IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 2696 of 2025
IN
CP (IB) NO. 751 (PB) OF 2023

IN THE MATTER OF:

IDBI TRUSTEESHIP SERVICES LIMITED

...**PETITIONER / FINANCIAL CREDITOR**

VERSUS

SHREE VARDHMAN INFRAHEIGHTS PVT. LTD.

...**CORPORATE DEBTOR**

AND IN THE MATTER OF:

ANAMIKA KATARIA & ORS.

...**APPLICANTS**

VERSUS

KAUTILYA FINANCE BV & ORS.

...**RESPONDENTS**

Order Reserved On: 08.07.2026
Order Pronounced On:17.07.2026

Coram:

JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Present:

For the Petitioner/Financial Creditor	:	Mr. Pranjit Bhattacharya, Advocate along with Ms. Nitya Prabhakar, Ms. Salonee Shukla, Ms. Shalini Bose Advs.
For the Applicant	:	Ms. Bani Dixit Advocate along with Ms. Shivangi Khandelwal, Mr. Aayush Rathore, Advs.
For the RP (Respondent No. 3)	:	Mr. Abhirup Dasgupta, Advocate along with Rahul Gupta, Mr. Rahul Dadhich, Ms. Vagisha Tiwari, Advs.
For the Suspended Board of Directors (Respondent Nos. 4 & 5)	:	Mr. Rajat Joneja, Advocate along with Ms. Sakshi Kapoor, Ms. and Tina Ahuja, Advs.
For the Respondent Nos. 1, 2, & 6	:	Mr. Pranjit Bhattacharya, Advocate along with Ms. Nitya Prabhakar, Ms. Salonee Shukla, Ms. Shalini Bose Advs.

ORDER

1. The instant Application, being I.A. No. 2696 of 2025 ("**Application**"), has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules, 2016**"), by Anamika Kataria and 8 others, being allottees/homebuyers ("**Applicants**") in the residential project Shree Vardhman Victoria, Sector 70, Village Badshahpur, Gurugram ("**Project**"), being developed by the Corporate Debtor, inter alia seeking:

   (a) Admit the claims of the Applicants and issue necessary directions to the Respondent No. 3 to ensure representation of the Applicants at meetings of the **CoC***;*

   (b) Declare Kautilya Finance BV and Kautilya Real Estate Fund as the related party of the Corporate Debtor and consequentially, be removed as a member of the Committee of Creditors under Section 21 of the Code and no voting right be assigned to the said creditors;

(c) Quash and set aside the decision of the Interim Resolution Professional / Resolution Professional whereby he had validly constituted the committee of creditor by admitting Kautilya Finance BV and Kautilya Real Estate as unrelated financial creditors of the corporate debtor;

(d) To set aside and declare null and void all resolutions passed in any meetings of the committee of creditors held and to be held after the invalidly constitution of the Committee of Creditors by the Interim Resolution Professional / Resolution Professional thereon.

***Interim Reliefs**:*

Pending the final disposal of the present application, it is further prayed that this Hon'ble Tribunal may be pleased to:

(e) Restrain the Resolution Professional from taking any further steps or actions in furtherance of issuing Form G;

(f) Restrain the Respondent / Resolution Professional from conducting CoC of the Corporate Debtor;

(g) Restrain the Respondent / Resolution Professional from placing the Resolution Plan submitted for approval before the CoC.

(h) Grant a status quo on voting rights of CoC members to strike down any resolutions approved by the invalidly constituted CoC in abuse of provisions of the Code;

(i) Pass such other order (s), directions (s) as deemed fit and proper in the facts and circumstances of the case and in the interest of justice and equity.

2. The short question that falls for determination is whether Respondent Nos. 1 & 2, admittedly Financial Creditors of the Corporate Debtor holding Debentures under a Debenture Trust Deed, are related parties of the Corporate Debtor so as to be disentitled from representation, participation, and voting in the CoC under the first proviso to Section 21(2) of the Code.

BRIEF FACTS OF THE CASE

3. By order dated 08.01.2025, this Tribunal admitted the petition filed under Section 7 of the Code by IDBI Trusteeship Services Limited (Respondent No. 6 herein, acting as Debenture Trustee for Respondent Nos. 1 & 2) and initiated the Corporate Insolvency Resolution Process ("**CIRP**") against Shree Vardhman Infraheights Pvt. Ltd. ("**Corporate Debtor**" / "**CD**"). Respondent No. 3 was appointed as the Interim Resolution Professional and was subsequently confirmed as the Resolution Professional by the CoC in its first meeting held on 17.02.2025, and by this Tribunal vide order dated 10.03.2025.

4. The order of admission dated 08.01.2025 was assailed by the erstwhile suspended directors of the Corporate Debtor, i.e., Respondent Nos. 4 and 5 herein, before the National Company Law Appellate Tribunal ("NCLAT") in **Company Appeal (AT)(Ins.) No. 146 of 2025**, inter alia on the ground that Respondent Nos. 1 & 2 were "related parties" of the Corporate Debtor and were, in fact, in control of the Project through the Project Monitoring Committee ("**PMC**") constituted under a Settlement Agreement dated 04.11.2019 and the Amended and Restated Debenture Trust Deed dated 04.11.2019 ("**DTD**").

5. The NCLAT, by judgment dated 10.02.2025, dismissed the appeal and affirmed the admission order. The judgment of the NCLAT was carried in appeal to the Supreme Court of India in **Civil Appeal No. 2640 of 2025**, which was dismissed on 21.02.2025.

6. Pursuant to the public announcement dated 11.01.2025 inviting claims, the Applicants, 9 out of 257 homebuyers of the Project, submitted their claims on 22.04.2025, expressly seeking possession of their respective units as their primary claim. By email dated 29.04.2025, the RP sought a confirmation from the Applicants as to whether they wished to take possession of their units (offering completion 2-3 months ahead of the contractual date) or to seek a refund of the booking amount paid, upon which their claim would be admitted, and the allotment cancelled.

7. It is not in dispute that, as per the Agreements for Sale/Apartment Buyer Agreements ("**ABAs**") dated 09.10.2024 executed in favour of the Applicants, the contractual date for handing over possession falls on 09.10.2025, i.e., after the commencement of CIRP on 08.01.2025.

8. The present Application came to be filed on 26.05.2025, seeking, in substance, the exclusion of Respondent Nos. 1 & 2 from the CoC on the ground that they are related parties of the Corporate Debtor. Respondent No. 3 filed its reply on 15.07.2025 and Respondent Nos. 1, 2 & 6 filed a detailed joint reply on 15.07.2025. The Applicants thereafter filed a compilation of case laws on 21.11.2025 in support of their contentions.

<u>SUBMISSIONS OF THE APPLICANT</u>

9. Learned Counsel for the Applicants submits that, on a true and holistic construction of the Settlement Agreement dated 04.11.2019 and the DTD dated 04.11.2019, Respondent Nos. 1 & 2 fall squarely within the definition of related party under Section 5(24)(h), (l) and (m)(i) & (iv) of the Code, on the following principal grounds:

(a) The PMC constituted under Clause 2.1 of the Settlement Agreement comprised 5 members, of whom 3 (a clear majority) were nominees of Respondent Nos. 1 & 2, thereby vesting them with effective control over the PMC's decisions, which were required to be taken by majority.

(b) under Clauses 2.2, 2.5, 2.9, 2.10, 2.14 and 2.16 of the Settlement Agreement, the PMC/Debenture Trustee's representatives ("**DT Representatives**") were vested with wide powers, including participation in policymaking, appointment/substitution of key personnel and contractors, review of daily sales reports, and status as co-signatories to the Project Operating Account.

(c) the Board of Directors of the Corporate Debtor were bound by the decisions of the PMC, thereby rendering Respondent Nos. 1 & 2 the de facto principals, with the Corporate Debtor's Board acting merely as their agent.

(d) Respondent Nos. 1 & 2 presently hold a voting share of approximately 99% in the CoC, underscoring the extent of their financial and consequent decision-making dominance over the Corporate Debtor.

10. In support of the above submissions, the Applicants have placed reliance, principally, on the following judgments:

(i) **Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd., (2021) 3 SCC 475**, for the proposition that the objective of the Code is best served when the real nature of transactions is unearthed to prevent related parties of a corporate debtor from sabotaging the CoC.

(ii) **ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1**, and **Subhkam Ventures (I) (P) Ltd. v. SEBI, 2010 SCC OnLine SAT 35**, for the meaning and tests of "control", both de jure and de facto.

(iii) **Revolution Infocom (P) Ltd. v. Sandwoods Infratech Projects (P) Ltd., 2022 SCC OnLine NCLAT 4572**, where a joint venture company was held to be a related party on account of its participation in pricing decisions of the corporate debtor.

(iv) **IDBI Trusteeship Services Ltd. v. Abhinav Mukherji, 2022 SCC OnLine NCLAT 267**, said to be a case on near-identical facts, where a secured lender/debenture trustee holding rights over an escrow account, business plan approvals and board deadlock decisions was held to be a related party of the corporate debtor; and

(v) **Sai Peace and Prosperity Apartment Buyers Association v. ASK Investment Managers (P) Ltd., 2020 SCC OnLine NCLAT 168**, where a financial creditor with a substantial ownership/voting interest and involvement in day-to-day decision-making was declared a related party and excluded from the CoC; along with the Reports of the Insolvency Law Committee of March 2018 and February 2020, for the legislative rationale underlying the first proviso to Section 21(2) of the Code, namely, the prevention of conflicts of interest arising from related-party participation in the CoC.

<u>SUBMISSIONS OF RESPONDENT NOS. 1, 2 AND 6</u>

11. Learned Counsel appearing for Respondent Nos. 1, 2 & 6 opposes the Application on the following principal grounds:

(i) Absence of locus standi

The Applicants constitute only 9 out of 257 homebuyers of the Project. In terms of Regulation 16A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") and the ratio of **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., (2022) 1 SCC 401**, the collective interest of homebuyers is required to be espoused through the duly appointed Authorised Representative (Mr. Vijay Kishore Saxena, appointed vide order dated 10.03.2025), and minority allottees have no independent right to maintain such a challenge.

It is further submitted that, as per the Applicants' own ABAs dated 09.10.2024, the contractual date for possession is 09.10.2025, which had not arisen as on the date of the Application; there being no subsisting default qua the Applicants, their claims are premature, they are not, as of date, Financial Creditors of the Corporate Debtor, and consequently have no cause to seek the removal of Respondent Nos. 1 & 2, who are not even arrayed against them, from the CoC.

(ii) The Application is collusive and an abuse of process.

It is submitted that the ABAs in favour of the Applicants were executed on 09.10.2024, within days of this Tribunal reserving orders on the Section 7 petition on 24.09.2024, upon payment of a paltry booking amount of approximately 14.85% of the total consideration, with the balance 85.15% deferred to the point of possession; such terms were not extended to any other homebuyer of the Project. Despite impleading Respondent Nos. 4 & 5, the suspended erstwhile directors of the Corporate Debtor, no relief whatsoever is claimed against them, and not a single averment is directed at them, notwithstanding that it is they alone who had raised the related-party plea in the Section 7 proceedings.

It is submitted that this establishes, prima facie, that the Application has been engineered in collusion with the suspended management to re-agitate, through newly-inducted proxies, an issue that the promoters had already lost before this Tribunal, the NCLAT and the Supreme Court; a comparative table of identical pleadings raised by the suspended management and by the Applicants has been placed on record.

(iii)The related-party plea is barred by the principle of res judicata.

It is submitted that the very plea that Respondent Nos. 1 & 2 are related parties of the Corporate Debtor, founded on the very same Settlement Agreement and DTD dated 04.11.2019, was raised by the suspended management at the pre-admission stage of the Section 7 petition and was specifically rejected in the Admission Order dated 08.01.2025, wherein this Tribunal recorded a finding that, on examination of the correspondence between the parties, it could not be said that the Financial Creditor was controlling the Project, and that the Corporate Debtor alone remained responsible for the Project's completion.

This finding was affirmed in extenso by the NCLAT vide judgment dated 10.02.2025 in **Sandeep Jain v. IDBI Trusteeship Services Ltd. & Anr. CA(AT)(Ins) No. 146 of 2025**, which held that the PMC was constituted only to monitor and assist the Project and did not, in terms of Clauses 2.6 and 2.22 of the Settlement Agreement, dilute or shift the Corporate Debtor's independent repayment and completion obligations; and was further affirmed by the Supreme Court on 21.02.2025.

It is submitted that a judgment attaining finality binds the parties on all issues relating to the subject matter of the proceeding, and that this principle applies with equal force to bar re-agitation of an identical issue at a subsequent stage of the very same CIRP, relying on **Satyendra Kumar v. Raj Nath Dubey, (2016) 14 SCC 49**, and **Sulthan Said Ibrahim v. Prakasan, Civil Appeal No. 7108 of 2025**.

(iv) No "Change in Control" ever occurred.

It is submitted that Clause 1.1 of the DTD defines "Change in Control" to mean, inter alia, the Promoters ceasing to hold 100% of the paid-up equity share capital of the Corporate Debtor, or ceasing to control the majority of the Board; and Schedule 29(iv) of the DTD is an affirmative covenant that no such Change in Control shall occur till the Final Discharge Date.

It is an admitted position that the Promoters continued to hold 100% shareholding and full control of the Board throughout, and no Change in Control, as defined, ever took place a fact conspicuously omitted from the Application despite the Applicants extracting several other clauses of the very same DTD.

(v) No cause of action; claims not rejected.

It is submitted that the RP has not rejected the Applicants' claims; the RP's email dated 29.04.2025 merely sought an election between possession (with an offer of early completion) and refund, consistent with Regulations 13 and 14 of the CIRP Regulations. Reliance is placed on **Dahiben v. Arvindbhai Kalyanji Bhanushali, (2020) 7 SCC 366**, **T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467**, and **ITC Ltd. v. Debts Recovery Appellate Tribunal**, for the proposition that a cause of action created through clever or ingenious drafting ought to be nipped in the bud.

(vi) The ABA and RERA record identify the CD alone as "Promoter".

It is submitted that the HRERA Registration Certificate bearing Regd. No. 70 of 2017, and Recitals C, D, E, F, I, N & O together with Clauses 7.2, 8 and 20 of the Applicants' own ABAs, identify the Corporate Debtor alone as the "Promoter" possessing the "exclusive, irrevocable and unequivocal right to develop, construct, launch, market and sell" the Project representations to which the Applicants were themselves signatories.

SUBMISSIONS OF RESPONDENT NO. 3 (RESOLUTION PROFESSIONAL)

12. Learned Counsel for Respondent No. 3/RP submits that the Application is frivolous, premature, and an abuse of the process of the Tribunal, and adopts, in substance, the submissions of Respondent Nos. 1, 2 & 6 on the issue of related party status, additionally submitting as follows:

(a) the related-party plea urged by the Applicants is verbatim identical to the plea already raised by the suspended management of the Corporate Debtor and rejected by this Tribunal, the NCLAT, and the Supreme Court.

(b) the RP has ensured that the interests of the Applicants are protected; five of the nine Applicants have already responded to the RP's email dated 29.04.2025 expressing an intention to take possession, and the RP shall raise demands and grant possession in accordance with the respective ABAs.

(c) as the contractual date of possession for the Applicants' units falls on 09.10.2025, i.e., after commencement of the moratorium under Section 14 of the Code with effect from 08.01.2025, there is, as of date, no default qua the Applicants, rendering their claims premature and the Applicants not creditors of the Corporate Debtor as of date.

(d) two materially different copies of the Application appear to have been served on the RP on 31.05.2025 and 04.06.2025 respectively, with an additional prayer and two additional annexures introduced in the later copy, raising a serious question as to the bona fides of the Applicants; and

(e) an application with materially identical averments had earlier been circulated by the Applicants in April 2025, which was subsequently refiled with cosmetic modifications, further evidencing a lack of bona fides.

13. It is accordingly prayed that the Application be dismissed *in limine*.

14. Further, during the course of the arguments, it was submitted that Section 21(2) of the Code, read with the relevant proviso, clarifies that where a financial sector regulator becomes a related party of the Corporate Debtor solely on account of the conversion or substitution of debt into equity or any similar transaction undertaken in accordance with the terms of the financial contract, such financial creditor shall not be treated as a related party for the purposes of the Code.

15. It was argued that financial institutions often acquire certain control or protective rights over the corporate debtor to safeguard the utilisation of their funds and ensure recovery of their dues. The mere existence of such

rights or control, acquired in the ordinary course of financing, cannot render the financial creditor a related party within the meaning of the Code.

16. It was further submitted that this Tribunal has also consistently applied the above principle and has held that where the relationship between the parties is purely that of a lender and a borrower, and where the financial creditor neither controls the affairs of the Corporate Debtor nor satisfies any of the ingredients of a "related party" under Section 5(24) of the Code, such creditor cannot be treated as a related party. In such circumstances, the financial creditor is entitled to participate in the CoC.

ANALYSIS AND FINDINGS

17. Section 5(24) of the Code defines "related party", in relation to a corporate debtor, in clauses (a) to (m), including, materially, clause (h) (any person on whose advice, directions or instructions a director of the corporate debtor is accustomed to act), clause (l) (any person who can control the composition of the board of directors of the corporate debtor), and clause (m) (any person associated with the corporate debtor on account of participation in policy-making processes, common directorships, interchange of managerial personnel, or provision of essential technical information).

18. The first proviso to Section 21(2) of the Code disqualifies a related-party Financial Creditor from any right of representation, participation or voting in a meeting of the CoC. The rationale, as explained by the Supreme Court in **Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd., (2021) 3 SCC 475**, and reflected in the Reports of the Insolvency Law Committee of 2018 and 2020, is to prevent conflicts of interest and to ensure that the CoC's composition remains untainted by persons who, by virtue of their relationship with the corporate debtor, may not act at arm's length or in the collective interest of unrelated creditors. The relevant para of the aforenoted judgements reads as follows:

> 94 Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing between a related party financial creditor and the corporate debtor. As such, the financial creditor who *in praesenti* is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso.
>
> 95 Hence, while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties *in praesenti* would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder. Mr Kaul has argued, correctly in our opinion, that if this interpretation is not given to the first proviso of Section 21(2), then a related party financial creditor can devise a mechanism to remove its label of a 'related party' before the Corporate Debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors.

19. The touchstone of "related party" status under the clauses relied upon by the Applicants is "control". The expression "control", as defined in Section 2(27) of the Companies Act, 2013 and as elucidated by the Supreme Court in **ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1**, comprises two distinct limbs: (i) de jure control, being the right to appoint a majority of the directors; and (ii) de facto control, being the positive and proactive power, directly or indirectly, to influence management or policy decisions.

20. The Supreme Court, approving the Securities Appellate Tribunal's formulation in **Subhkam Ventures (I) (P) Ltd. v. SEBI, 2010 SCC OnLine SAT 35**, held that "control" denotes being "in the driving seat" controlling the steering, accelerator, gears and brakes of the company and that a mere

power to block or restrict, without more, does not amount to "positive control". This test, which this Tribunal respectfully adopts and applies, distinguishes affirmative, proactive management/policy control from the ordinary negative, protective and monitoring covenants that a secured lender or debenture holder customarily bargains for.

21. The Applicants are 9 out of 257 homebuyers of the Project. This Tribunal has, by order dated 10.03.2025, appointed an Authorised Representative for the homebuyers/financial creditors in a class, in terms of Regulation 16A of the CIRP Regulations. In light of the ratio of the Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., (2022) 1 SCC 401**, the collective grievances of homebuyers, including any challenge to the composition of the CoC, are ordinarily required to be canalised through the Authorised Representative, and a fraction of the class of allottees does not, without more, possess an independent right to mount such a challenge in their individual capacity.

22. Further, and independently, it is not in dispute that the contractual date for possession under the Applicants' ABAs dated 09.10.2024 is 09.10.2025, which post-dates the commencement of CIRP (08.01.2025) and, consequently, post-dates the filing of the present Application. No default subsists qua the Applicants as of date; the RP has not rejected their claims, but has only sought a clarification, consistent with Regulations 13 and 14 of the CIRP Regulations, as to whether the Applicants wish to take possession (with an offer of early completion) or a refund. The Applicants not being Financial Creditors admitted to the CoC as of date, they have not demonstrated any accrued right to seek representation in, or to challenge the constitution of, a body of which they are not members.

23. The Applicants' ABAs having been executed on 09.10.2024, within a fortnight of this Tribunal reserving orders on the Section 7 petition on 24.09.2024, upon payment of a disproportionately low booking amount of approximately 14.85% of the total consideration, on terms not extended to

any other allottee of the Project coupled with the impleadment of the suspended erstwhile directors as Respondent Nos. 4 & 5 without a single averment or relief being directed against them, lends credence to the submission of Respondent Nos. 1, 2, 3 & 6 that the Application has been engineered to furnish a fresh conduit for re-agitating a plea that the suspended management could no longer press in its own right.

24. While this Tribunal refrains from returning any conclusive finding of collusion, which is not strictly necessary for disposal of this Application, these circumstances reinforce the conclusion that the Applicants' locus to maintain the present challenge, in the manner framed, is doubtful.

25. Independent of the question of locus, this Tribunal finds that the substantive plea urged in the present Application that Respondent Nos. 1 & 2 are related parties of the Corporate Debtor by virtue of the Settlement Agreement and DTD dated 04.11.2019 and the PMC constituted thereunder is not being raised for the first time. An identical plea, founded on the very same documents, was urged by the suspended management of the Corporate Debtor at the pre-admission stage of the Section 7 petition.

26. This Tribunal, in its Admission Order dated 08.01.2025, examined the correspondence between the parties and specifically found that it could not be said that the Financial Creditor was controlling the Project, and that the Corporate Debtor alone remained responsible for the Project's completion.

27. This finding was affirmed by the NCLAT vide judgment dated 10.02.2025 in **CA(AT)(Ins) No. 146 of 2025**, which held, after extracting Clauses 2.6 and 2.22 of the Settlement Agreement, that the PMC was constituted only to monitor the Project and improve sales and collections, and did not, in any manner, dilute or shift the Corporate Debtor's independent repayment obligations. This finding attained finality upon dismissal of the Civil Appeal by the Supreme Court on 21.02.2025.

28. It is a settled principle, reiterated by the Supreme Court in **Satyendra Kumar v. Raj Nath Dubey, (2016) 14 SCC 49**, that a judgment which has attained finality binds the parties on all issues relating to the subject matter of the proceeding, and in **Sulthan Said Ibrahim v. Prakasan, Civil Appeal No. 7108 of 2025**, that this principle applies with equal force to bar re-agitation of an identical issue at a subsequent stage of the same proceeding.

29. The CIRP of the Corporate Debtor is a single, continuing proceeding, and the question of whether Respondent Nos. 1 & 2 control the Corporate Debtor was examined in the course of that very proceeding, at the admission stage, on the same documents, at the instance of parties whose plea the Applicants have adopted in substance.

30. It is, however, correct that the question decided at the admission stage was, strictly, confined to the existence of a financial debt and a default, and that the distinct question of related-party disqualification under the first proviso to Section 21(2) of the Code becomes live only after the CoC stands constituted; to that extent, the plea of res judicata, in the strict sense contemplated by Section 11 of the Code of Civil Procedure, 1908, may not apply with full rigour, since the question of "related party" status for the purposes of Section 21(2) was not, in terms, the subject matter of the Admission Order dated 08.01.2025, the NCLAT judgment dated 10.02.2025, or the Supreme Court order dated 21.02.2025.

31. That said, this Tribunal cannot ignore that the very same factual matrix i.e., the constitution and composition of the PMC and the contention that it amounted to "control" of the Corporate Debtor, was placed before this Tribunal at the admission stage and thereafter squarely examined by the NCLAT and the Supreme Court, both of which returned a considered finding on the very facts now relied upon by the Applicants to establish "control".

32. While such findings do not operate as a technical res judicata on the distinct question under Section 21(2), they constitute a considered adjudication entitled to significant weight, and permitting the identical issue to be re-litigated through newly-inducted allottees, absent any fresh facts, would sit uneasily with the finality of this Tribunal's, the NCLAT's, and the Supreme Court's orders. This circumstance weighs heavily against the Application, though it is not treated as dispositive by itself; it is accordingly necessary to examine the merits of the related-party plea independently, as this Tribunal proceeds to do below.

33. First, on the question of de jure control: it is undisputed that the Promoters of the Corporate Debtor continuously held 100% of its issued and paid-up equity share capital and constituted its entire Board of Directors throughout the relevant period. Clause 1.1 of the DTD defines "Change in Control" to include the Promoters ceasing to hold 100% of such share capital or ceasing to control the majority of the Board, and Schedule 29(iv) of the DTD is an affirmative covenant that no such Change in Control shall occur.

34. It is not disputed that no Change in Control, as so defined, ever took place, and Respondent Nos. 1 & 2 at no point appointed, or had an occasion to appoint, any nominee director on the Board of the Corporate Debtor.

35. Second, on the question of de facto control through the PMC: Clause 2.2 of the Settlement Agreement confines the PMC's purpose to monitoring the Project and improving sales, collections and construction. Clauses 2.6 and 2.22 of the Settlement Agreement expressly and unambiguously provide that responsibility for construction, development, marketing and sale of the Project, and for repayment of amounts due, is "independent of the working of the PMC" and remains the obligation of the Corporate Debtor/Obligors alone, a finding this Tribunal has already returned in the Admission Order and which stands affirmed by the NCLAT.

36. The PMC's co-signatory rights over the Project Operating Account and its role in reviewing daily sales reports and monitoring vendor payments are, on this record, in the nature of financial discipline and creditor-protective monitoring ordinarily associated with a secured debenture arrangement, rather than a general, affirmative power to direct the management or policy of the Corporate Debtor.

37. Third, the HRERA Registration Certificate bearing Regd. No. 70 of 2017, and Recitals C, D, E, F, I, N & O together with Clauses 7.2, 8 and 20 of the Applicants' own ABAs, identify the Corporate Debtor alone as the "Promoter" possessing the exclusive, irrevocable and unequivocal right to develop, construct, launch, market and sell the Project representations to which the Applicants were themselves signatories and upon which they claim to have relied.

38. These contemporaneous, party-admitted facts are inconsistent with the plea that Respondent Nos. 1 & 2 were in de facto control of the Corporate Debtor's affairs.

39. Fourth, the circumstance that Respondent Nos. 1 & 2 presently hold a voting share of approximately 99% in the CoC does not, by itself, establish related-party status. Voting share in the CoC is a function of the quantum of financial debt owed, governed by Section 21(2) and (6) of the Code, and is a distinct concept from "control" under Section 5(24).

40. A disproportionate voting share, without independent proof of management or policy control of the kind discussed above, cannot found a related-party plea.

41. **Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd., (2021) 3 SCC 475**: The general principle that the real nature of transactions must be examined to prevent related parties from sabotaging the CoC is well settled and is applied by this Tribunal.

42. However, on an application of that very test to the facts on record as opposed to the bare allegations of the Application the real nature of the relationship between the Corporate Debtor and Respondent Nos. 1 & 2 is that of a secured Financial Creditor-debtor relationship under a Debenture Trust Deed, attended by customary creditor-protective covenants, and not one of equity participation, common directorship, or management control, as was found to exist in Phoenix ARC itself. This judgment is, therefore, not attracted on the facts of the present case.

43. **ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1** and **Subhkam Ventures (I) (P) Ltd. v. SEBI, 2010 SCC OnLine SAT 35**: The test of "control" laid down in these judgments is correctly stated by the Applicants and has been applied by this Tribunal above.

44. However, when so applied to the facts of the present case, these very judgments negate rather than support the Applicants' plea: Respondent Nos. 1 & 2 have not been shown to be "in the driving seat" of the Corporate Debtor; at best, they hold negative, protective and monitoring rights typical of a secured debenture holder, which do not amount to "positive control" within the meaning explained therein.

45. **Revolution Infocom (P) Ltd. v. Sandwoods Infratech Projects (P) Ltd., 2022 SCC OnLine NCLAT 4572**: That case turned on the appellant's status as a joint venture partner of the corporate debtor, holding a contractual right of "mutual consent" over the corporate debtor's core pricing decisions a right going to the heart of the corporate debtor's business operations. Respondent Nos. 1 & 2 hold no equity, joint-venture, or comparable affirmative-consent right over the Corporate Debtor's core business decisions; their relationship is that of a secured Financial Creditor. This judgment is, accordingly, distinguishable on facts and inapplicable.

46. **IDBI Trusteeship Services Ltd. v. Abhinav Mukherji, 2022 SCC OnLine NCLAT 267**: This Tribunal has examined this judgment with care, given the emphasis laid on it by the Applicants. The finding of related-party status therein rested on a specific constellation of facts an unconditional contractual right of the lender to appoint a nominee director and an Observer on the board, a final and binding deadlock-breaking vote vested in the lender's nominee in the event of any Board or shareholder disagreement, an irrevocable Power of Attorney authorising the lender to execute sale deeds on the corporate debtor's behalf, a contractual requirement that the corporate debtor's Business Plans be approved by the lender, and, materially, a forensic audit finding that the corporate debtor had been used as a vehicle to divert funds to entities controlled by the promoters, with the lender found to be in "complete charge" of the corporate debtor's assets, project revenue and land. None of these features is present on the facts of this case: Respondent Nos. 1 & 2 hold no right to appoint a director; there is no deadlock-breaking casting vote; there is no irrevocable Power of Attorney to execute sale deeds; Clauses 2.6 and 2.22 of the Settlement Agreement expressly exclude Business Plan/repayment matters from the PMC's purview; and there is no allegation, much less finding, of fraudulent diversion of funds.

47. This Tribunal accordingly holds that **IDBI Trusteeship Services Ltd. v. Abhinav Mukherji** is distinguishable on facts and does not compel a finding of related-party status in the present case. It may also be observed, to avoid any confusion arising from the coincidence of nomenclature, that Respondent No. 6 in the present proceedings (IDBI Trusteeship Services Limited, acting as Debenture Trustee) has no relation whatsoever to the lender/appellant in that case, and the mere similarity of name does not lend that judgment any greater force on the facts of this case.

48. **Sai Peace and Prosperity Apartment Buyers Association v. ASK Investment Managers (P) Ltd., 2020 SCC OnLine NCLAT 168**: In that case, the financial creditor held a substantial 89.9% ownership/equity interest in the corporate debtor and was found to have consequent involvement in its day-to-day decision-making. No equity or ownership interest of Respondent Nos. 1 & 2 in the Corporate Debtor is alleged or demonstrated in the present case; their interest is confined to a debenture/security interest. This judgment is, therefore, factually inapposite and does not assist the Applicants.

49. The Reports of the Insolvency Law Committee of March 2018 and February 2020, relied upon for the legislative rationale behind the first proviso to Section 21(2) of the Code, correctly explain the object of the provision, which this Tribunal has kept in view; however, absent a factual finding of "related party" status under Section 5(24), as recorded above, these Reports do not, by themselves, advance the Applicants' case.

50. This Tribunal finds no infirmity in the conduct of Respondent No. 3 in seeking a clarification from the Applicants vide email dated 29.04.2025 as to whether they wished to take possession of their units or seek a refund, this being consistent with Respondent No. 3's obligations of claim verification under Regulations 13 and 14 of the CIRP Regulations.

51. The Applicants' claims have not been rejected; the grievance in relation to the RP's email is, at best, premature. Consequently, no case is made out for quashing the constitution of the CoC or for declaring the resolutions passed thereat as null and void.

CONCLUSION

52. For the reasons recorded above, this Tribunal holds and finds as follows:

(i) the Applicants, being a fraction of a class of allottees represented by a duly constituted Authorised Representative and having no accrued default in their favour as of the date of filing, lack the locus standi to maintain the present Application in their individual capacity.

(ii) in view of the findings of the NCLAT vide judgment dated 10.02.2025 and the Supreme Court vide order dated 21.02.2025, it is concluded that such considered findings, while not operating as a technical res judicata on the distinct question of related-party status under Section 21(2) of the Code, constitute a considered adjudication on the very facts now sought to be relied upon to establish “control”, and are entitled to significant weight in this Tribunal’s assessment of the same facts for the purpose of Section 5(24); this circumstance weighs against the Application but is not treated as dispositive by itself, and the plea is, in any event, independently examined and answered on merits at (iii) below.

(iii) in any event, and independent of (i) and (ii) above, Respondent Nos. 1 & 2 do not satisfy the test of “related party” under Section 5(24) of the Code on merits, there being no de jure or de facto control of the Corporate Debtor of the kind contemplated under Section 2(27) of the Companies Act, 2013, as explained in ArcelorMittal (supra); and the judgments relied upon by the Applicants, for the reasons recorded above, are factually distinguishable and do not assist the Applicants; and

(iv) no infirmity is found in the constitution of the CoC by Respondent No. 3, or in Respondent No. 3’s conduct in verifying and processing the Applicants’ claims.

53. **In view of the foregoing, I.A. No. 2696 of 2025 is devoid of merit and is accordingly dismissed. All interim reliefs prayed for therein are also rejected. There shall be no order as to costs.** The Registry is directed to forthwith upload a copy of this order on the website of this Tribunal.

Sd/-
(ANUPINDER SINGH GREWAL)
(PRESIDENT)

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)