

The financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC under the proviso to section 21(2) of the Code. However, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2).

CASE TITLE	Phoenix Arc Private Limited Vs Spade Financial Services Limited &Ors. ¹
CASE CITATION	Civil Appeal No. 2842 of 2020
DATE OF ORDER	01.02.2021
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>Swiss Ribbons Pvt. Ltd. v. Union of India;</i> <i>Pioneer Urban Land and Infrastructure Ltd. V. Union of India</i> <i>Arcelor Mittal India Private Limited v. Satish Kumar Gupta</i> <i>R S Nayak v. A R Antulay</i>
SECTION/REGULATION REFERRED	Section 60(5), 61, 62, 21 of IBC

Brief of the case:

An appeal was filed against the impugned order of NCLT wherein they had held that AAA and Spade have to be excluded from the CoC formed in relation to the CIRP initiated against Corporate Debtor. Spade and AAA have independently filed an appeal under Section 62 in order to assail the decision of the NCLAT affirming their exclusion from participating in the CoC on the ground that they are related parties of the Corporate Debtor in terms of Section 5(24) and the first proviso to Section 21(2) of IBC.

Decision:

Hon'ble Apex Court held that,

"... while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties in praesenti would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder. Mr Kaul has argued, correctly in our opinion, that if this interpretation is not given to the first proviso of Section 21(2), then a related party financial creditor can devise a mechanism to remove its label of a 'related party' before the Corporate Debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors."



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://ibbi.gov.in/uploads/order/a05b0fb37f6ba33290c7e0bfc690cf75.pdf>