

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 829 of 2019

[Arising out of Order dated 19th July 2019 passed by NCLT, New Delhi Bench-III in CP(IB) - 55/ ND/ 2018]

IN THE MATTER OF:

**1. Spade Financial Services Limited
Through its Authorised Representative
Mr S.C. Arora
Having Registered Office at:
K-24, Jangpura Extension
New Delhi – 110014**

**2. AAA Landmark Private Limited
Through its Authorised Representative
Mr S.C. Arora
Having Registered Office at:
K-24, Jangpura Extension
New Delhi – 110014**

...Appellants

Versus

**1. Hari Krishan Sharma
Operational Creditor/Applicant u/s 9 of IBC
R/o 36/1, Krishna Nagar (Bagu)
NH-24, Ghaziabad
Uttar Pradesh – 201009**

**2. AKME Projects Limited
A Company registered under the provisions
of the Companies Act, 1956
Through Resolution Professional (RP)
Mr Anurag Sharma
IBBI/IPA-002?IP-N00209/2017-18/10728
40 LGF, National Park
Lajpat Nagar-IV
New Delhi – 110024
Anurag.s.irp@gmail.com**

**3. Anil Nanda
Ex-Director
M/s AKME Projects Limited
S/o Shri H.P Nanda
R/o 12 C, Friends Colony West
New Delhi – 110025**

4. **Yes Bank Limited**
(The applicant in CA-268/C-2/ND/2018 & CA-269/C-2/ND/2018)
48, Nyay Marg, Chanakya Puri
New Delhi – 110021
subhal.garg@yesbank.in
sanju.kumar@yesbank.in
5. **Phoenix ARC Private Limited**
(The applicant in CA-337/C-2/ND/2018 and CA-338/ND/2018)
5th Floor, Dani Corporate Park
158 CST Road, Kalina
Santacruz (E) Mumbai – 400098
pallavi.chavan@phoenixarc.co.in
ajit.kewin@phoenixarc.co.in
- ...Respondents

Present:

For Appellant: Shri Ramji Srinivasan, Sr. Advocate with Shri Lokesh Bhola, Shri Rohit K. Nagpal, Shri Karan Grover, Ms Syloma Mohaptra and Shri Yash Patel, Advocates

For Respondent: Shri Abhishek Anand, Advocate (R-2)
Shri Neeraj Yadav and Ms Aditi Sharma, Advocates (R-4)
Shri Amit Chadha, Sr. Advocate with Ms Sonaakshi Dhiman, Shri Suresh Dobhal, Ms Srishti Grovil and Shri Sharan Mehta, Advocates (R-5)

J U D G M E N T

[Per; V. P. Singh, Member (T)]

The present appeal is preferred against the common impugned order dated 19th July 2019 passed by the National Company Law Tribunal, New Delhi Bench -III in CP (IB) No. 55 /ND/2018 titled as 'Hari Krishan Sharma Versus AKME Project Limited'. By the impugned order the Adjudicating Authority has held that Mr Arun Anand and his Companies, namely, Spade and AAA Landmark were related parties to the 'Corporate Debtor'. However, after 2013 (soon after signing the Agreement to Sell), Arun Anand resigned from Anil Nanda Group, and so they are no longer related to the 'Corporate Debtor' at the time of filing of an application for initiation of 'Corporate

Insolvency Resolution Process'. The Adjudicating Authority further observed that the affairs of the 'Corporate Debtor; as well as the Group of Arun Anand companies are deeply entangled and it is difficult for the Tribunal in a summary jurisdiction to unravel the same. Considering that the 'Corporate Debtor' and Spade and AAA were in close business relationship in the past and also the fact that the accounts of the 'Corporate Debtor' have not been finalised and audited and filed with the Registrar of Companies since 2016, the Adjudicating Authority has allowed the application of the Yes Bank Limited and Phoenix ARC Private Limited and declared that **the Spade and AAA Landmark are related parties to the 'Corporate Debtor'**. Feeling aggrieved by the said order, this appeal has been filed.

2. The main issue under-challenge is regarding the declaration of Appellants Spade Financial Services Limited, and its wholly-owned subsidiary AAA Landmark Private limited as a related party to the corporate debtor AKME Projects Ltd. They are in the 'Committee of Creditors' of the corporate debtor "AKME Projects Limited (for brevity APL)" because of being 'Financial Creditors' of APL. The main ground under challenge is that Spade Financial Services Limited and AAA Landmark Private Limited are companies promoted and managed by Sh. Arun Anand, who is a related party of the 'Corporate Debtor'.

3. The Yes Bank Limited, one of the 'Financial Creditor' of the 'Corporate Debtor' has stated in CA-268/2018 and CA-269/2018, that their voting share in the 'Committee of Creditors' was 15.27%. But the same was reduced to 4.28%, pursuant to the claims of AAA Landmark Private Limited

and Spade Financial Services Private Limited. The Yes Bank Limited has stated that these two entities are related parties to the 'Corporate Debtor' as per provisions of Section 5(24) and Section 21(2) of the 'Insolvency and Bankruptcy Code, 2016'. Thus they should not have been granted the right of representation, participation or voting in the meeting of 'Committee of Creditors' of APL.

4. Similarly, Phoenix ARC Private Limited has stated that they had accrued its rights by registered Deed of Assignment dated 28th December 2015, whereby, Karnataka Bank Limited, assigned its Non-Performing Asset (concerning the credit facilities granted by Karnataka bank Limited to the 'Corporate Debtor' / AKME Projects Limited) in favour of Phoenix. Thus their voting share in the 'Committee of Creditors' was reduced to 4.218%, pursuant to acceptance of the claims of AAA Landmark Private Limited and Spade Financial Services Private Limited, as the financial creditors of APL, and their inclusion in the Committee of Creditors.

5. That the question arises for our determination is as under:

Whether appellants Spade Financial Services Private Limited (Appellant No.1) and AAA Landmark Private Limited (Appellant No.2) are related parties to the Corporate Debtor, AKME Projects Limited, in terms of Section 5(24) and Section 21(2) Insolvency and Bankruptcy Code, 2016?

6. The brief facts of the case are that the Corporate Insolvency Resolution Process (CIRP) has been initiated against the Corporate Debtor

AKME Projects Limited on 18th April 2018 on an application filed by the Operational Creditor, respondent No.1. During Corporate Insolvency Resolution Process (in short 'CIRP') claims were invited by Interim Resolution Professional (in short 'IRP'). The appellants Spade Financial Services Private Limited and AAA Landmark Private Limited filed their claims as Financial Creditors. The 'IRP' rejected the claim of appellant No.1 on the ground that the alleged transaction does not involve time value money. The appellant No.2 claim was rejected by 'IRP' on the ground that it was received after the last date of submission of the claim as stated in public announcement. The rejection of the claim was challenged before the Ld. Adjudicating Authority. The Adjudicating Authority held that there is no dispute, that the amount has been received by the corporate debtor as a deposit, which is duly mentioned in the balance sheet. The entries of interest payment are reflected in Form '26 AS', deducting TDS on interest and thus claim of appellant No.1 is a Financial Creditor. After that first meeting of Committee of Creditors (in short 'CoC') held on 1st June 2018, unanimous decisions were taken to have a forensic audit into the accounts of Corporate Debtor and replace the 'IRP'.

7. During first 'CoC' the Financial Creditors, i.e. Yes Bank (Respondent No.4) and Phoenix ARC Private Limited (Respondent No.5) filed an application that the Appellants No.1 and 2, i.e. Spade and AAA Landmark from the CoC, be declared as a related party to the Corporate Debtor AKME Projects Limited.

8. The allegations based on which the R-4 claimed Appellants to be related party are at Para 16 [at Pg. 196 & 212] of its application and Para 14 [at Pg. 229 & 246] of Application by R-5. The sum and substance of allegations are as under:

- i. *Arun Anand, Director of both Appellants, was appointed as Group CEO, of Anil Nanda Group of Companies of which CD was a part, on 26.11.2012 till February 2013.*
- ii. *Agreement to Sell dated 25.10.2012 read with Development Agreement dated 01.03.2012 reveals joint development/ partnership between Appellant no 2 & CD.*
- iii. *Name of one of the projects of CD “AKME Raaga” derived from the name of CD and Raaga Realtech, a company belonging to Mr Arun Anand, thus is a partnership.*
- iv. *Mr Sonal Anand (Director of CD) is Co-brother of Mr Arun Anand.*
- v. *CD & JIPL (holding Company of CD) holds shares of Appellant No-1, totalling to 1.45% voting rights in Appellant No-1.*
- vi. *Mr Arun Anand held 20000 shares of CD in the past and Mr Anil Nanda had working relations with Mr Arun Anand in the past.”*

9. The Adjudicating Authority allowed the application of Respondent No.4 and Respondent No.5 vide impugned order dated 19th July 2019. The appellant contends that the impugned order is based on incorrect factual findings not supported by any record. By the impugned order the Adjudicating Authority has reversed its earlier order dated 31st May 2018, which had remained unchallenged and undisputed.

10. The appellant contends that Rs.43.06 crores have been credited to the account of Mr Arun Anand is a baseless and against the record. Mr Arun Anand was not Director of Corporate Debtor, nor any allegation was made in this regard. Appellant has also raised the issue that finding of the Adjudicating Authority regarding the collusive transaction is based on non-credit of Rs.43.06 crores in the account of Mr Arun Anand, is based on a false assumption about entire amount under ICDs, which was never given to the Corporate Debtor. It is further contended by the appellant that Association of Mr Arun Anand with the Corporate Debtor and its Group of Companies as Director and shareholder is also baseless and against the record. The finding of the Adjudicating Authority is based on factually incorrect facts. The appellants vehemently contended that they are not a related party to the Corporate Debtor. The allegations for five years before the commencement of CIRP would not be a relevant consideration, given the provision of Section 43(4) and Section 46 of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code, 2016).

11. We have heard the counsel for both the parties and perused the record. Admittedly appellants are the Financial Creditors of the Corporate Debtor AKME Projects Limited (in short 'APL'). By the impugned order, Adjudicating Authority had treated the appellant as a related party to the Corporate Debtor, as per provision of Section 5(24) and Section 21(2) of the I&B Code, 2016. To know the natures of the transactions entered into between the appellants and the Corporate Debtor, it is imperative that status, influence and interrelationship among the parties must be

examined, inter-alia, for the period of the transactions that were entered into between in 2010 to 2013.

In this regard, the close relationship of the key managerial person of the Corporate Debtor (Mr Anil Nanda) and Appellant (Mr Arun Anand) is quintessential. Based on the claim forms of the appellants, signed by Mr Arun Anand and the documents filed before the Adjudicating Authority, it is evident that Mr Arun Anand (Director of the Appellants) worked for Mr Anil Nanda, Corporate Debtor) for over 25 years and purported transactions from 2010 to 2013 were entered into vide Mr Arun Anand, who had worked as an employee for Escorts Limited/Nanda Group of Companies specifically Mr Anil Nanda including AKME Projects Limited the Corporate Debtor, and also held Key Managerial roles in the companies. The chart below clearly shows each transaction and the relationship of the persons above:

- (i) On perusal of the documents, it is clear that AKME Projects Limited, Spade Financial Services Private Limited and AAA Landmark Private Limited throughout has common Key Managerial person Mr Arun Anand and Mr Sonal Anand, who acted and benefited Mr Anil Nanda and his Group of Companies, i.e. Goetze India, NANZ or AKME Projects Limited during 2010 to 2013. These personals entered into transactions as managerial persons of one entity, while holding an essential portfolio in the other. The following chart reveals:

- a) Each transaction and the relationship of associated persons specifying the conditions of Section 5(24)(a) of the I&B Code, 2016.
- b) That on 02nd December 2010, Memorandum of Understanding between Spade Financial Services Private Limited and AKME Projects Limited was done for giving money to the Subros, which is apparent from page 390 of the reply of Phoenix ARC Private Limited. Mr Anil Anand signed this MOU on behalf of Spade Financial Services Private Limited, and it's on record that Mr Arun Anand was also the financial consultants for the Corporate Debtor AKME Projects Limited. Mr Sonal Anand was Whole Time Director of Joint Investment Private Limited, i.e. the holding company of AKME Projects Limited and Mr Anil Nanda was Promoter/ Director of the AKME Projects Limited.
- c) On 8th February 2011, Memorandum of Understanding between appellant Spade Financial Services Private Limited and the Corporate Debtor AKME Projects Limited was entered into towards Spade Financial Services Private Limited shares in AKME Raaga Projects (At page 391 of the reply of Phoenix). At the time of Memorandum of Understanding, Mr Arun Anand was the Financial Consultant for the Corporate Debtor AKME Projects Limited,

and at that time Mr Sonal Anand was Whole Time Director of Joint Investment Private Limited (holding company of a Corporate Debtor AKME Projects Limited) and Director of the Corporate AKME Projects Limited, and Mr Anil Nanda was the Director of the Corporate Debtor AKME Projects Limited.

d) On 18th May 2011, an Agreement to Sale was executed between Corporate Debtor AKME Projects Limited and the appellant Spade Financial Services Private Limited for alleged development of the project. The said agreement was entered, even though Spade Financial Services Private Limited was incorporated only to render financial services at the time of agreement Mr Arun Anand was appointed as Financial Consultant/Strategic Advisor for the Corporate Debtor AKME Projects Limited and Mr Sonal Anand was Whole Time Director of Joint Investment Private Limited, i.e. holding company of AKME Projects Limited and Director of the Corporate Debtor AKME Projects Limited and Mr Anil Nanda was Promoter/Director of AKME Projects Limited.

e) On 12th August 2011 Memorandum of Understanding was arrived between Corporate Debtor AKME Projects Limited and Spade Financial Services Private Limited, stating that ICD of Rs.26.55 crores granted to AKME Projects Limited by Spade Financial Services Private Limited (At page 844 of the

reply of Phoenix ARC Private Limited). At the time of the alleged transaction, Mr Arun Anand was Financial Consultant/ Strategic Advisor for the Corporate Debtor AKME Projects Limited, Mr Sonal Anand was Whole Time Director of Joint Investment Private Limited, i.e. holding company of AKME Projects Limited and Director of the Corporate Debtor. Mr Anil Nanda was the Director of the Corporate Debtor of the AKME Projects Limited.

- f) On 1st March 2012 the Corporate Debtor (through Mr Anil Nanda) and AAA Landmark Private Limited (through Mr Arun Anand) executed the alleged development agreement (At page 163 to 178 of the reply of Phoenix ARC Private Limited). At the time of execution of development agreement, Mr Arun Anand was Financial Consultant/ Strategic Advisor for the Corporate Debtor AKME Projects Limited. Mr Sonal Anand was Whole Time Director of Joint Investment Private Limited, i.e. holding company of AKME Projects Limited and Director of AKME Projects Limited. Mr Anil Nanda was promoter Director of AKME Projects Limited.
- g) That on 25th October 2012, Agreement to Sale, AAA Landmark Private Limited along with the letter, incorporating terms akin to the development agreement (At page 179 to 192) and (At page 193 to 197 of reply to appeal by Phoenix ARC Private Limited). At the time of Agreement Mr Anil

Anand was appointed as Financial Consultant/Strategic Advisor for the Corporate Debtor AKME Projects Limited and Mr Sonal Anand was Whole Time Director of holding company Joint Investment Private Limited (JIPL) and Director of the Corporate Debtor AKME Projects Limited and Mr Anil Nanda was the promoter of AKME Projects Limited.

- h) On 16th/17th January 2013, email was sent by Mr Sonal Anand, the relation of Mr Arun Anand, to Mr Anil Nanda for 3rd party debts to Mr Bawa (At page 845 of the reply of respondent No.5). At the time of this email and Mr Arun Anand was Financial Consultant/Strategic Advisor for AKME Projects Limited, Mr Sonal Anand was Whole Time Director of the holding company of the Corporate Debtor AKME Projects Limited, and Mr Anil Nanda was Promoter/Director of the Corporate Debtor AKME Projects Limited.
- i) Admittedly, Spade Financial Services Private Limited was incorporated on 21st October 1994 and was promoted and managed by Mr Arun Anand, who was the Director and Majority Shareholder. The other Directors included his wife and daughter. The AAA Landmark Private Limited is a 100% subsidiary of the Spade Financial Services Private Limited and was incorporated in June 2011. Spade Financial Services Private Limited gave inter-corporate deposits to the Corporate Debtor from 1st June 2009 to January 2013

amounting to Rs.66 crores vide Memorandum of Understanding dated 12th August 2011. Out of inter-corporate deposits given by Spade Financial Services Private Limited to the Corporate Debtor, Rs.43.06 crores credited to the account of Mr Arun Anand by consent. The Spade Financial Services Private Limited was hired as Consultant by the Corporate Debtor on assignment basis during the period 1st June 2009 to 28th February 2011. Appellants contend that Mr Anil Nanda is the major shareholder of Joint Investment Private Limited (in short 'JIPL') the company holding 80% of the Corporate Debtor share. The Corporate Debtor is a part of Mr Anil Nanda Group of Companies, Mr Arun Anand holds different positions in the Group Companies of Mr Anil Nanda at different point of time. Details of the position held by Mr Arun Anand as per documents submitted before us is given below:

	Years	Positions held	Company
1.	1979-1993	Various positions Including Manager Limited	Escorts Limited
2.	1993-1995	General Manager (Finance)	Nanz Foods Products Limited
3.	1996	General Manager	GI Power Corporation Limited
4.	1996-2003	Various Positions including whole-time	Goetze India Limited

		director the executive director	
5.	2005-2007	Vice-Chairman & Managing Director	Federal-Mogul Goetze
6.	2007-2011	Consultant (Through Spade)	AKME Projects Limited
7.	2012-2013	Group CEO	The Anil Nanda Group of Companies
8.	2012-2013	Group CEO	The Anil Nanda Group of Companies

12. Appellants contend that Mr Arun Anand ceased to be a Director in AKME Projects Limited as on 31st March 2002. Mr Arun Anand and Mr Aditya Anand's shareholding in Corporate Debtor AKME Projects Limited, i.e. 20,000 equity share were sold in year 2004/2005.

13. That because Mr Arun Anand was a Group CEO of Mr Anil Nanda Group. It is alleged by respondent No.4 & 5 that Mr Arun Anand being a Key Managerial Person the corporate debtor is a related party to the corporate debtor in terms of Section 5(24)(b) of the I&B Code, 2016. Even otherwise both Mr Arun Anand and Spade Financial Services Private Limited on account of being CEO/Strategic Advisor/Consultant, at the relevant point of time, would fall within ambit of related party in terms of Section 5(24)(h) and Section 5(24)(m)(i) of I&B Code, 2016.

It is also alleged by the respondents No.4 and 5 that Mr Arun Anand is closely related to one of the Director of the Corporate Debtor Mr Sonal Anand, being brother- in- law (Brother of Mr Arun Anand's wife), who was

the Director of Corporate Debtor from November 2007 to 2013. It is further contended by the respondents that said Mr Sonal Anand and Mr Anil Anand have common Directors on the Board of the same Group of Companies, i.e. GI Power Company Limited, AKME Projects Limited, Akme Rhine River Projects Private Limited, Joint Investment Private Limited, GI Insurance Services Limited, Akme Maintenance 86 Utilities Limited and cathedral acme Projects Private Limited.

14. The appellant also contends that Mr Arun Anand has admitted in affidavit dated 4th August 2018 before the Adjudicating Authority that, Mr Sonal Anand was a Non-Executive Director of the Corporate Debtor, which categorically shows that Mr Arun Anand and Mr Sonal Anand fall in the category of a related party in terms of Section 5(24) of the I&B Code, 2016.

15. It is further pointed out by the IRP that Spade Financial Services Private Limited was claiming monies transferred by it to the account of AAA Landmark Private Limited, as Inter Corporate Deposit to the Corporate Debtor AKME Projects Limited, but no interest is claimed on such debt.

16. Respondent further contends that there was nexus between the Corporate Debtor AAA Landmark Private Limited and Spade Financial Services Private Limited.

17. The Learned Adjudicating Authority held that Mr Arun Anand and his Group Companies namely Spade Financial Services Private Limited and AAA Landmark Private Limited were related parties to the Corporate Debtor. **But after 2013, i.e. soon after signing the Agreement to Sale, Dt. 25th**

October 2012, Mr Arun Anand resigned from all the Companies of the Mr Anil Nanda Group, and they are no longer related to the Corporate Debtor at the time of filing of an application for initiating Corporate Insolvency Resolution Process (CIRP). But the Adjudicating Authority further observed that the affairs of the Corporate Debtors, as well as the Group of Arun Nanda Companies, are deeply entangled and it is difficult for the Tribunal in a summary jurisdiction to unravel the same. “Considering that the Corporate Debtor and Spade and AAA Landmark Private Limited were in close business relationship in the past and also the fact that the accounts of the Corporate Debtor have not been finalised and audited and filed with the Registrar of Companies since 2016, we have no hesitation in allowing the instant applications filed by Yes Bank Limited and Phoenix ARC Private Limited.”

18. The Appellant No 2, AAA Landmark Pvt Ltd and corporate debtor entered into a Development Agreement Dt 1.3.2012. Even after cancellation of this development agreement, and in place thereof the Appellant No 2 had entered into an Agreement to sale Dt 25.10.2012, yet the Appellant continued to be partner of the Corporate debtor in view of the terms of the agreement. On perusal of the letter 25.10.2012, issued by Appellant No 2 to the corporate debtor, it is evident that Agreement Dt 25th Oct 2012 was merely a camouflage, and the Appellant No2 and corporate debtor AKME were partners in developing the project to be sold to third party for profit. Therefore the Appellant No 2 is Related Party to the corporate debtor in

terms of Sec 5(24)(a) of the I& B Code 2016. Sec 5(24) of Insolvency and Bankruptcy Code 2106 is given as under for ready reference;

“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;

Thus, Appellant, No 2 is a related party to the corporate debtor in terms of Sec 5(24)(a) of the Insolvency and Bankruptcy Code 2016.

On perusal of the documents filed by the parties, it is also apparent that AKME Projects Ltd, i.e. Corporate Debtor, promoted by Sri Arun Anand and his son Mr Aditya Anand, being majority shareholder therein. The Arun Anand and his family members, i.e. his wife, his son and daughter are the majority shareholder in the Appellant SPADE Financial Services. The said Mr Arun Anand, Ms Renu Anand and Ms Gayatree Anand are the directors of the Appellant SPADE, while Appellant No 2, AAA Landmark is wholly owned subsidiary of it.

It is an undisputed fact that Mr Arun Anand is the director of the Appellant SPADE Financial Services since its inception. Even though Mr Arun Anand claims that he resigned from the corporate debtor since 2007. But even after that, the Appellant Spade Financial Services, was appointed as Consultant on 1.6.2009 to carry out the assignment, assigned by the corporate debtor. It is also on record that first Inter Corporate Deposit was given by the Appellant SPADE FINANCIAL SERVICES on 1.6.2009 when Appellant SPADE was appointed as a consultant. (Page 117-119 of

Respondent No's 4 replies).The said consultancy agreement of SPADE continued till 21.2.2011, after that the said agreement was terminated by the corporate debtor AKME Projects. After that instead of SPADE on 1.11.2011, Mr Arun Anand was appointed as Strategic Advisor. Mr Arun Anand was also appointed as Group CEO of the Anil Nanda Group of Companies including the corporate debtor, i.e. AKME Projects Ltd w.e.f. 26.11.2012.

Sec. 5(24)(h) of the Code provides that:

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

Admittedly in the present case, ICD worth Rs 26,55,00,000 was provided by Appellant No 1 SPADE to the corporate Debtor AKME bearing interest of 24%.No date is given when the ICD was given to the corporate debtor. It is mentioned that First ICD was given to the Corporate Debtor in mid of 2009, whereas MOU Dt 12.8.2001 shows that ICD were given by the Appellants when Appellant No 1 was a consultant to the corporate debtor. Thus it is clear that on the **advice, directions or instructions of the Appellants, a director, partner or manager of the corporate debtor is accustomed to act. Therefore the Appellants are related party to the corporate debtor in terms of Sec 5(24)(h) of the Code.**

Further Sec 5(24) of the Code provides that;

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

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

The Appellant No 1 being the consultant of the corporate debtor from 1.6.2009 to 21.2.2011 and its director and majority shareholder Mr Arun Anand being a strategic Advisor of the corporate debtor w.e.f.1.3.2011, being Group CEO of Anil Nanda Group of Companies, which clearly shows that both the Appellants are related Party in terms of **Sec 5(24)(m)(i) of the Code.**

Sec 5(24) of Insolvency and Bankruptcy Code 2106 provides that:

“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;

Sec 5(24-A) “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;

It is also pertinent to mention that Mr Arun Anand and Mr Sonu Anand continued to be director of the corporate debtor till 2013 and therefore Arun Anand being the relative also falls within the definition of a Related party in terms of Sec 5(24)(a) read with Sec 5(24)(A) of the Code.

On perusal of the documents specifically, Memorandum of Understanding signed on 2nd December 2010 signed between Spade Financial Services Private Limited through Mr Arun Anand and AKME Projects Limited Corporate Debtor, Memorandum of Understanding dated 8th February 2011 between Spade Financial Services Private Limited and AKME Projects Limited, Agreement to Sale dated 18th May 2011 between AKME Projects Limited and Spade Financial Services Private Limited allegedly development project and Memorandum of Understanding dated

12th August 2011 between AKME Projects Limited and Spade Financial Services Private Limited, Memorandum dated 1st March 2012 between AKME Projects Limited and AAA Landmark Private Limited, Agreement to Sale dated 25th October 2012 executed by AAA Landmark Private Limited and AKME Projects Limited. Therefore we are of the considered opinion that Mr Anil Nanda, Mr Arun Anand had created a Web of Companies in which both along with the near and dear ones including Ms Renu Anand (Wife of Mr Arun Anand) and Mr Sonal Anand (Bother-in-law of Mr Arun Anand) acted in a concert with each other. The said person and entities falls in the definition of related parties in terms of Section 5(24) of the I&B Code, 2016, specifically during 2010 to 2013 and based on that the Corporate Debtor Promoter/Director Mr Anil Nanda is trying to get back door entry to the Committee of Creditors of Corporate Debtor.

19. Section 5(24)(f) of I&B Code, 2016 provides that 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.

Pertinently during the transaction period of 2010 to 2013, Spade Financial Services Private Limited under Mr Arun Anand was making substantial financial arrangements on behalf of AKME Projects Limited by acting on the advice, directions or instructions of the Director and Management of the AKME Projects Limited, being Mr Sonal Anand and Mr Anil Anand, thereby clearly falling under the provisions of Section 5(24)(f) of I&B Code, 2016.

20. Among others, the following two transactions have been noticed by us, which shows directly influence of AKME Projects Limited over Spade Financial Services Private Limited.

That on 2nd December 2010 Memorandum of Understanding between Spade Financial Services Private Limited and AKME Projects Limited arrived, acknowledging Spade Financial Services Private Limited has on behalf of AKME Projects Limited paid Rs.22 crores as ICD to a 3rd party Subros and given a donation of Rs.3 crores to one Subros Trust (At page 390 of reply of Phoenix at page 394 para 1).

21. That on 16th January 2013 to 17th January 2013 Mr Anil Nanda Group through its Director, Mr Sonal Anand sought to be settled 3rd party debts of the Group (Mr Bawa for Rs.2 crore) vide funds parked with Mr Arun Anand in Spade Financial Services Private Limited (At page 845 of reply of Phoenix).

22. Even in 2017, Mr Anil Nanda through his company Joint Investment Private Limited (JIPL) holds shares in Spade Financial Services Private Limited and Joint Investment Private Limited, is still the holding company, of the Corporate Debtor AKME Projects Limited.

23. The relationship between Spade Financial Services Private Limited and AAA Landmark Private Limited is further proved by the fact that Spade Financial Services Private Limited and AAA Landmark Private Limited neither objected to not staked any claim against Yes Bank Limited, even when it proceeded against AKME Projects Limited to sell the project land,

even though it is alleged that the appellants investments are purportedly linked to the said project.

It is pertinent to mention that under the order of the Adjudicating Authority dated 13th May 2018, the IRP convened Committee of Creditors meeting on 1st June 2018 in which Mr Arun Anand and Ms Renu Anand (representing AAA Landmark Private Limited and Spade Financial Services Private Limited) were also present. It was during said CoC meeting, the respondent Phoenix came to know about the alleged claims of AAA Landmark Private Limited and Spade Financial Services Private Limited. On perusal of the documents, it became apparent to Phoenix that Spade Financial Services Private Limited and AAA Landmark Private Limited (Acting through Mr Arun Anand) and at the behest of Mr Arun Nanda) are related parties to the Corporate Debtor AKME Projects Limited. Accordingly, Phoenix ARC and Yes Bank filed their application before the Adjudicating Authority for the exclusion of Spade Financial Services Private Limited and AAA Landmark Private Limited from the Committee of Creditors of AKME Projects Limited. Based on the said application the Adjudicating Authority passed the order dated 19th July 2019 whereby Spade Financial Services Private Limited and AAA Landmark Private Limited were excluded from the Committee of Creditors of AKME Projects Limited. Since the Spade Financial Services Private Limited and AAA Landmark Private Limited.

On the above discussion, we are of the considered opinion that the Adjudicating Authority has rightly excluded the Spade Financial Services Private Limited and AAA Landmark Private Limited for participation in

Committee of Creditors. We find no reason to interfere in the order passed by the Learned Adjudicating Authority. Thus, the appeal is rejected with no order as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

[V. P. Singh]
Member (Technical)

NEW DELHI
January 27, 2019

pks/md