the company on the date of payout.

4. Benefits:

You will earn paid time off consistent with the Company's paid time off policy offered to other employees of the company. You will be eligible for Twelve (12) days of Casual Leaves (CL) and Six (6) Sick Leaves (SL) prorated from your joining date.

5. Orientation:

Your orientation will be on your joining day. You will need to bring along the list shared by HR. This is mandatory to complete the joining formalities.

6. Reporting:

You will report to the chairman of the company.

7. At-will Employment:

Your employment with the Company may be terminated by you or by the Company at any time for any or no reason. You may terminate your employment with the Company by providing written notice of 90 days in accordance with the Company policies.

8. Termination of Employment:

If you resign from your employment with company or if the company terminates your employment, you will receive any unpaid annual base salary, as well as any accrued, unused vacation per Company policy (if applicable), earned through the effective resignation or termination date, and no additional compensation.

You will be governed by the Company's laid down code of conduct and if there is any breach of the same or non – performance of contractual obligation or the terms and conditions laid down in this agreement, your service could be terminated without any notice notwithstanding any other terms and conditions stipulated herein, the company further reserves the right to invoke other legal remedies as it deems fit to protect its legitimate interests.

9. Non-Disclosure to Third parties:

Except as required by your Duties, you shall not, at any time now or in the future, directly or indirectly, use, publish, disseminate or otherwise disclose any Confidential Information, concepts or ideas to any third party without the prior written consent of the Company which consent may be denied in each Instance and all of the same together with publication rights shall belong exclusively to the Company.

10. Documents Etc. :

All documents, diskettes, tapes, procedural manuals, guides, specifications, plans, drawings, designs and similar materials lists of present, past or prospective customers, customer proposals, invitations to submit proposals, price lists and data relating to the pricing of the Company products and services, records notebooks and all other materials containing confidential information or information about Concepts or Ideas (including all copies and reproductions thereof), that come into your possession or control whether prepared by authors or others : (a) are the property of the company, (b) will not be used by you in any way other than in connection with the performance of your Duties, and (c) at the termination (for whatever reason) of your relationship with the Company, will be left with or forthwith returned by you to the company.

11. Intellectual Property Rights

You agree that the Company is and shall remain the exclusive owner of the confidential information and Concepts and Ideas. Any interest in patents, patent applications, inventions, technology innovations,

trade names, trademarks, service marks, copyrights, copyrightable works, developments, discoveries, designs, processes, formulas, know how, data and analysis, whether registerable or not ("Development"), which you, as a result of rendering services to the Company under this employment agreement may conceive or develop shall; (i) forthwith be brought to the attention of the company and (ii) belong exclusively to the Company. No license or convenience of any such rights to you is granted or implied under this agreement.

12. Indemnification:

You shall defend, indemnify and hold harmless the Company and its officers, directors, employees, agents, parent, subsidiaries and other affiliates, from and against any and all damages, costs, liability, and expense whatsoever (including attorney's fees and related disbursement) incurred by reason of (a) any failure by you to perform any covenant or agreement set forth herein; (b) injury to or death of any person or any damage to or loss of property which is due to the negligence and/or wilful acts of yours. The Company shall have the right to offset against any salary or fees due under this Employment agreement, the amount of any Indemnity to which the Company is entitled under Indian Contract Act 1872.

13. Non- Solicitation:

You agree that during your employment by the Company and for a period of twelve months following the termination of your employment, you shall not directly or indirectly, without prior consent of the company, solicit, hire, employ or recruit any current employees, directors, consultants, contractors or subcontractors of the Company either on behalf of yourself or any other person or entity, nor will you encourage or induce any of these entities to leave and/or cease doing business with the Company. Furthermore, during your employment with the Company you will perform for the Company such duties as it may designate from time to time and will devote your full time and best efforts to such duties and will not, without prior written approval, directly or indirectly participate in or assist any business which is a current or potential supplier, customer, or competitor of the Company.

14. Confidential Information:

As an employee of the Company, you will have access to certain Company confidential information. You may also during the course of your employment, develop information or inventions which will be the property of the Company. To protect the interest of the Company you will need to sign the Company's standard "Employee Confidentiality Agreement" as a condition of your employment. We are delighted about the prospect of having you join the Wave Global team. Please confirm your acceptance of this offer by signing the below and returning it to us by end of 13th July 2017. This offer is subject to reference checks of peers, direct reports and supervisors with whom

you have worked in your current and past jobs, as well as through background check as applicable.

Sincerely,

Sd/- 14/07/2017

Mr. Subbarao Siddha battula.

Authorised Signatory,

Wave Global Educational Services Private Limited.”

40. We notice two things from the above letter. First, the top mast of the letter already shows the name of the CD followed by “**Powered by Corsalite**”. Secondly, the letter is dated 13.07.2017, but is signed on 14.07.2017 at the same time it gives time for confirmation to the addressee for acceptance of offer till end of 13.07.2017. This clearly means that, in effect, the appellants had taken over the functioning of the CD even prior to signing of BPA. The evidence shows that Appellant No.1 who was the Chairman of buyer (Corsalite) had immediately started functioning as Authorised Signatory of the Corporate Debtor and also functioned as the de-facto Chairman till his formal appointment. Simultaneously, Appellant No. 3 was appointed as Director and controlled the financial affairs of the Corporate Debtor from the same date. Significantly, Appellant No.1 simultaneously acted as Chairman and authorised signatory of both the Corporate Debtor and Respondent No.2.

41. We further note that simultaneously, 100% shareholding of the Corporate Debtor was transferred to the Buyer, namely Respondent No. 2. consisting of 9,999 shares in the name of Corsalite Education Services Pvt. Ltd. (Respondent No. 2) and 1 share in the name of Mr. Subbarao Siddabattula (Appellant No.1) on 14.07.2017.

42. The 2nd Annual Report of Board of Directors of the Company for the year 2017-18 dated 28.08.2018 shows the following:

Shareholding as on 14-07-2017:

Name of Member	No. of Shares	% of Shareholding
Rajiv Kumar Prasad	6700	67%
Bimal Kumar	3300	33%

The promoters transferred their entire shareholding to Corsalite Education Services Private Ltd/Respondent No. 2 on 14.07.2017.

43. The Board report further establishes that the aforesaid shareholding arrangement was merely transitory. Within a few months, i.e. on 07.11.2017, Respondent No.2 transferred its entire holding amongst the controlling Appellants in the following manner:

Shareholder / Appellant	Equity Shares Allotted/Transferred
Appellant No.1–Mr. Subbarao Siddabattula	5,000
Appellant No.2 – Mr. Ilangoval Thulasimani	2,500
Appellant No.3 – Ms. Charu Noheria	2,500
Total Shares Transferred by R 2	10,000

44. Thereafter, the Corporate Debtor issued **3,195 fresh equity shares**, including **695 shares to Appellant No.4** and **2,500 shares to Respondent No.3 Anne** Sivaram, thereby restructuring the ownership entirely under the control of the Appellants. The Board Report of CD corroborates the above

transfer of ownership and clearly reflects the Appellants as the principal shareholders of the Corporate Debtor after the BPA, namely:

- Appellant No.1 – **5,000 shares (37.89%)**
- Appellant No.2 – **2,500 shares (18.95%)**
- Appellant No.3 – **2,500 shares (18.95%)**
- Anne Sivaram/R3 – **2,500 shares (18.95%)**
- Narra Chaitanya/A4– **695 shares (5.27%)**

45. What comes out clearly from the above that the 100% Shareholding of CD was transferred to Respondent No. 2 as per BPA dated 14.07.2017 from the erstwhile promoters Rajiv Kumar Prasad and Bimal Kumar. Subsequently within 4 months the entire shareholding was transferred from the Buyer Corsalite/ Respondent No.2 to the Appellants and Respondent No.3 who are the Chairperson/ Directors and Associates of buyer Corsalite. These individuals in fact were exercising absolute control on CD and not the acquiring company viz. Corsalite/Respondent No. 2. It is also noted that these very same, five persons were the Chairman and Directors of the Corporate Debtor.

46. The Annual Return/Board records relied upon by the Respondent demonstrate extensive participation in the affairs of the CD. The records disclose Board Meetings held on 14.07.2017, 01.08.2017, 01.09.2017, 07.11.2017, 20.11.2017, 03.02.2018, 06.02.2018, 26.02.2018 and 31.03.2018, with full attendance recorded at the relevant meetings.

47. The Respondent has specifically pleaded that the Appellants participated in Board Meetings where crucial decisions concerning management of funds, future strategies and expansion of branches were taken. Thus, the assertion that the Appellants were strangers to the affairs of the CD is contradicted by the documentary record itself.

48. The above material further shows that after assuming control, the Appellants altered the letterhead of the Corporate Debtor by incorporating the Buyer's identity; opened a new coaching centre at Janakpuri by utilising the Corporate Debtor's funds; commissioned a valuation report dated 25.01.2018 valuing each share at Rs.14,400; issued further shares worth approximately Rs.4 crores; caused the Corporate Debtor to acquire 70% shareholding in Axis Tutorials Pvt. Ltd.; managed the affairs of Axis Tutorials through Appellant No. 3; and continued collecting substantial revenues without accounting the same to the Corporate Debtor.

49. The record further discloses that after the BPA, the CD entered into a Share Purchase Agreement dated 29.12.2017 for acquisition of 70% shares of Axis Tutorials Pvt. Ltd. for Rs.1,08,31,300/-, which amount was paid from the account of the CD.

50. Thereafter, Appellant No.3 was appointed as Director of Axis Tutorials Pvt. Ltd. and, according to the material placed on record, exercised control over its operations. Even after the subsequent demerger arrangement, the operations and fee collections continued to be controlled on behalf of the CD. The Reply records a collection of Rs.1,42,06,928/- over a period of three weeks which was allegedly not deposited into the account of the CD.

51. The former Directors, Mr. Rajiv Kumar Prasad and Ms. Rekha Gautam, are stated to have disclosed before the Adjudicating Authority that, post-BPA, the books and records of the CD were taken to Hyderabad by Appellant No.1 and that the control of the CD was exercised from Hyderabad.

52. Possession and control over the books, statutory records and corporate information of a company are not ordinary incidents of a person who has no role in its management. Such conduct is entirely consistent with the Respondent's case that the Appellants had assumed effective control over the affairs of the CD.

53. The record shows that Appellant Nos.1, 2 and 3 resigned from the directorship and divested themselves of their shareholding on or about 25.08.2018, followed shortly by the resignation of the other concerned persons.

54. The simultaneous withdrawal from the corporate structure after the period during which the Appellants had exercised control cannot, at this stage, be treated as an event wholly disconnected from their earlier conduct.

55. It is a circumstance which, when read together with their assumption of control immediately after the BPA, their financial authority, their participation in Board affairs, their handling of corporate records and their involvement in the business transactions of the CD, supports the conclusion that the Appellants had exercised absolute control over the CD.

56. As noted earlier, the entire share-holding of CD which was initially transferred to Corsalite (Buyer) on 14.07.2017 after the BPA, was within a span of four months was transferred to the Appellant Nos.1 to 3. Subsequently, the Company issued fresh equity shares which were allotted to Appellant No.4 and Respondent No.3. It is also on record that by fresh issue of equity more than Rs.4 crores was raised by the Corporate Debtor.

57. Equally significant is the fact that after exhausting the assets and business opportunities of the Corporate Debtor, all principal Appellants resigned almost simultaneously during May - August 2018 and purportedly divested their shareholding under circumstances questioned by the Liquidator. Such simultaneous resignation and divestment immediately after exercising complete operational control constitutes a relevant circumstance while determining whether the corporate structure was employed merely as a facade.

58. **Ms. Rekha Gautam** (one of the Directors), has filed an affidavit dated 28.10.2022 before Ld. Adjudicating Authority. She states that her only relationship with the Corporate Debtor ("CD") was as an operational/financial creditor, and that an amount of Rs.2,39,46,122/- was due and payable to her. The said amount comprised Rs.1,04,08,792/- paid towards the Master Franchise Fee for Delhi NCR and Haryana up to October, 2021, Rs.41,50,000/- towards expenditure incurred on furnishing of the premises, rent and generator charges, and Rs.98,87,330/- towards interest on the principal amount. She further asserted that although she was shown on record as a Director of the CD, she never functioned as such,

neither attended the office or meetings of the CD nor performed any duties or received remuneration as a Director. According to her, she was made a Director by certain persons, in connivance with Respondent No.2, by practicing fraud and misrepresentation.

59. She further states that, at the relevant time, the management and affairs of the CD were substantially controlled by M/s Corsalite Educational Services Pvt. Ltd. through its Directors, namely, Subbarao Sidabattula, Charu Noheria and Ilangovel Thulasimani, who also became Directors of the CD. She states that the accounts, purchases and management of the CD were being handled from the Hyderabad office by the aforesaid persons and that the accounts of the CD were also maintained there. Subbarao Sidabattula, according to her, was assisting them in the management of the CD and was also a Director and authorised signatory in all the bank accounts of the CD. She accordingly disclaims any actual participation in the management or affairs of the CD and maintains that she neither exercised any managerial functions nor derived any remuneration as its Director.

60. The Appellants had brought to our notice a settlement agreement dated 14.01.2019 between the Corporate Debtor and Corsalite. Claiming that CD had acknowledged receipt of Rs.1.5 Crores from them, but the same was not considered by the Ld. Adjudicating Authority. We have noted from the records that Respondent No. 2 had not filed any claim before the Liquidator, so, the question of consideration of such claims does not arise in these proceedings.

61. It is in this factual background that we now proceed to consider the second issue as to whether the amount payable under the Business Purchase Agreement constitutes an asset receivable by the Corporate Debtor.

62. The Appellants have placed much emphasis upon Clause 2(d) of the Business Purchase Agreement, according to which certain liabilities were to be discharged out of income generated by the Corporate Debtor. Clause 2(d) of the BPA is extracted below:

"2. Prices and Term. "in the terms of the Business Purchase Transaction under this "Purchase Agreement" are as follows:

d. Payment Terms and Conditions. The following payment terms are set forth as guidelines to releasing the funds towards this "Purchase Agreement";

I. Liabilities as assessed in Appendix A to be paid according to the monthly schedule in Appendix A from the income generated by the company. The amount of payment towards scheduled liabilities will be reduced in the proportion of the shortfall in the generated revenue up to 100% of the scheduled liability payment. In case of unpaid liability in any given month, the said amount should be carried forward and added to the upcoming month's liability payment amount until all liabilities are paid off.

II. Bonus amount as stated in clause 2(a)(ii) to be paid as per row 4, directors bonus. schedule given in Appendix A from the remaining income or the month after deducting company monthly expenses, payment towards the liabilities, and any other statutory payments in the proportion stated in 2(a)(ii)."

63. In our considered opinion, Clause 2(d) merely prescribes the commercial mechanism through which specified liabilities were intended to

be discharged. It cannot be interpreted as extinguishing the purchaser's primary obligation to pay the agreed consideration.

64. Acceptance of the Appellants' interpretation would enable the purchaser to indefinitely postpone payment merely by asserting inadequate revenue generation, despite having assumed complete control of the Corporate Debtor. Such an interpretation would render the Business Purchase Agreement commercially unworkable and defeat its fundamental purpose.

65. Commercial contracts must receive a business efficacy interpretation. The Appellants, having remained in complete control of the business operations, cannot rely upon the financial consequences of their own management to avoid contractual obligations.

66. We have seen that during the period from 14.07.2017 till August 2018 when the Appellants were in control of Corporate Debtor, they had raised more than Rs.4.00 crores by issue of equity shares in the Company. The had also utilised more than Rs.1 crore to acquire Axis Tutorials from the funds of the Corporate Debtor. It is also to be noted that income arising from the Axis Tutorials during this period has not been brought into the accounts of Corporate Debtor.

67. Once possession, management and commercial benefits under the Agreement have been accepted and enjoyed, the purchaser cannot avoid payment of the agreed consideration by selectively relying upon isolated contractual clauses. Clause 8 of the Business Purchase Agreement specifically records that the purchaser accepted the business on an "as is

where is" basis after conducting due diligence. Having accepted the assets with full knowledge of their condition, the purchaser cannot subsequently contend that the agreed consideration has become unenforceable.

68. The Adjudicating Authority, after considering the material on record, recorded a finding that monies were due from the Respondents to the Corporate Debtor and remained unpaid. It further found that the records relied upon by the Respondents did not establish that the entire consideration had been received by the CD and consequently directed that the amounts due be refunded so as to augment the liquidation estate and protect the interests of creditors.

69. Once the transaction resulted in assets/business of the CD being placed under the control of the buyer-side persons and the consideration remained unpaid or inadequately accounted for, the Liquidator was justified in seeking recovery of the amounts due to the CD. The issue no.2 is accordingly decided in affirmative.

70. We now proceed to the third issue as to the liability of the Appellants along with Respondent No.2, for recovery of amount due to Corporate Debtor from the buyer.

71. The main contention of the Appellants is that the Business Purchase Agreement was signed between the Corporate Debtor and Corsalite (Buyer/ Respondent No.2), and accordingly recovery, if any, could only be made from the Buyer and not from the individuals. The Appellant's contention is that there is no privity of contract between them and the Corporate Debtor.

Therefore, the Appellants are not individually liable for any recovery on account of liability of the Buyer.

72. It is true that the BPA was executed between the Corporate Debtor and the buyer-company, however, the Appellants' case cannot be determined merely by identifying the persons whose signatures appear upon the BPA. The substance and effect of the transaction have to be gathered from the contractual provisions as well as the conduct of the parties immediately thereafter.

73. The Appellants' defence suffers from an inherent contradiction. They seek to contend that they had no contractual connection with the BPA, yet the material shows that immediately after its execution they became the persons occupying the controlling positions in the CD. They seek to contend that they had no control over the CD, yet Appellant No.1 became Chairman and authorised signatory and Appellant No.3 was entrusted with financial management. They seek to contend that they had no involvement in the affairs of the CD, yet the Board records show their participation in meetings where all business and financial decisions were taken.

74. They seek to rely upon the separate legal personality of the buyer-company, yet they themselves subsequently acquired shares in the CD and assumed direct managerial positions. We have already noted from the records of the CD and its filings with Ministry of Corporate Affairs that immediately after take over of the CD by Corsalite (Buyer) the control of the CD was taken over by the Appellants. So much so, that on 13.07.2017 a

day before the date of signing of agreement, the Appellant No.1 purportedly as authorised signatory of Corporate Debtor issued the offer letters to 2 existing promoter Directors of the CD, new positions in the Corporate Debtor.

75. We have already noted that within a few months of acquisition of CD by Corsalite, entire shareholding of CD was transferred to Appellants 1,2 and 3. The fresh issue of 3195 shares of the CD were made to Appellant No.4 and Respondent No.3.

76. Clause 8 of the BPA records that upon completion of closing, the purchaser was to obtain possession, custody and control of the purchased assets and that the purchaser had an opportunity to investigate and inspect the assets before entering into the transaction. The material placed before us further shows that the transaction was acted upon and that the Appellants, immediately thereafter, assumed positions of authority in the Corporate Debtor. Thus, the contractual relationship between the CD and the buyer-company cannot be treated as an isolated commercial arrangement having no connection with the subsequent conduct of the Appellants.

77. The sequence of events—execution of the BPA through Respondent No. 2, immediate assumption of management by the Appellants, transfer of the entire shareholding from Respondent No. 2 to the Appellants themselves, exercise of complete dominion over the Corporate Debtor's affairs, utilisation of its assets and business, and eventual simultaneous

resignation—forms one continuous transaction revealing that Respondent No. 2 functioned merely as the alter ego of Appellant Nos.1 to 3.

78. A person who, immediately following the acquisition arrangement, becomes the Chairman and authorised signatory of the Corporate Debtor cannot subsequently contend that he had no role whatsoever in the management or affairs of the CD. Likewise, where another Appellant was entrusted with financial management and was authorised to operate the banking affairs of the CD, the plea that the Appellants were merely external shareholders or persons unconnected with the management cannot be accepted.

79. In these circumstances, the distinction sought to be drawn by the Appellants between themselves and Respondent No. 2 becomes purely artificial. The doctrine of separate corporate personality cannot be invoked where the corporate form is used as a device to conceal the identity of the persons exercising complete control and to evade corresponding liabilities.

80. The doctrine of privity determines the enforceability of contractual rights and obligations between parties to a contract. It cannot, however, be employed as a device to disregard the subsequent acts of persons who themselves assumed control of the company, participated in its management, operated its finances and acted upon the very transaction from which they now seek to dissociate themselves. The corporate form is a legal mechanism for carrying on business. It cannot be permitted to become

a cloak for avoiding responsibility for acts personally undertaken by those controlling the affairs of the company.

81. The question before us is not whether the Appellants can be described as the original contractual purchasers under the BPA. The question is whether, after the BPA was executed, they themselves exercised control over the CD and participated in the acts and transactions which resulted in depletion of, or liability against, the assets of the CD. On that question, the documentary record answers in the affirmative.

82. The record shows that post-BPA the assets, property, customer list and goodwill of the CD came under the direct control of the Appellants and the buyer-company, and that decisions concerning the running of the business were taken by the new shareholders and Directors. The Appellants were not passive or nominal participants. They assumed key positions, altered the letterhead of the CD, took financial and administrative decisions and caused the CD's existing funds to be utilised for establishment of a new coaching centre at Janakpuri. Appellant No.3 was specifically responsible for financial matters and business expansion. These are acts of management and control, and not acts of a person having no concern with the affairs of the CD.

83. The Appellants cannot, on the one hand, rely upon the corporate personality of the buyer-company to contend that the BPA created obligations only against that company, while, on the other hand, relying upon the same corporate structure to distance themselves from acts which

they personally undertook in the management of the CD. The material on record demonstrates that the Appellants were not merely acting from behind the corporate structure. They themselves occupied managerial positions, exercised financial authority, participated in Board decisions, dealt with the assets and business of the CD, and thereafter exited from the management in a manner which, viewed cumulatively, raises a clear and compelling inference regarding their effective control.

84. This chain of circumstances establishes effective control and participation of the Appellants in the affairs of the Corporate Debtor. The Appellants therefore cannot be permitted to invoke the doctrine of privity as a complete answer to the liability arising from their own acts and conduct.

85. The Appellants have claimed that the Liquidator has not pleaded about lifting of corporate veil. In our view, there is no requirement for lifting of corporate veil as the actions of Appellants on record clearly shows that the buyer was merely used as a vehicle to take over the Corporate Debtor. The evidence establishes that Respondent No.2 was merely the corporate instrumentality through which Appellants acquired and controlled the Corporate Debtor, and they were the real beneficiaries and decision-makers behind every material transaction undertaken after 14.07.2017. The shareholding of Corporate Debtor also was transferred from buyer Corsalite to the Appellant Nos. 1 to 3. It was crystal clear from the beginning that the Appellants were the owners and were exercising total control over all activities of Corporate Debtor.

86. Ordinarily, Directors are not personally liable for obligations undertaken by a company. Equally well settled, however, is the principle that where the corporate form is employed merely as a façade for achieving an improper purpose or where individuals themselves constitute the real controlling mind behind the transaction, Courts and Tribunals are entitled to lift the corporate veil.

87. Consequently, the Adjudicating Authority committed no error in fastening liability not merely upon Respondent No.2 but also upon Appellant Nos.1 to 3, who were the controlling minds behind the transaction and who derived the benefit of the Corporate Debtor's assets, business and management after execution of the BPA. The sequence of events, namely acquisition of business, assumption of management, mobilisation of fresh capital, utilisation of Corporate Debtor's assets and simultaneous resignation coupled with transfer of shareholding shortly before insolvency proceedings, clearly demonstrates that the Appellants were not passive Directors but the real persons directing and controlling the transaction.

88. The judgment of the Hon'ble Supreme Court in “**Balwant Rai Saluja v. Air India Ltd. (2014) 9 SCC 407**” does not assist the Appellants. The Supreme Court itself recognised that the doctrine of lifting the corporate veil applies where the corporate personality is employed to defeat legitimate rights or perpetuate injustice. The present case falls within such recognised exceptions.

89. In view of the findings above, we find no infirmity in decision of Ld. Adjudicating Authority imposing the liability for recovery of Corporate Debtor's dues from the Appellants in addition to Respondent No.2/ Corsalite.

90. However, we have noted one minor discrepancy in the impugned order passed by Ld. Adjudicating Authority. The impugned order passed in the I.A. No. 2902 of 2022 had the following prayers:-

a. To direct the Respondent and its Directors to pay the amount of Rs. 3 Crore (Rupees Three Crore) and interest @ 18% per annum from 01.06.2018 till the actual date of full payment to the CD.

b. To direct the ex-Directors of CD (1) Mr. Subbarao Siddabattula, (2) Ms. Charu Noheria, (3) Mr Ilangovel Thulasirnani, (4) Mr. Anne Sivaram and (5) Mr. Chaitanya Narra and (6) Mr. Nitin Kumar, exFinance Manager of CD to disclose the assets and documents and handover the same to Liquidator and to extend their cooperation to the Liquidator immediately while performing the obligations/duties /responsibilities required under the provisions of the Insolvency and Bankruptcy Code, 2016.

c. Pass such other order/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of this case.

91. We note that Ld. Adjudicating Authority had passed the following order with regard to prayer-(a) of the I.A. No. 2902 of 2022.

"The Respondents shall within four weeks refund to the Liquidator being the amount due and payable to the Corporate Debtor. Any amount so received by the Liquidator shall be deposited in the Liquidation Account of the Corporate Debtor and form a part of the Liquidation Estate of the Corporate Debtor".

92. A perusal of the documents on record reveals that the statutory/legal notice dated 14.09.2021 for repayment of dues of CD was admittedly addressed to Respondent No.2, Corsalite Education Services Private Limited; Appellant No.1, Mr. Subbarao Siddabattula; Appellant No.2, Mr. Ilangovel Thulasimani; and Appellant No.3, Ms. Charu Noheria. The said notice was therefore confined to the aforesaid three ex-Directors of Corsalite. In response thereto, the Corsalite/Respondent No. 2 and Appellant Nos. 1 to 3 submitted their reply dated 07.10.2021, specifically denying the allegations contained in the legal notice. The prayer (a) in IA No. 2902 of 2022 filed by the Liquidator referred only to Respondent and its Directors. The respondent being Corsalite and its Directors being Respondent Nos. 2,3, and 4 of the IA No. 2902 of 2022.

93. The Adjudicating Authority in para 11 of the Impugned Order has directed the Respondents to make payment, but the order does not specify which particular respondents were directed. The Liquidator on the other hand, had sought the refund of money due to CD, only from the buyer/Corsalite (Respondent No. 1 in the IA No. 2902/2022) and Respondent Nos. 2,3 and 4; who are the Directors of the Corsalite. In our view, the recovery has to be made from Appellant Nos. 1, 2 & 3, who are the Directors of Respondent No.2/ Corsalite and the Buyer/Respondent No.2 (Corsalite) in this appeal, against whom the prayer was made by the Liquidator in IA No. 2902 of 2022.

94. In view of the above, the appeal is disposed of with partial modifications to the impugned order as given below : -

- (i) That the amount due and payable to the Corporate Debtor along with interest due would be paid by Respondent No.2/Corsalite and Appellant Nos. 1, 2 & 3 to the Liquidator within a period of four weeks from this order. The Liquidator shall deposit the amount so received in the liquidation account of the Corporate Debtor and the same would form a part of Liquidation Estate of the Corporate Debtor.
- (ii) There would be no change to the direction in paragraph 11(ii) of the impugned order.

All pending Interlocutory Applications, if any, stand disposed of. No order as to costs.

Justice N. Seshasayee
Member (Judicial)

Arun Baroka
Member (Technical)

Indevar Pandey
Member (Technical)

Place: New Delhi

Harleen