IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301 - IA/1037(AHM)2024
ITEM No.302 - IA/1222(AHM)2024
ITEM No.303 - IA/1787(AHM)2024
In
C.P.(IB)/53(AHM)2023

Orders under Section 60(5) IBC

IN THE MATTER OF:

Basil Enterprise ....**Applicant**
V/s
Sebacic India Limited ....**Respondent**

Order delivered on: 09/07/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.

-SD-
SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – I, AHMEDABAD,

IA/1037(AHM)2024
and
IA/1222(AHM)2024
and
IA/1787(AHM)2024
in
CP(IB) No. 53 of 2023

In the matter of: *Sebacic India Limited*

IA/1037(AHM)2024

(Application filed under Section 60(5)(c) and Section 22 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules)

Manish Kumar Bahgat
Interim Resolution Professional of
Sebacic India Ltd.
Having office at:
B-1204, Shilp Corporate Park,
Rajpath Rangoli Road,
Next to Aaron Spectra, Bodakdev,
Ahmedabad-380054
Email; mbhagat2003@gmail.com

....Applicant/IRP

Vs

1. **Sterling Auxiliaries Pvt. Ltd.**
   Member of Committee of Creditors
   Having address at:
   Block No. 210, Marol Bhavan,
   Marol Co-Operative Industrial Estate Ltd. M. V. Road,
   Andheri East, Mumbai City,
   Mumbai, Maharashtra,

India, 400059

2. **Tushar Raojibhai Patel**
Through his POA Sanjiv Kiritbhai Patel
Having address at:
86/AB, Tapowan Society, Ambawadi,
Ahmedabad,
Gujarat-380015, India

3. **Vishnu P. Patel**
Through his Authorised Representative
Shivam D Parikh
Having Address at:
301, Shivalik Shilp,
Iscon Cross Road,
S.G. Highway,
Ahmedabad-380058

4. **Piyush R. Patel**
Through his POA Sanjiv Kiritbhai Patel
Having Address at: 86/AB,
Tapowan Society,
Ambawadi, Ahmedabad,
Gujarat-380015, India

5. **Ramesh D. Patel**
Through his POA Sanjiv Kiritbhai Patel
Having address at:
86/AB, Tapowan Society, Ambawadi,
Ahmedabad-380015

.... Respondents

AND

IA/1222(AHM)2024

(Application under section 60(5) read with section 21 (2) of the Insolvency and Bankruptcy Code, 2016).

Sterling Auxiliaries Pvt. Ltd.
CIN: U74999MH1985PTC036959
Through its Authorised Representative, Govind K. Salian,
Male, Aged: 58 years,
Registered office at:
'Block No. 210, Marol Bhawan,

Marol Cooperative Industrial Estate Ltd.,
M.V. Road, Andheri East,
Mumbai-400059,Maharashtra

Versus

1. **CA Manish Kumar Bhagat,**
   Interim Resolution Professional
   Having address at: B-1204,
   Shilp Corporate Park,
   Rajpath Rangoli Road,
   Bodakdev, Ahmedabad-380.054.

2. **Mr. Vishnubhai Patel**
   Residing at: 18 Nathan Drive,
   Towaco, NJ 0702-1452,
   United States of America.
   Through his authorised representative
   Shivam D. Parikh
   Having address at: 301,
   Shivalik Shilp, Iscon Cross Roads,
   S.G. Highway, Ahmedabad-380 058.

3. **Mr. Tushar Raojibhai Patel**
   Residing at: Dayna Lane,
   Lawerenceville New Jersey,
   United State of America.
   Through his Power of Attorney, Sanjiv Kiritbhai Patel
   Having address at:
   86/AB, Tapowan Society,
   Ambawadi, Ahmedabad, Gujarat 380 015.

4. **Mr. Ramesh D. Patel**
   Male, Aged: Adult Through his Power of Attorney,
   Sanjiv Kiritbhai Patel
   Having address at:
   86/AB, Tapowan Society,
   Ambawadi, Ahmedabad,
   Gujarat - 380 015.

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5. **Mr. Piyush R. Patel**

2

Male, Aged: Adult Through his Power of Attorney,
Sanjiv Kiritbhai Patel
Having address at:
86/AB, Tapowan Society, Ambawadi,
Ahmedabad, Gujarat - 380 015.

... Respondents

AND

IA/1787(AHM)2024

(Application filed under Section 60(5)(c) and Section 22 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules)

Tushar Raojibhai Patel
Through his POA Sanjiv Kiritbhai Patel
Having address at:
86/AB, Tapowan Society, Ambawadi,
Ahmedabad,
Gujarat-380015, India

....Applicant

Vs

1. **Manish Kumar Bhagat**
   Interim Resolution Professional,
   B-1204, Shilp Corporate Park,
   Rajpath Rangoli Road, Bodakdev,
   Ahmedabad-380 059.

2. **Sterling Auxiliaries Pvt. Ltd.**
   Through its Authorized representative,
   G.K. Salian
   Having its registered office at:
   Block No. 210, Marol Bhavan,
   Marol Cooperative Industrial Estate Ltd.,
   M V Road, Andhrei(East),
   Mumbai-400059

.... Respondents

ORDER PRONOUNCED ON: 09.07.2025

C O R A M :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E :

For the Applicant	: Mr. Nipun Singhvi, Adv. A.w. Mr. Mayur Jugtawat, Adv. for (for IA 1037 of 2024)
	: Mr. Saurabh Soparkar, Sr. Adv. a.w. Mr. Siddharth K Gujarati, Adv. & Ms. Divya Shah, Adv. (in IA/1222 of 2024
	: Mr. Nandish Chudgar, Adv. (in IA/1787 of 2024)
For the Respondent	: Mr. Turab Ali Kazmi, Adv.
	: Mr. Utkarsh Singh, Adv.
	: Mr. Hardik Kukreja, Adv. a.w. Mr. Himanshu Shah, Adv.

C O M M O N   O R D E R
(*Per*: Bench)

1. The present adjudication pertains to three interlocutory applications, IA/1037(AHM)2024, IA/1222(AHM)2024, IA/1787(AHM)2024, filed in the context of the Corporate Insolvency Resolution Process (CIRP) of Sebacic India Limited (hereinafter referred to as the "Corporate Debtor"), initiated by the order of this Adjudicating Authority on 15.05.2024 under CP (IB) No. 53 of 2023, pursuant to an application by M/s Basil Enterprises, an Operational Creditor. These applications raise interconnected issues concerning the constitution of the Committee of Creditors (CoC), the classification of certain financial creditors as related parties under the Insolvency and Bankruptcy Code, 2016 (IBC), the validity of claims as financial creditors, and the resolution of a deadlock in the appointment of the Resolution Professional (RP).

2. **IA/1037(AHM)2024**, filed by Mr. Manish Kumar Bhagat, the Interim Resolution Professional **(IRP),** on 28.06.2024 under section 60(5)(c) and Section 22 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules, seeking judicial intervention to resolve a deadlock in the CIRP process, particularly regarding the appointment of the RP under Section 22 of the IBC, and requests directions for the respondents to cooperate for the smooth functioning of the CIRP with the following prayers: -

a) *Your Lordship may be pleased to allow the present application;*

b) *Your Lordship may be pleased to remove deadlock in the CIRP process and appoint present applicant as RP of the Corporate Debtor and direct Respondents to cooperate with Applicant for smooth functioning of CIRP process.*

c) *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice;*

3. **IA/1222(AHM)2024**, filed by **Sterling Auxiliaries Pvt. Ltd.** (hereinafter "Sterling") on 10.07.2024 Under Section 60(5) Read With Section 21 (2) of The Insolvency And Bankruptcy Code, 2016, seeks the removal of Respondents No. 2 to 5 (Tushar Patel, Vishnu Patel, Ramesh Patel, and Piyush Patel) from the CoC, alleging they are related parties to the Corporate Debtor under Section 5(24) of the IBC with the following prayers: -

> *(A) The Hon'ble Tribunal may kindly be pleased to admit and allow the present Application;*
>
> *(B) The Hon'ble Tribunal may kindly be pleased to set aside the Report Certifying the Committee of Creditors issued by IRP;*
>
> *(C) The Hon'ble Tribunal may kindly be pleased declare Respondents No. 2 and 3 as related parties;*
>
> *(D) The Hon'ble Tribunal may kindly be pleased remove the related parties, being Respondent No. 2 and 3, from the Committee of Creditors;*
>
> *(E) The Hon'ble Tribunal may kindly be pleased to direct the removal of the IRP and further be pleased to appoint another IRP, one Mr. Rajkumar Jaiswal, in his place;*
>
> *(F) The Hon'ble Tribunal may kindly be pleased to direct the IRP to reconstitute the Committee of Creditors;*
>
> *(G) The Hon'ble Tribunal may kindly be pleased to set aside all decisions taken by the Committee of Creditors that may have a bearing on the management of the Company;*
>
> *(H) Pending the hearing of this application, the Hon'ble Tribunal may kindly be pleased to restrict the IRP from taking any further action;*

(l) The Hon'ble Tribunal may kindly be pleased to stay the Resolution Process till the disposal of the present Application;

4. **IA/1787(AHM)2024**, filed by **Tushar Raojibhai Patel** on 20.11.2024, under Section 60(5), Read With Section 21 (2) of the Insolvency and Bankruptcy Code, 2016, seeks the removal of Sterling Auxiliaries Pvt. Ltd from the CoC, contending that Sterling is a related party to the CD and not a genuine financial creditor with the following prayers: -

   a. This Hon'ble Tribunal may kindly be pleased to admit and allow the present Application;

   b. This Hon'ble Tribunal may be pleased to disqualify the Respondent No. 2 as a 'Financial Creditor' of Corporate Debtor under the provisions of Insolvency and Bankruptcy Code, 2016 and be further pleased to direct the removal of the Respondent No. 2 from the list of Financial Creditor of the Corporate Debtor i.e. Sebacic India Ltd. (in CIRP);

5. For convenience, the respective parties in all the IAs shall be referred by their names instead of Applicant and Respondent:

   i. **Sterling Auxiliaries Pvt. Ltd.** who is Applicant in IA No.1222 of 2024 and Respondent no. 2 in IA No.1787 of 2024 and Respondent No. 1 in IA No. 1037 of 2024 is being referred to as "**Sterling**".

   ii. **Mr. Tushar Raojibhai Patel** who is Respondent No.3 in IA No.1222 of 2024, Respondent No.2 in IA No.1037 of

2024 and Applicant in IA No.1787 of 2024 is being referred to as " **Mr. Tushar Patel**".

iii. **Mr. Vishnubhai Patel** who is Respondent No.2 in IA No.1222 of 2024, Respondent No.3 in IA No.1037 of 2024 and is not a party in IA No.1787 of 2024 is being referred to as "**Vishnu Patel**".

iv. **Mr. Ramesh D. Patel** and **Mr. Piyush R. Patel** are Respondent No.4 & 5 in IA No.1222 of 2024, Respondent No.5 & 4 in IA No.1037 of 2024 and are not parties in IA No.1787 of 2024 are being referred to as "**Mr. Ramesh Patel**" and "**Mr. Piyush Patel**" respectively.

v. The **Interim Resolution Professional** is Respondent No.1 in IA No.1222 of 2024, Applicant in IA No. 1037 of 2024 and also Respondent No.1 in IA No.1787 of 2024 is being referred to as "**IRP**".

6. This judgment consolidates the adjudication of all three applications, analyzing the facts, documents, written submissions, and legal precedents cited by the parties. It addresses whether Sterling, Tushar Patel, and Vishnu Patel are related parties under Section 5(24) of the IBC as on the date of initiation of CIRP in the case of Sebacic India Limited i.e. 15.05.2024, evaluates the validity of their financial creditor status, and resolves the deadlock in the RP's appointment, ensuring compliance with the IBC's objectives.

DETAILED FACTUAL MATRIX

7. **Corporate Debtor - Sebacic India Limited** was incorporated on 10.09.2007. Between 2011 and 2014, and in 2018, Venture Capital Funds, namely Wayzata III India Ocean Pvt. Ltd. (Wayzata) and India Nivesh Renaissance Fund (India Nivesh), held significant shareholdings in this company. As of December 2018, Wayzata held 52.8%, and India Nivesh held 35.3% of the Corporate Debtor's shares, indicating a substantial influence by external investors during this period.

8. On 15.05.2024, this Adjudicating Authority admitted CP (IB) No. 53 of 2023, filed by Operational Creditor - **Basil Enterprises**, and initiated the CIRP against the Corporate Debtor. **Manish Kumar Bhagat** was appointed as the IRP, with the order rectified on 16.06.2024 due to procedural clarifications. The IRP issued a public announcement in Form-A on 18.05.2024, inviting claims from creditors by 29.05.2024, as mandated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

9. Pursuant to the claims received, the IRP constituted a CoC comprising five financial creditors: Sterling (48.84% voting share percentage), Tushar Patel (11.85% voting share percentage), Vishnu Patel (28.50% voting share percentage), Ramesh Patel (4.64% voting share percentage), and Piyush Patel (6.17% voting share percentage). The CoC's constitution was reported to this Adjudicating Authority and taken on record on 19.06.2024 in IA/925(AHM)2024. Subsequently, in the second CoC meeting on 06.07.2024, Mr. Pankaj Pandya was included as a sixth financial creditor, revising the voting shares, though the IRP did not disclose the legal opinion justifying this inclusion.

10. The first CoC meeting was convened on 14.06.2024, where Sterling raised objections to the inclusion of Tushar Patel and Vishnu Patel, alleging they are related parties under Section 5(24) due to their historical roles as promoters, directors, shareholders, and guarantors. Sterling also dissented on the agenda to appoint the IRP as the RP, proposing Mr. Rajkumar

Jaiswal instead. The e-voting results revealed that Respondents No. 2 to 5 (collectively holding 51.16% voting share) voted in favour of continuing the IRP as the RP, while Sterling (48.84%) voted against it. As Section 22(2) requires a 66% majority for such decisions, the resolution failed, creating a deadlock in the appointment of RP.

11. Sterling's claim as a financial creditor stems from a loan agreement dated 24.03.2023, through which it advanced Rs. 16,73,03,357.52 to the Corporate Debtor to enable it to settle a One-Time Settlement (OTS) with the State Bank of India (SBI). The loan was secured by a mortgage deed dated 12.06.2023, executed pursuant to a board resolution on 10.05.2023 authorizing Mr. Nimish Mehta, a director, to sign the agreement. Sterling asserts that this transaction qualifies it as a financial creditor under Section 5(7) and (8) of the IBC.

12. IA/1037(AHM)2024, IRP, Sterling, Vishnu Patel, Tushar Patel, Ramesh, and Piyush Patel inter alia contend that: -

12.1. It is contended that the CIRP was initiated against Sebacic India Limited on 15.05.2024 by the NCLT, Ahmedabad, following a petition by Basil Enterprises (Operational Creditor) under CP (IB) No. 53 of 2023. The IRP was appointed as no RP was proposed by the operational creditor.

12.2. The IRP published Form-A on 18.05.2024, inviting claims by 29.05.2024, and formed a CoC with five financial creditors, including Sterling (48.84% voting share), Tushar Patel, Vishnu Patel, Ramesh Patel, and Piyush Patel.

12.3. The first CoC meeting on 14.06.2024 discussed the appointment of the IRP as RP, but a resolution failed due to insufficient votes (51.16% in favor, below the 66% threshold required under Section 22(2) of IBC), leading to a deadlock.

12.4. During the first CoC meeting, Sterling (R1) opposed the IRP's continuation as RP, proposing another RP, alleging improper CoC formation due to the inclusion of related parties (R2 and R3).

12.5. The e-voting resulted in R2 to R5 (51.16%) voting for the IRP as RP, while R1 (48.84%) voted against, failing to meet the 66% threshold, causing a deadlock.

12.6. Sterling alleges that R2 (Tushar Patel) and R3 (Vishnu Patel) are related parties under Section 5(24) of IBC due to past shareholding, directorship, and personal guarantees provided to banks, disqualifying them from CoC participation under Section 21(2).

12.7. Sterling claims R2 and R3 divested shares post-insolvency filing to circumvent related party status, citing the Supreme Court's ruling in Phoenix Arc Pvt. Ltd. v. Spade Financial Services Ltd. (2021) to argue that such divestments with intent to sabotage CIRP are invalid.

12.8. Sterling also challenges the IRP's inaction in excluding R2 and R3 and seeks their removal from the CoC and replacement of the IRP.

12.9. Tushar Patel (R2) alleges Sterling is not a genuine financial creditor, claiming the bridge loan of Rs. 16.73 crores (via Loan Agreement dated 24.03.2023 and Mortgage Deed dated 12.06.2023) was a facade for a takeover deal of Sebacic India Limited.

12.10. Evidence includes Sterling's letter to SBI (25.03.2023) mentioning a "takeover deal" and email exchanges indicating share purchase negotiations. Tushar Patel argues the loan agreement was backdated (evidenced by a 02.05.2023 email requesting its execution post-OTS payment).

12.11. Tushar Patel further alleges Sterling is a related party under Section 5(24) due to its control over the CD's board through appointed directors (e.g., Samir Dalia, appointed 23.12.2023) and seeks Sterling's removal from the CoC.

12.12. Sterling denies these claims, asserting the loan was legitimate, secured by a mortgage, and that it holds only

0.00008% shares, far below the 20% threshold for related party status. It claims the takeover deal fell through due to CD's financial discrepancies.

12.13. In the third CoC meeting (13.07.2024), the IRP added Pankaj Pandya as a financial creditor, which Sterling opposed, alleging he is a related party (promoter group, per Gujarat High Court's judgment in 2021). The IRP's inclusion of Pandya without sharing legal opinion further fueled disputes.

12.14. R2, R4, and R5 allege Sterling seeks to dominate the CoC (potentially achieving >75% voting share by removing other creditors) to approve a resolution plan by its associate, Omtech Chemical Industries Pvt. Ltd., which proposes full payment to Sterling (Rs. 15.76 crores) but nil to other financial creditors and partial payment to operational creditors.

12.15. They claim Sterling's actions are mala fide, aimed at acquiring CD assets at a low price without settling liabilities.

12.16. Per *Essar Steel* and *PTC India Financial Services*, the IRP's role is to collate and verify claims, not adjudicate them. The IRP defends the CoC's constitution based on information available as of 15.05.2024, noting R2 and R3 were neither shareholders nor directors at that time.

12.17. Sterling denies being a related party, emphasizing it is only a secured creditor with no management control. It argues the loan was legitimate, supported by board resolutions and a mortgage deed.

12.18. Tushar Patel asserts he ceased being a director in 2018 and held no shares by 2024, making him unrelated as per *Phoenix Arc* and *Dipak Bhadra* rulings, which limit related party status to present relationships unless divestment was mala fide.

13. In IA/1222(AHM)2024, Sterling, IRP, Vishnu Patel, Tushar Patel, Ramesh, and Piyush Patel inter alia contend that: -

13.1. Sterling contends that Tushar Patel and Vishnu Patel are related parties due to their shareholding (64.31% for Vishnu Patel and 2.85% for Tushar Patel as of 03.03.2023), past directorships (Tushar Patel until 26.08.2018, and Vishnu Patel until 26.08.2023), and personal guarantees provided to banks.

13.2. Sterling cites a Gujarat High Court judgment dated 25.06.2021 in ***Sebacic India Limited v. SBI*** (Special Civil Application No. 7158 of 2021), identifying them as part of the promoter group. Sterling claims their inclusion in the CoC violates Section 21(2), which bars related parties from CoC participation. This is claimed as an avoidable transaction intended to sabotage the CIRP.

13.3. Sterling further alleges that their share divestments post the insolvency filing on 16.01.2023 only to circumvent related party restrictions, constituting an avoidable transaction under Sections 43 or 45 of the IBC.

13.4. Sterling provided a Rs. 16.73 crore bridge loan to the CD via a Loan Agreement (24.03.2023) and Mortgage Deed (12.06.2023), secured by the CD's assets. Sterling alleges Vishnu breached the Mortgage Deed's covenants by divesting shares without approval from IndiaNivesh (14.48% shareholder).

13.5. Sterling communicated concerns about Vishnu and Tushar's related party status to the IRP via emails (10.06.2024, 11.06.2024, 13.06.2024, 19.06.2024), but the IRP included them in the COC's first meeting (14.06.2024). Sterling cites the Supreme Court's ruling in ***Phoenix Arc v. Spade Financial* (2021)** to argue that past related parties who divest shares to join the COC should be excluded.

13.6. Sterling also accuses the IRP, CA Manish Kumar Bhagat, of failing to verify related party status and requests his replacement with Rajkumar Jaiswal, alongside reconstitution of the COC and setting aside its decisions.

13.7. The IRP (Respondent No. 1) denies Sterling's allegations, stating the COC was constituted based on verified claims and shareholding data as of 15.05.2024, when CIRP commenced. The IRP argues that Vishnu and Tushar were neither shareholders nor directors at that time, and their past roles do not qualify them as related parties under Section 5(24).

13.8. The IRP cites the Supreme Court's ruling in *Phoenix Arc v. Spade Financial* (2021), emphasizing that related party status applies "in praesenti" and not to past associations unless divestment was a deliberate attempt to sabotage the CIRP.

13.9. Vishnu Patel (Respondent No. 2) denies being a related party, stating he sold his shares on 31.10.2023 (Annexure-II, Demat Statement), before the CIRP, and was never a director. He accuses Sterling of entering a fraudulent 12 Crore loan agreement to gain control over the COC, violating Section 186 of the Companies Act, 2013, as Sterling's paid-up capital (Rs. 98.16 lakh) cannot support such a loan.

13.10. Vishnu alleges Sterling controlled the CD's board via nominees (e.g., Sameer Dalia, appointed 23.12.2023) and holds 100 equity shares, suggesting Sterling is a related party under Section 5(24) due to its influence over Sebacic's board through appointed directors.

13.11. Vishnu claims Sterling's loan was a sham to take over the CD, aware of the pending Section 9 application

(16.01.2023). He reserves the right to file under Section 65 of the IBC for malicious prosecution.

13.12. Tushar Patel (Respondent No. 3) denies related party status, noting he resigned as a director in 2018 and reduced shareholding to 2.86% by 2019 and held no shares by 2024. He argues his resignation predates the CIRP (15.05.2024) by over six years, negating ***Phoenix Arc's*** applicability.

13.13. Tushar seeks to disqualify Sterling as a financial creditor, alleging the Rs. 12 crore bridge loan (24.03.2023) was a facade for a takeover, not a financial debt under Section 5(8). Key evidence includes:

(i). Emails (e.g., 25.03.2023) showing Sterling's intent to acquire Sebacic's shares, with payments to SBI and Central Bank as part of a takeover deal (Annexure P/3, IA 1787/2024).

(ii). A tripartite agreement (23.03.2023) for Sterling to purchase 100 shares from Yogesh Pujara, indicating a broader share purchase plan.

(iii). An email (02.05.2023) from Sterling's Vishal Shah requesting Tushar to sign a backdated loan agreement to "reflect" the OTS payment, suggesting the agreement was fabricated.

13.14. Tushar claims Sterling controlled the CD's board via nominees (Sameer Dalia, Tushar Barot, Kapil Patel, appointed 23.12.2023), making Sterling a related party under Section 5(24)(h), (l), and (m). He disputes Sterling's claim of withdrawing Sameer Dalia's authorization (19.12.2023) as fabricated, supported by Dalia's affidavit (19.11.2024).

13.15. Tushar cites ***Phoenix Arc*** and other cases (***Ansal Housing v. Samyak Projects, Jushya Realty v. Ninety Properties***) to argue the loan agreement and mortgage deed are sham, aimed at acquiring Sebacic without liabilities.

13.16. Tushar alleges Sterling aims to approve a resolution plan from its group company, **Omtech Chemical Industries Pvt. Ltd.**, offering full payment to Sterling (Rs. 15.76 crore) but nil to other financial creditors (Rs. 17.84 crore) and 55% to operational creditors (Rs. 5.11 crore of Rs. 9.80 crore), indicating a plan to control the COC

13.17. He argues the loan agreement with Sterling was a sham to facilitate a takeover, not a genuine financial debt, and cites emails showing Sterling's intent to acquire Sebacic. Tushar has filed IA 1787/2024 to disqualify Sterling as a financial creditor, alleging Sterling controlled Sebacic's board through nominees like Sameer Dalia.

13.18. Ramesh and Piyush Patel (Respondents No. 4 and 5) deny related party status, with no specific pleadings against them in Sterling's application, though their removal is sought in the prayer clause. They align with Tushar's arguments.

14. In **IA/1787(AHM)2024**, Tushar Patel, IRP and Sterling, inter alia contend that: -

14.1. Tushar Patel alleges that Sterling is a "related party" under Section 5(24)(h) and (n) of IBC, as it controlled SIL's management through its representatives, notably Sameer Dalia, appointed as a director in December 2023. Dalia was Sterling's authorized representative (per letter dated 01.08.2023, Annexure P/15).

14.2. The Applicant alleges Sterling orchestrated a plan to transfer SIL's assets (plant, machinery, land) to its sister concern, Sterling Oleo Chemicals Pvt. Ltd., without liabilities, by influencing SIL's board, including nominees like Tushar Barot and Kapil Patel.

14.3. Vishnu Patel's affidavit (27.11.2024, Annexure P/17) states his 76% shareholding was transferred to Tushar Barot, Sterling's nominee, with payment conditional on Sterling's funds, indicating Sterling's control over SIL's shareholding and board. The Applicant relies upon the following key documents: -

Annexure P/3: Sterling's letter to SBI (25.03.2023), declaring a takeover deal.

Annexure P/4: Loan agreement (24.03.2023) between Sterling and SIL.

Annexure P/5: Tripartite Share Transfer Agreement (23.03.2023) involving Sterling, Yogesh Pujara, and SIL.

Annexure P/6: Emails showing the Applicant's facilitation of Sterling's share purchase.

Annexure P/7: Mortgage deed (12.06.2023) securing Sterling's loan.

Annexure P/15: Authorization letter (01.08.2023) naming Sameer Dalia as Sterling's representative.

Annexure P/17: Vishnu Patel's affidavit (27.11.2024) detailing share transfers to Tushar Barot.

Annexure P/18: Sameer Dalia's affidavit denying withdrawal of his authorization.

14.4. Sterling refutes the Applicant's claims in its reply, asserting that it is a Legitimate Financial Creditor as Rs. 11.00 crore payment was a bridge loan, secured by a loan agreement (24.03.2023) and mortgage deed (12.06.2023), approved by SIL's board resolutions (11.03.2023 and 10.05.2023). The loan agreement mandated a charge on SIL's immovable properties within 45 days, fulfilled by the mortgage deed.

14.5. Sterling initially explored a takeover but abandoned it due to SIL's statutory non-compliances (e.g., unfiled financials since 2021, pending tax dues, expired licenses). It opted for a secured loan to protect its financial interest.

14.6. The Applicant approached Sterling via Kalpesh Patel, proposing either a share purchase or a bridge loan to settle OTS dues, as SIL faced legal action from banks. Sterling chose the loan option after due diligence revealed SIL's issues.

14.7. The IRP, Manish Kumar Bhagat, in its reply maintains neutrality, stating he lacks authority to adjudicate claims, only to verify and collate them, per Supreme Court and NCLAT judgments (e.g., Essar Steel, PTC India Financial Services).

14.8. The Applicant's documents (e.g., Sterling's letter to SBI, Share Transfer Agreement) were unknown to the IRP, who awaits Tribunal adjudication on the related party and financial creditor disputes.

14.9. Tushar Patel denies Sterling's claim that the Applicant initiated the takeover proposal, asserting Sterling approached him through Kalpesh Patel (Artek Group consultant) to aggregate SIL's shares.

14.10. Tushar Patel Reaffirms the loan and mortgage deed as shams, noting the board resolution authorizing Nimish Mehta (10.05.2023) postdates the loan agreement (24.03.2023), undermining its legitimacy.

14.11. Tushar Patel alleges Sterling controlled SIL's board via nominees (Tushar Barot, Sameer Dalia, Kapil Patel) to transfer assets to Sterling Oleo Chemicals Pvt. Ltd., thwarted by the CIRP order.

14.12. Tushar Patel disputes Sterling's claim of withdrawing Dalia's authorization, citing Dalia's affidavit (Annexure P/18), labeling the withdrawal letter as fabricated.

15. Key documents include email communications between Sterling and the IRP (10.06.2024, 11.06.2024, 13.06.2024, 14.06.2024, 20.06.2024, and 22.06.2024), the shareholding pattern as of 30.12.2023, MCA Master Data, Form MGT-7 for FY 2020-21, and affidavits from Vishnu Patel (27.11.2024) and Sameer Dalia. These documents reveal the share transfers, directorship changes, and Sterling's involvement in the Corporate Debtor's management. The IRP's minutes of the CoC meetings and the e-voting report further highlight the disputes.

16. The Chronology of Relevant Facts which has taken place, are as under:-

Sr. No.	Date	Particulars	Reference
1.	10.09.2007	Sebacic Mfg & Exp. India Limited was incorporated	Anx. 1-pg 16 of IA 1222/24
2.	16.01.2008	Name of Sebacic Mfg & Expo. India Limited was changed to Sebacic India Limited ("hereinafter "Sebacic")	
3.	2017-2018	Sebacic's Financial Statement 1. Tushar Patel Holds 5.81% shareholding in Sebacic(at pg 48) 2. Tushar Patel resigned as Director on 26.08.2018 (at Pg. 35)	Anx. A/2-Pg 29-Sterling's Additional Affidavit dt. 6.8.2024.-IA 1222/24
4.	2018	Sterling approached Wayzata, a venture capital fund and then a	Para. 4-Resp. no. 3's Reply-

		majority shareholder of Sebacic, for take-over of Sebacic through share purchase. However, this transaction did not materialise.	IA 1222/24
	26.08.2018	Mr. Tushar Patel resigned from the position of Director but continued with his pledge of shares for the credit facility taken by the CD till Sterling cleared the debt of CD bank under OTS settlement on 25.03.2023 by providing Bridge loan.	
5.	2022	State Bank of India filed CP(IB) No. 107 of 2022 against Sebacic under Section 7 of the IBC for the Initiation of CIRP.	Para 5- Resp. no.3's – IA 1222/24
6.	2022	Sterling approached Tushar Patel for purchase of shares of Sebacic with a view to take over Sebacic and requested him to assist and arrange purchase of shares from other shareholders since Tushar Patel being the founder shareholder would be able to find out the scattered shareholders of Sebacic. Sterling, being in a similar chemical business, was keen to acquire Sebacic to achieve business synergy and vertical integration. To assist sterling in the purchase of shares to complete its take over deal of Sebacic, Tushar got in touch with shareholders, executives and Directors of Sebacic and collected information on Sebacic.	
7.	07.09.2022	A Share Purchase Agreement was entered into between: Sellers: Wayzata, IndiaNivesh, Avalokiteshvar, Altaf Tapia, Pankaj Pandya and Tushar Patel. Sellers in total holding 76% shareholding (Schedule 1 at Pg. 47) and Acquirer: Vishnu Patel and Nimesh Mehta Shareholding pattern upon completion of share purchase (Schedule 1-Pg. 48, schedule 3-Pg. 50) Vishnu Patel and Nimesh Mehta: 76% IndiaNivesh:14.48%	Anx. A-Pg. 19-Sterling's Rejoinder to Resp. no. 2's Reply--IA 1222/24

		Avalokiteshvar:9% Altaf Tapia: 0.52% As per shareholder agreement, Mr. Vishnu Patel and Mr. Nimish Mehta collectively had right to appoint 4 out of 5 directors of the CD. After acquiring the shares, Mr Vishnu Patel also paid Rs 3 crores to Bank towards acceptance of OTS and balance was paid by Sterling.	
8.	07.09.2022	A Shareholders Agreement was entered pursuant to the aforesaid Share Purchase Agreement between the parties thereto.	Anx. A/1 - Sterling's Additional Affidavit dt. 6.8.2024-IA 1222/24
9.	28.09.2022	Letter from Central Bank of India to Pankaj Pandya approving Sebacic's proposal for compromise settlement in the NPA account of Sebacic larken from SBI to Sabacic accepting Sebacic's	
10.	18.11.2022	Letter from SBI to Sebacic accepting Sebacic's offer for settlement on dues	
11.	20.01.2023	Basil Enterprise filed CP (IB) No. 53 of 2023 against Sebacic under Section 9 of the IBC for initiation of CIRP before the National Company Law Tribunal, Ahmedabad.	Ref.at Pg 19-IA 1222/24
12.	03.03.2023	List of shareholders as on 03.03.2023 Vishnu Patel- 64.3159%, IndiaNivesh-14.48%, Tushar Patel-2.85%.	Pg. 96 Sterling's Rejoinder to Resp. no. 2's Reply-IA 1222/24
13.	11.03.2023	A resolution was passed at an Extra Ordinary General meeting of Sebacic to increase its authorised share capital from INR 116,97,00,000 to INR 161,97,00,000. It was also resolved that subsequent to fund liability, the assets of Sebacic released by the banks shall be secured by mortgage/charge in favour of shareholder investing in preference	Pg. 111-IA 1222/2024 (Vol 2)

		shares or compulsorily convertible preference shares. The said 11.03.2023 EGM resolution allowed Sterling to invest through subscription to preference shares or Compulsory convertible preference shares and secure its position by obtaining a charge over assets released from banks. Further, in the EGM Mr. Nimish Mehta was authorised to sign and execute loan agreement, mortgage agreement to make OTS payment.	
14.	16.03.2023 To 21.03.2023	Tushar Patel, in furtherance of his effort to assist Sterling to complete the take-over deal by purchasing all shares of Sebacic, shared with Vishal Shah relevant information and documents relating to Sebacic. Vide email dated 16.03.2023, Tushar Patel Shared with Vishal Shah the old share purchase agreement, which email was forwarded by Vishal Shah to Govind Salian. Vide email 16.03.2023 Tushar Patel shared with Vishal Shah the resolution passed on 11.3.2023 to increase authorised share capital and increase equity shares by Rights Issue, which email was forwarded by Vishal Shah to Govind Salian. Vide email dated 17.03.2023, Tushar Patel shared with Vishal Shah the latest financial statement of Sebacic, which email was forwarded by Vishal Shah to Govind Salian. Vide email dated 17.03.2023, Tushar Patel shared with Vishal Shah the OTS letter to Central Bank, which email was forwarded by Vishal Shah to Govind Salian. Vide email dated 21.03.2023, Tushar Patel shared with Vishal Shah a list of pledged shared to SBI, which email was forwarded by Vishal Shah to	Sterling's Rejoinder to Resp no. 2's Reply-IA 1222/24 Pg. 62 Pg. 65 Pg. 67 Pg. 69 Pg.74

		Govind Salian.	
15.	23.03.2023	A resolution was passed by the Board of Directors of Sterling to make a bridge loan to Sebacic of approximately INR 12 crore. By this time, CP(IB) No. 107 of 2022 filed by SBI against Sebacic under Section 7 of the IBC before NCLT, Ahmedabad had come up for final hearing and it was imminent for Sebacic to repay the loan entirely or enter into a settlement with SBI to repay the same. Since Sterling was interested in taking over Sebacic as a going concern, it decided to make payment to SBI on behalf of Sebacic, of an amount equivalent to the OTS amount.	Pg. 146-IA 1222/24 (Vol 1)
16.	23.03.2023	A Tripartite Share Purchase Agreement was executed between Sterling, Mr. Yogesh Pujara and Sebacic, for purchase of 100 shares of Sebacic by Sterling from Yogesh Pujara. Notably, this agreement records that the share sale/purchase is being done at the request of Mr. Vishnu Patel (majority shareholder of Sebacic at that time). Further, Sterling has admitted, at paragraph 8 of its Rejoinder to Resp no. 3's Reply, that purchase of Shares from Yogesh Pujara was a part of its deal to take over Sebacic.	Pg. 37-Rep No. 3's Reply- IA 1222/24
17.	24.03.2023	Email from Vishal Shah (of Sterling) to Tushar Patel stating that Govind will be sending a copy of the MOU which summarises the understanding between the parties, further requesting Tushar Patel to send back a signed executed copy as soon as possible. The email of 23.03.2023 from Tushar Patel also notes that" I am putting on this email Vishnubhai in USA who is currently majority shareholder in case u need to send any communication and our	Pg. 73-Sterling's Rejoinder to Resp no. 2's Reply in IA 1222/24

		nominated director Nimish Mehta who is authorised signatory sitting in Hyderabad."	
18.	24.03.2023	Sterling entered into Loan Agreement with the CD. CD used the loan to clear out OTS entered with the Bankers. Mr. Pankaj Pandy and Mr. Tushar Patel got their pledged shares and guarantee released from the Bank. At Sterling's insistence as it required a security for its investment, a Loan Agreement was executed between Sebacic (borrower) and Sterling (lender) whereby sterling agreed to provide a bridge loan to Sebacic by directly paying Sebacic's outstanding debt to SBI and Central Bank of India under OTS between Sebacic and the banks. It is pertinent to note that the Loan Agreement does not provide for any repayment schedule. Repayment of the loan was to be made by Sebacic, on demand, in one bullet repayment, together with interest at 16% per annum, default interest etc.	Annx. 7-pg. 74-IA 1222/24 (Vol 1)
19.	25.03.2023	Sterling addressed a letter to SBI (appearing on page 39 of IA 1787/24) paying 9 crore on behalf of Sebacic towards OTS obligation. Notably, in this letter, Sterling has explicitly stated that, "***we would further like to inform you that we are in the process of finalising a complete takeover deal from the existing shareholders of the company...***	Pg. 23-Resp no. 3's Reply-IA 1222/24
20.	25.03.2023	Email from Tushar Patel to Govind Salian (cc to Vishnu Patel, Nimish Mehta etc) and reply thereto. It is pertinent to note that Tushar Patel informed Sterling that Pankaj Pandya has started collecting signature from 58 individual shareholders to transfer their shares to Vishnu Patel. He requested Sterling to prepare a single share purchase agreement (SPA) whereby Vishnu Patel will sell his shares in Sebacic at 45 paisa per share as agreed to	Pg. 76, Rejoinder to Resp 2's Reply-IA 1222/24

		Sterling. He also requested Sterling to provide details of nominee directors on the Board of Sebacic. In Reply, pertinently, Sterling agrees that once the shares are transferred, we can have the actual agreement only with Vishnu Patel.	
21.	12.04.2023/14.04.2023	Email exchange which shows that parties were trying to get in place necessary documentation for the banks to release the shared pledged to SBI to Sterling upon payment of the loans. It also refers to an undertaking to be prepared by the Investor i.e. Sterling who shall be repaying the 9 crore loan on behalf of Sebacic. One such email from Vishal Shah (of Sterling) dated 14.04.2023 reads as: " All-FYI- below is a list of activities required by the Banks to release the pledged shares that banks are requiring. Sebacic -CS working on it but sending this as a heads up from our side there is an undertaking (see h/l below) which their CS is preparing which we can review and offer comments".	Pg. 81- Sterling's Rejoinder To Resp. no. 2's Reply- IA1222/24
22.	31.05.2023	Sterling Oleo Chemicals Pvt. Ltd was incorporated, which is a group company of Sterling.	
23.	02.06.2023	Email exchange regarding resolution passed by Sebacic by circulation in furtherance of resolution passed at EGM held on 11.3.23, that the assets of Sebacic released by the banks shall be secured by mortgage in favour of shareholder investing in preference shared/compulsorily convertible preference shares or as security to investor providing a loan.	Pg. 86, Rejoinder to Resp. no. 2's Reply-IA 1222/24
24.	12.06.2023	An Indenture of Mortgage was executed between Sebacic and Sterling in terms of the Loan Agreement, thereby creating a first ranking pari passu charge on Sebacic's immovable and movable assets, including currents assets more particularly listed in the Schedule at page 125 to 133. It is pertinent to note that the "lender" is stated to be	Annx. 8, Pg, 95- IA 122/24

		an investor.	
	19.06.2023 and 21.06.2023	Sterling sends first demand notice to Sebacic and 2 directors out of 3 directors resigned from the CD and only Mr. Nimish Mehta continued as a Director.	
25.	30.06.2023	Email from Nimesh Mehta (Sebacic director) to Vishal Shah and Tushar Patel wherein is it noted that the bridge loan was given by Sterling to Sebacic as their intention to take over Sebacic against mortgage of assets of Sebacic. The email reads; " Dear Mr. Shah, This has reference to your email, sending therewith a Demand Notice, for repayment of the Bridge Loan given by M/s Sterling Auxiliaries Pvt. Ltd, to M/s Sebacic India Limited for meeting one time settlement with their Bankers, for your intention to take over the company, against mortgage of the fixed assets of our company. At the outset, we are thankful to your company for the support given at the right time to save the assets of our company.	Pg. 160, Rejoinder to Resp. no. 2's Reply- IA 1222/24
26.	20.07.2023	Email from Vishal Shah to Tushar Patel providing draft of board resolution to be passed by Sebacic and EGM notice to take forward the asset sale of Sebacic to Sterling. The resolution provides for sale and transfer of all existing assets as mortgaged to Sterling (lender). The explanatory statement attached to the Resolution records that Sebacic was unable to restart its operations and assets and facilities of the company have been lying dormant. Sebacic has been unable to pay the bride loan to Sterling (lender), despite multiple notices from the lender. Hence Sebacic has resolved to sell the assets as set out in the mortgage deed to Sterling.	Pg. 91, Rejoinder to Resp. no. 2's Reply-IA 1222/24
27.	01.08.2023	Letter of authorisation issued by sterling in favour of Samir Dalia. In this document, Sterling has stated	Pg 34-Resp. no. 3's Reply - IA 1222/24

		that since Sebacic failed to pay the Loan as mentioned in the Mortgage Deed, Sterling has taken possession of the Mortgaged assets of Sebacic and is appointing Samir Dalia to look after security labour and other related matters of such assets.	
28.	02.08.2023	Email from Vishal Shah to Samir Dalia forwarding the Letter of authorisation dt. 1.8.2023.	Pg. 5-Resp. no. 3's Additional Reply-IA 1222/24 26-Resp
29.	03.08.2023	Tushar Patel (R3) sold his entire equity shareholding in Sebabic to Sterling	Pg 26-Resp no. 3's Reply-IA 1222/24
30.	30.09.2023	Pankaj Pandya sold his equity shareholding in Sebacic to Vishnu Patel. Mr. Pankaj Pandya was holding 4.19% share in the CD.	
31.	31.10.2023	Vishnu Patel sold his entire equity shareholding in Sebacic to Tushar Barot. ,	Para 4-Resp. no. 2's Reply, Pg. 29- IA 1222/24
32.	15.12.2023	Letter of withdrawal, purportedly issued by Sterling withdrawing authority given by Sterling to Samir Dalia. It is submitted that, This letter is fabricated and back dated. There is no proof of sending this letter to Samir Dalia. In fact, Samir Dalia in his affidavit has admitted that this letter was never received by him. Even after this letter, on 23.12.2023, Samir Dalia is appointed as a Director of Sebacic by Sterling. Till the date of admission of CIRP, Samir Dalia was on the premises when IRP went to take over.	Pg. 17, rejoinder to Resp no. 3's Reply-IA 1222/24
33.	23.12.2023		Pg. 41, Resp. no. 3's reply-IA 1222/24
34.	26.12.2023	Email to Samir Dalia from Govind Salian through Kalpesh bhai sharing copy of original sale deed of Sebacic by which Sebacic purchased various	Pg. 53-Resp. no. 3's Reply-IA 1222/24

		parcels of land of its factory premises.	
35	01.02.2024	Email from Manoj Jadhav to Samir Dalia regarding outstanding payment of security agency at Sebacic's Baroda unit which is overseen by Samir Dalia.	Pg. 22-Resp. no.3's Reply - IA 1222/24
36.	11.04.2024	Email from Govind Salian to Kalpesh sharing draft of various agreement to be executed between Sterling and Sebacic for sale of Sebacic's immovable properties to Sterling and its registration before sub registrar Padra Mamlatdar office. The following documents were enclosed therewith: 1. A Deed of reconveyance to be executed between Sterling and Sebacic to record that Sebacic has repaid the loan to Sterling and therefore for Sterling to reconvey the mortgaged assets to Sebacic. (pg. 58). The CD had authorised Mr Tushar Barot its director to execute the above documents before the Sub-Registrar Padra. However, these documents were not executed. 2. Subsequently, a Deed of conveyance was to be executed between Sebacic and Sterling Oleo Chemicals Private Limited for Sebacic to sell the its immovable properties to Sterling Oleo Chemicals Private Limited for 9.25 crore. (pg. 74). The email states that Sterling has paid stamp duty and registration fee.	Pg. 56-Resp. no. 3's Reply - IA 1222/24 (Anx. A/7, Samir Dalia's Affidavit)
37.	15.05.2024 16.06.2024	CP (IB) No. 53 of 2023 was allowed and Sebacic was admitted in CIRP. CA Manish K. Bhagat was appointed as the IRP. Order dated 15.05.2024 was rectified to correct the registration no. of the IRP	Anx 2-pg 17-IA 1222/24
38.	18.05.2024	IRP made a public announcement calling upon all creditors to submit their respective claims on or before 29.05.2024.	Anx. 5 of IA-IA 1222/24
39.	28.05.2024	Sterling submitted its claim form to the IRP as a financial creditor having a claim of INR 16,73,03,357 on basis of	Anx 6, pg. 68-IA 1222/24

		(a) Loan Agreement dated 24.3.23 between Sebacic and Sterling for the purpose of discharging Sebacic's debt to SBI and Central Bank of India under OTS by making direct payments to the banks from 24.3.24-28.3.24 and (b) Mortgage Deed dated 12.6.23 between Sebacic and Sterling registered with the Registrar.	
40.	07.06.2024	IRP submitted before the NCLT a Report certifying the Constitution of Committee of Creditors. List of COC members at page 41 of IA.	Anx 3-Pg. 35 of-IA 1222/24
41.	08.06.2024	Notice issued by the IRP for the first meeting of COC to be held on 14.06.2024, comprising of Sterling, Vishnu Patel, Tushar Patel, Ramesh Patel and Piyush Patel.	Anx 9-Pg. 154-IA 222/2024
42.	10.06.2024	Email from Govind Salian to the IRP to remove Vishnu Patel and Tushar Patel from COC on the ground that as per shareholding report of Sebacic as on 03.03.2023, Vishnu Patel holds 64.3159% shares and Tushar Patel holds 2.85% shares.	Anx 10-Pg. 190, at pg. 192 of IA 1222/24
43.	11.06.2024	Email from Govind Salian to the IRP to rectify list of COC members by removing Vishnu Patel and Tushar Patel.	Anx. 11-Pg. 195- IA 1222/24
44.	13.06.2024	Email from Govind Salian to the IRP to rectify list of COC members by removing Vishnu Patel and Tushar Patel.	Anx 12, pg. 196- IA 1222/24
45	16.06.2024	Minutes of the first COC meeting.	Anx 13-Pg 197-IA 1222/24
46.	19.06.2024	Email from Govind Salian to the IRP objecting to approval of Minutes of Meeting of first COC meeting wherein Vishnu Patel and Tushar Patel are members.	Anx 14-Pg 222-IA 1222/24
47.	20.06.2024	Email from IRP to Govind Salian informing that COC is constituted on basis of shareholding position of financial creditors as on 15.05.2024.	Anx 15-Pg 223-IA 1222/24
48.	22.06.2024	Email from IRP to Govind Salian informing that there is no change in	Anx 15-Pg 223-IA 1222/24

		COCO i.e. Vishnu Patel and Tushar Patel are rightly included as members of COC.	
49.	08.07.2024	Minutes of second COC meeting	Anx p/10-Pg. 152-IA 1787/2024
50.	10.07.2024	Sterling filed Interlocutary Application No. 1222 of 2024 before NCLT under Section 60(5) of the Code.	
51.	13.07.2024	Third COC meeting was held	

17. We have heard Ld. Counsels for all the Parties, considered their written submissions, precedents relied upon in support of their submissions, and perused the material available on record.

18. The following issues are framed for detailed adjudication, based on the pleadings, submissions, and evidence: -

(i). Whether Sterling Auxiliaries Pvt. Ltd. is a genuine financial creditor under Section 5(7) of the IBC or a related party to the Corporate Debtor under Section 5(24), warranting its removal from the CoC?

(ii). Whether Vishnu Patel and Tushar Patel are related parties to the Corporate Debtor under Section 5(24) of the IBC as on 15.05.2024, warranting their removal from the CoC or whether their inclusion in the CoC complies with Section 21(2) and is lawful?

(iii). Whether Ramesh Patel and Piyush Patel are related parties to the Corporate Debtor under Section 5(24) of the IBC as on 15.05.2024, warranting their removal from the CoC?

(iv). Whether the deadlock in the appointment of the Resolution Professional under Section 22 of the IBC requires judicial intervention, and if so, what directions are necessary to ensure the smooth functioning of the CIRP?

(v). Whether the actions of the IRP in constituting the CoC and handling claims were in accordance with the IBC and relevant regulations, and whether any procedural lapses warrant corrective measures/replacement?

18. Section 5(7) & 7(8) of the IBC: deals with Definition of "**financial creditor**" and "**financial debt**" which is reproduced here under: -

(7) "**financial creditor**" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) "**financial debt**" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes–

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

19. Section 5(24) of the IBC: Defines a "**related party**" in relation to a corporate debtor, including:

- A director or key managerial personnel (KMP) or their relatives.
- A person holding more than 2% of the share capital.
- Any person who controls or influences the corporate debtor's management or board.
- A relative of a director or KMP, as defined under Section 5(24A).

Section 5(24) of the IB Code is as under:

(24) "related party", in relation to a corporate debtor, means-

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid- up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of-

   (i) participation in policy-making processes of the corporate debtor; or

   (ii) having more than two directors in common between the corporate debtor and such person; or

   (iii) interchange of managerial personnel between the corporate debtor and such person; or

   (iv) provision of essential technical information to, or from, the corporate debtor;

(24A) "related party", in relation to an individual, means-

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation. - For the purposes of this clause, -

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:-

(i) members of a Hindu Undivided Family,
(ii) husband,
(iii) wife,
(iv) father,
(v) mother,
(vi) son,
(vii) daughter,
(viii) son's daughter and son,
(ix) daughter's daughter and son,
(x) grandson's daughter and son,
(xi) granddaughter's daughter and son,
(xii) brother,
(xiii) sister,
(xiv) brother's son and daughter,
(xv) sister's son and daughter,
(xvi) father's father and mother,

(xvii) mother's father and mother,
(xviii) father's brother and sister,
(xix) mother's brother and sister; and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;

20. Section 21(2) of the IBC: Stipulates that financial creditors who are related parties to the corporate debtor shall not have representation, participation, or voting rights in the CoC. The proviso clarifies that this exclusion does not apply to financial creditors regulated by a financial sector regulator solely due to debt-to-equity conversions prior to the CIRP commencement date.

21. Committee of creditors. –

(1) *The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.*

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

Provided that a 1[financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares ***1****[or completion of such transactions as may be prescribed], prior to the insolvency commencement date.*

21. **Section 22 of the IBC**: Governs the appointment of the RP. The CoC, in its first meeting, may, by a 66% majority vote, either appoint the IRP as the RP or replace the IRP with another RP. If the Board does not confirm the proposed RP within ten days, the Adjudicating Authority may direct the IRP to continue as the RP (Section 22(5)).

Section 22 of the IB Code is as under: -

***22.* Appointment of a Resolution Professional. -**

(1) *The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.*

(2) *The committee of creditors, may, in the first meeting, by a majority vote of not less than seventy-five per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.*

(3) *Where the committee of creditors resolves under sub-section(2)-*

(a) to continue the interim resolution professional as resolution professional, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional.

(4) *The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.*

(5) *Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the*

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resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

22. **Regulations 13 and 14 of the CIRP Regulations**: Mandate the IRP to verify claims within seven days of the last date for receipt and maintain a list of creditors. The IRP may estimate claims based on available information, but cannot adjudicate or reject claims, as per judicial precedents.

Regulations 13. Verification of claims:

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(1A) Where the interim resolution professional or the resolution professional, as the case may be, does not collate the claim after verification, he shall provide reasons for the same.

(1B) In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation.

(1C) The interim resolution professional or resolution professional, as the case may be, shall:-

(a) intimate the creditor within seven days of categorisation thereof under sub-regulation (1B) and provide reasons where such claim has been categorised as non-acceptable for collation; and

(b) put up the claims categorised as acceptable under sub-regulation (1B) and collated by him to:-

(i) the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and

(ii) submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.]

(2) The list of creditors shall be –

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors and guarantors of the corporate debtor 52[or their authorised representatives];

(c) displayed on the website, if any, of the corporate debtor;

(ca) filed on the electronic platform of the Board for dissemination on its website:

Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;

(d) filed with the Adjudicating Authority; and

(e) presented at the first meeting of the committee.

Regulations 13. 14. Determination of amount of claim:

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1),as soon as may be practicable, when he comes across additional information warranting such revision.

23. Key Precedents relied upon by the parties are as under:

- *Phoenix Arc Pvt. Ltd. v. Spade Financial Services Ltd.* (Civil Appeal No. 2842 of 2020, dated 01.02.2021): The Supreme Court held that the exclusion under Section 21(2) applies to financial creditors who were related parties at the time the debt was created or who divested their related party status to circumvent the exclusion, emphasizing the prevention of conflicts of interest.
- *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta* (Civil Appeal No. 8766-67 of 2019): The Supreme Court clarified that the IRP's role is to collate claims, not adjudicate them.
- *PTC India Financial Services Ltd. v. Venkateswarlu Kari* (Company Appeal (AT) (Insolvency) No. 450 of 2018): The NCLAT reiterated that the IRP lacks adjudicatory powers over claims.
- *Dipak Bhadra v. RCBS Realty Pvt. Ltd.* (IA (IB) No. 471/KB/2021): The NCLT Kolkata held that past directorships do not disqualify a creditor unless cessation was intended to sabotage the CIRP.

ANALYSIS AND REASONING

24. The Issue No. (i); Whether Sterling Auxiliaries Pvt. Ltd. is a genuine financial creditor under Section 5(7) of the IBC or a related party under Section 5(24), warranting its removal from the CoC?

24.1. Tushar Patel in IA/1787(AHM)2024 contends that Sterling is a related party under Section 5(24) of the IBC as on 15.05.2024 due to its control over the Corporate Debtor's board through the appointment of nominee directors, including Mr. Sameer Dalia, in December 2023. He alleges that the loan agreement dated 24.03.2023 and mortgage deed dated 12.06.2023, through which Sterling advanced Rs. 16,73,03,357.52, are sham documents. Tushar Patel argues that the payment to SBI on 25.03.2023 was part of a takeover deal, not a financial debt, as evidenced by Sterling's letter to SBI, emails requesting details of nominee directors, and affidavits confirming Sterling's influence over the Corporate Debtor's management.

24.2. **Sterling** in IA/1222(AHM)2024 and reply in IA/1787(AHM)2024 refutes these allegations, asserting its status as a financial creditor, relying on the loan agreement dated 24.03.2023, approved by a board resolution on 11.03.2023, and the mortgage deed dated 12.06.2023, authorized by a resolution on 10.05.2023. Sterling claims the payment to SBI was to settle the OTS, securing its financial interest, and denies any control over the Corporate Debtor's management. Sterling's shareholding of 100 shares (0.00008%) is below the 2% threshold under Section 5(24)(d) or (e) for private/public companies and the 20% threshold under Section 5(24)(i) for voting control.

24.3. To understand the related facts, we consider appropriate to refer to some of the documents dealing with the transaction and these are discussed in the following paragraphs.

24.4. The loan agreement dated 24.03.2023 between Sebacic India Limited (as borrower) and Sterling Auxiliaries Private Limited (as lender), appearing on pages 74 to 94 of IA 1222/24, among other things provide for the following: -

(a) The purpose of the loan is to discharge the borrower's obligations (for the amounts equal to the State Bank of India and Central Bank of India under the respective one-time settlement schemes entered into by the Borrower with the said banks.

(b) Under the heading Amounts of the loan, the agreement notes that, " the lender shall provide the Bridge loan to the borrower in a single tranche or disburse the Bridge loan directly to State Bank of India and Central Bank of India (as the case may be) to the extent of the amounts outstanding to each of them from the borrower, pursuant to the undertaking and representations made by the borrower in this Agreement being true and correct.

(c) Regarding the purpose, the agreement notes that, "the borrower confirms that it shall apply the Bridge loan solely towards the purpose. The bridge loan shall not be utilised for any other purpose other than as may be agreed by the lender.

(d) Regarding the repayment, the agreement notes that, " the borrower shall repay the Bridge loan to the lender, on demand, in one bullet repayment together with interest, default interest., costs, charges, expenses and other monies whatsoever stipulated and payable to the lender arising out of or in connection with this agreement.

(e) The Board of Directors of Sterling had passed a resolution on 23.03.2023 to provide Bridge loan to the tune of Rs 12,00,00,000 for the purpose of discharging the obligations to the State Bank of India and Central Bank of India under the respective one-time settlement schemes entered into by the M/s Sebacic India Limited with the said banks.

(f) Resolution dated 11.03.2023 passed in the Extra Ordinary General Meeting of the shareholders of Sebacis India Limited resolved that, "the Board of Directors shall have exclusive authority to accept investment or otherwise in any form of equity, either from existing shareholders or prospective investors. Or to secure unsecured loan from shareholders, so as to meet the requirement of Rs 11 crores as to complete the one-time settlement with the Banks".

(g) Page 39 of the IA 1787/24 filed by Tushar Patel is a letter dated 25.03.2023 issued by Sterling Auxiliaries Private Limited to State Bank of India with subject:

Making payment for meeting the one-time settlement by Sebacis India Limited for account No. 32683423396. It notes that, "We have remitted am amount of Rs 900 lakhs for credit of the abovementioned account of Sebacis India Limited. The remittance has been sent with an intention and purpose to complete the one-time settlement obligation of the company. We would further like to inform you that we are in the process of finalising a complete take over deal from the existing shareholders of the company and the procedural aspects for completing the formalities shall be taking time as out legal team is finalising the documentation. The need of the hour is to meet the deadline for one time settlement and therefore it has ben found necessary to remit the amount residual for meeting the one-time settlement obligations."

24.5. The claim of Sterling in Form C filed before the IRP notes that the claim is of Rs 16,73,03,357 that comprises of principal loan amount of Rs 11,24,71,258.91 and the balance amount is on account of stamp duty charges mortgage, legal charge for mortgage- M M Singhi, Interest 16%, Default penal interest – 10%, stamp duty charges for conveyance deed, advance given to Doc Registration Advocate, Legal charges sale/reconveyance deed, Professional Fees, Security guard cost to safeguard the property, other administrative cost SAPL.

24.6. Pages 57 to 59 of IA 1787/24 by Tushar Patel is a share transfer agreement dated 23.03.2023 made at Mumbai between Sterling Auxiliaries Private Limited (Purchaser), Mr. Yogesh Pujara (Seller), and Sebacic India Limited (Company). The agreement provides that, "The seller isa shareholder in the company. At the request of the Company and Mr. Vishnu Patel (the majority shareholder of the company), the seller has agreed to sell (100) shares of the company to the purchaser and the purchaser has agreed to purchase the sale shares in terms of this Agreement and the Share Purchase Agreement dated on or about the date hereof, entered into by the Purchaser and the Company.

24.7. The facts stated on paragraphs 24.4 to 24.6 clearly demonstrate that Sterling paid the amount directly to SBI so that the obligations of one-time settlement are met. The purpose of making the payment to SBI by Sterling is clearly stated by Sterling in the letter addressed to SBI. Further, the approval given by the shareholders of Sebacic was for accepting investment or otherwise in any form of equity, either from existing shareholders or prospective investors. Further, the purchase of shares by Sterling from Yogesh Pujara on 23.03.2023 (in the same week of making payment to SBI) and also reference to the share purchase agreement between Sterling and Sebacis is considered as a part of a planned acquisition of shares of Sebacic by Sterling.

24.8. Based on the above, the claim of Sterling of advancing loan to Sebacic is not supported by facts and the amount paid is more of an investment to ensure that the company to be acquired is not subject to any adverse actions by the Banks and it acquires a company free of any liabilities from the banks.

24.9. Section 5(24) of the IBC defines a "related party" in relation to a corporate debtor, including, inter alia, directors, key managerial personnel, shareholders holding more than 2% of share capital, or any person who controls or influences the corporate debtor's management. Section 21(2) of the IBC excludes related party financial creditors from having representation, participation, or voting rights in the CoC.

24.10. The Supreme Court in ***Phoenix Arc Pvt. Ltd. v. Spade Financial Services Ltd.*** (Civil Appeal No. 2842 of 2020, dated 01.02.2021) clarified that the exclusion under Section 21(2) applies to financial creditors who were related parties at the time the debt was created or who divested their related party status to circumvent the exclusion. The Court emphasized that the purpose of the exclusion is to prevent conflicts of interest and ensure that related parties do not influence the CIRP to the detriment of other creditors.

24.11. The evidence indicates that Sterling's payment to SBI was made on 25.03.2023, accompanied by a letter from Sterling Auxiliaries Private Limited (page 39 of IA 1787/2024) stating it was in the process of finalizing a complete takeover deal. The loan agreement was executed on 24.03.2023, and the mortgage deed on 12.06.2023, after a board resolution on 10.05.2023. Tushar Patel points to an email dated 25.03.2023, where Sterling was asked to provide details of nominee directors, suggesting control over the Corporate Debtor's management. Additionally, affidavits from Mr. Vishnu Patel (dated 27.11.2024) and

Mr. Sameer Dalia confirm that Sterling's representatives, including Mr. Sameer Dalia, were appointed as directors in December 2023. Further, Mr. Nimish Mehta's email (page 160 of Rejoinder to Reply of R-2 in IA 1222/2024) also refers to takeover of the CD by Sterling. These facts clearly establish that Sterling was in the process of taking over the control and management of the CD and to avoid the recovery proceedings from the BANKS, Sterling provided funds to pay for OTS. As it had given funds, the loan and mortgage agreement can be considered document to secure its funding before actual take over.

24.12. The appointment of Sterling's nominees as directors, as evidenced by the affidavits and emails, establishes a relationship under Section 5(24), which includes a person who can control the composition of the board of directors. The share transfer to Mr. Tushar Barot, a nominee of Sterling, and the involvement of Sterling's group companies in preparing documents for asset transfer further indicate control over the Corporate Debtor's affairs.

24.13. Regarding the financial creditor status, Section 5(8) of the IBC defines "financial debt" as a debt disbursed against the consideration for the time value of money. The loan agreement and mortgage deed, though executed, appear inconsistent with the timeline and intent. The loan agreement (24.03.2023) was executed after the board resolution on 11.03.2023 authorizing Mr. Nimish Mehta, but the mortgage deed (12.06.2023) was executed after 90 days, not within the stipulated 45 days, raising doubts about its legitimacy. Moreover, Sterling's sister concern, Omtech Chemical Industries Pvt. Ltd., submitted an Expression of Interest to take over the Corporate Debtor, contradicting Sterling's claim that it found the Corporate Debtor unworthy of acquisition due to statutory non-compliances.

24.14. The ***Phoenix Arc judgment*** warns against commercial contrivances designed to circumvent the related party exclusion. The sequence of events—payment to SBI, appointment of nominee directors, and preparation of asset transfer documents—suggests that Sterling's loan was part of a takeover strategy rather than a genuine financial debt. The Adjudicating Authority finds that Sterling's actions align with a related party attempting to influence the CIRP, disqualifying it from CoC membership under Section 21(2).

24.15. Therefore, **Sterling Auxiliaries Pvt. Ltd.** is a **Related Party** to the Corporate Debtor as on 15.05.2024 under Section 5(24) (h), (l), (m)(i), due to its control over the Corporate Debtor's board through nominee directors as on 15.05.2024. The loan agreement and mortgage deed are sham transactions, as the payment to SBI was part of a takeover deal, not a genuine financial debt. Thus, Sterling is not a valid financial creditor under Section 5(7) and is liable to be excluded from the CoC under Section 21(2).

25. The Issue No. (ii): Whether Vishnu Patel and Tushar Patel are related parties to the Corporate Debtor under Section 5(24) of the IBC as on 15.05.2024, warranting their removal from the CoC or whether their inclusion in the CoC complies with Section 21(2) and is lawful?

25.1. Sterling in IA/1222(AHM)2024 & Reply alleges that Tushar Patel and Vishnu Patel are related parties due to their historical roles as promoters, directors, shareholders (64.31% for Vishnu Patel and 2.85% for Tushar Patel as of 03.03.2023), and guarantors. The Gujarat High Court judgment (25.06.2021) identifies them as part of the promoter group. Sterling argues that their share divestments post the insolvency filing on 16.01.2023 are avoidable transactions under Sections 43 or 45, intended to manipulate CoC participation.

25.2. The **IRP** and **Tushar Patel, Vishnu Patel** assert that as on 15.05.2024, Tushar Patel and Vishnu Patel held no shares or directorships, as per the shareholding pattern (30.12.2023) and MCA Master Data. Tushar Patel ceased directorship on 26.08.2018, and Vishnu Patel on 26.08.2023. They argue that past roles do not disqualify them under Section 5(24), citing ***Dipak Bhadra***.

25.3. The **Phoenix Arc judgment** holds that the related party status must be assessed "in praesenti" as on the CIRP commencement date, unless there is evidence of divestment to circumvent the exclusion. The NCLT Kolkata in ***Dipak Bhadra v. RCBS Realty Pvt. Ltd.*** (IA (IB) No. 471/KB/2021) clarified that past directorships do not automatically disqualify a creditor unless the cessation was intended to sabotage the CIRP.

25.4. **Section 5(24)(a), (j):** Includes directors, KMP, or those with significant influence. Tushar Patel's directorship until

26.08.2018 and Vishnu Patel's until 26.08.2023, combined with guarantees, establish influence.

25.5. **Section 5(24A)(b):** The familial tie, where Tushar Patel's son is married to Vishnu Patel's daughter, qualifies both as related parties under Section 5(24A)(b), read with the Explanation defining 'relative' to include son-in-law and father-in-law.

25.6. The evidence shows that Vishnu Patel transferred his 76% shareholding to Mr. Tushar Barot in September and October 2023, after the insolvency application was filed on 16.01.2023. The affidavit of Vishnu Patel dated 27.11.2024 reveals that the transfer was facilitated by Sterling, with cheques issued by Tushar Barot to be encashed only after Sterling's payment, indicating a coordinated arrangement. This suggests an attempt to divest related party status to participate in the CoC, falling within the **Phoenix Arc** prohibition.

25.7. Tushar Patel's shareholding (2.85%) and directorship until 26.08.2018, Vishnu Patel's shareholding (64.31%) and directorship until 26.08.2023, their personal guarantees, and familial relationship (Tushar's son married to Vishnu's daughter) establish related party status under Section 5(24)(a), (j), and (24A)(b). Vishnu's transfer of 76% shares to Tushar Barot in September/October 2023, post-insolvency filing (16.01.2023), facilitated by Sterling (per Vishnu's affidavit dated 27.11.2024), constitutes a preferential transaction under Section 43, as it was within the two-year look-back period for related parties (Section 43(4)(a)) and intended to secure CoC participation, per Phoenix Arc. Alternatively, the share transfers at 45 paisa per share (as per email dated 25.03.2023, para 16, Sr. No. 20) may constitute undervalued transactions under Section 45, as they appear significantly below market value, intended to secure CoC participation. The IRP is required to assess the transfer value against the CD's asset valuation. Therefore, these transfers are avoidable, warranting their CoC exclusion under Section 21(2).

25.8. Therefore, Tushar Patel and Vishnu Patel are related parties under Section 5(24)(a), (j), and (24A)(b) as on 15.05.2024, due to their historical roles, guarantees, familial relationship, and strategic share divestments. Their inclusion in the CoC violates Section 21(2) and are liable to be excluded from the CoC under Section 21(2).

26. The Issue No.(iii): Whether Ramesh Patel and Piyush Patel are related parties to the Corporate Debtor under Section 5(24) of the IBC as on 15.05.2024, warranting their removal from the CoC?

26.1. Regarding Ramesh Patel and Piyush Patel, no specific evidence establishes their related party status under Section 5(24) as of 15.05.2024. They held no directorships or significant shareholding, and no familial ties to the CD's management are proven. Therefore, they are not found to be related parties.

27. The Issue No.(iv): Whether the deadlock in the appointment of the Resolution Professional under Section 22 of the IBC requires judicial intervention, and if so, what directions are necessary to ensure the smooth functioning of the CIRP?

27.1. The deadlock arose in the first CoC meeting (14.06.2024), where only 51.16% voted to continue the IRP as the RP and 48.84% against, falling short of the 66% threshold under Section 22(2). Sterling's dissent, based on its objections to the CoC's constitution, caused the impasse. The IRP seeks directions in IA/1037(AHM)2024 to resolve this and ensure CIRP progression.

27.2. Section 22(5) allows the Adjudicating Authority to direct the IRP to continue as the RP if the Board does not confirm a proposed RP within ten days. Given the findings that Sterling, Tushar Patel, and Vishnu Patel are related parties, their voting shares (48.84% + 11.85% + 28.50% = 89.19%) are excluded under Section 21(2).

27.3. The CIRP is a time-bound process under Section 12 of the IBC, and delays due to CoC disputes undermine its objective of maximizing asset value. The exclusion of related parties ensures impartial decision-making. Judicial intervention is warranted to break the deadlock and ensure compliance with the IBC.

27.4. The deadlock necessitates reconstitution of the CoC, excluding Sterling, Tushar Patel, and Vishnu Patel, followed by a fresh vote for the RP's appointment. If no RP is appointed, the IRP should continue as the RP under Section 22(5) until a new RP is confirmed.

28. The Issue No.(v): Whether the actions of the IRP in constituting the CoC and handling claims were in accordance with the IBC and relevant regulations, and whether any procedural lapses warrant corrective measures/replacement?

28.1. The IRP's role in verifying claims and constituting the CoC is governed by Regulations 13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Supreme Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta* (Civil Appeal No. 8766-67 of 2019) and NCLAT in *PTC India Financial Services Ltd. v. Venkateswarlu Kari* (Company Appeal (AT) (Insolvency) No. 450 of 2018) clarify that the IRP's role is to collate claims, not adjudicate them.

28.2. The IRP constituted the CoC based on claims submitted and information available as on 15.05.2024, as per Regulation 13. Sterling's emails (10.06.2024, 11.06.2024, 13.06.2024, 14.06.2024, 20.06.2024, 22.06.2024) highlighting the related party status of Tushar Patel and Vishnu Patel, were not adequately addressed.

28.3. While the IRP followed claim collation procedures, his inaction on related party allegations and lack of transparency regarding Pankaj Pandya constitute procedural lapses. However, replacement is not warranted, as Section 27 allows the Adjudicating Authority to replace the IRP for misconduct, but the lapses here (inadequate investigation and transparency) are correctable through directions.

28.4. Therefore, the IRP is required to re-evaluate all claims with due diligence, ensuring compliance with Section 21(2) and the cited precedents.

FINDINGS AND DIRECTIONS

29. Therefore, it is held that **Sterling** is a related party under Section 5(24)(h), (l), (m)(i) due to its control over the Corporate Debtor's board, and its loan is a sham transaction, disqualifying it as a financial creditor under Section 5(7), warranting CoC removal.

30. It is also held that **Tushar Patel** and **Vishnu Patel** are related parties under Section 5(24)(a), (j), and (24A)(b) due to their past directorships, shareholding, personal guarantees, and familial relationship, with their share divestment being an avoidable transaction, rendering their CoC inclusion unlawful, warranting their removal from the CoC.

31. Further, the deadlock in the RP's appointment necessitates judicial intervention. The CoC must be reconstituted, excluding Sterling, Tushar Patel, and Vishnu Patel, and a fresh vote conducted for the RP's appointment. The IRP shall continue as the RP under Section 22(5) until a new RP is confirmed.

32. The IRP's actions in constituting the CoC were partially non-compliant due to inadequate investigation of related party status. The IRP's procedural lapses warrant re-evaluation of claims and CoC reconstitution. The IRP's procedural lapses do not justify replacement but require corrective measures.

33. Accordingly, in view of the above findings following order is passed: -

(a). **IA/1037(AHM)2024** is partly allowed. The IRP, **Manish Kumar Bhagat**, shall continue as the RP under Section 22(5) of the IB Code until a new RP is appointed by the reconstituted CoC. The respondents are directed to cooperate with the IRP/RP for the smooth functioning of the CIRP.

(b). **IA/1222(AHM)2024** is partly allowed. **Tushar Patel** and **Vishnu Patel** are removed from the CoC as related parties under Section 21(2) of the IB Code.

(c). IA/1787(AHM)2024 is allowed. **Sterling Auxiliaries Pvt**. Ltd. is also removed from the CoC as a related party under Section 21(2) of the IB Code.

(d) Other prayers in **IA/1222(AHM)2024,** including replacing the IRP with Rajkumar Jaiswal (prayer E) and staying the CIRP (prayer I), are rejected, as the IRP's lapses do not warrant replacement under Section 27, and the CIRP stay is **vacated** to ensure timely resolution per Section 12 of the IB Code.

(e). The IRP shall reconstitute the CoC, excluding Sterling Auxiliaries Pvt. Ltd., Tushar Patel, and Vishnu Patel, within 7 days and conduct a fresh vote for the RP's appointment within 14 days from the date of this order.

(f). The IRP shall re-evaluate all claims, including Pankaj Pandya's, addressing Sterling's objection that he is part of the promoter group (per Gujarat High Court, 2021, para 12.13), ensuring compliance with Section 21(2) and the ***Phoenix Arc judgment***, and explicitly verify his non-related party status as of 15.05.2024, and file a revised CoC constitution report with this Adjudicating Authority within 21 days.

-Sd-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)
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-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)