

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 503 of 2019

IN THE MATTER OF:

Aasaan Global Trade

...Appellants

Vs

Vasudevan & Ors.

...Respondents

Present:

**For Appellants: Mr. A. Muraleedharan and Mr. B. Karunakaran,
Advocates**

**For Respondents: Mr. Venkata Subramaniam and Mr. R. Moorthy,
Advocates for R-1.**

**Mr. E. Omprakash, Sr. Advocate with
Ms. Madhusmita Bora, Advocate for R-2.**

ORDER

09.05.2019: The Appellant, Financial Creditor filed application before the Adjudicating Authority (National Company Law Tribunal), Single Bench Chennai alleging 2nd Respondent 'Mr. M. Poobalan' is related party of the Corporate Debtor and therefore, the 2nd Respondent, who is also a Financial Creditor should not be made member of the Committee of Creditors. The Adjudicating Authority on hearing the parties by detailed impugned order dated 27th March, 2019 rejected the claim and held that the 2nd Respondent is not a related party.

2. Learned counsel appearing on behalf of the Appellant referred to 'Agreement for appointment of administrative agency on profit sharing basis' dated 20th December, 2012 and read the terms and conditions therein to suggest that the 2nd Respondent is an agent of the Corporate Debtor. Thus, it is submitted that the 2nd Respondent comes within the meaning of 'related party' within the meaning of Section 5(24) (h) of the Insolvency and Bankruptcy Code, 2016.

3. On plain reading of Section 5(24) (h) – ‘related party’ in relation to a corporate debtor, we find that related party is any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act. The said provision cannot be made applicable in relation to the 2nd Respondent, who is also a Financial Creditor and in agreement referred to above, he is not supposed to give any advice, directions or instructions to the director or partner or manager of the corporate Debtor. Even if it is accepted that he is an agency of the Corporate Debtor, he has to act on the directions of the Corporate Debtor and not to give advice.

4. The aforesaid fact has also been noticed by the Adjudicating Authority and by detailed order refused to accept such submission. We find no merit in this appeal. It is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

(Kanthi Narahari)
Member (Technical)

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