

**If a Financial Creditor is related party of the corporate debtor, it shall not have any right of representation, participation and voting in a meeting of committee of creditors.**

<b>CASE TITLE</b>	Suasth Healthcare Foundation and Ors. vs. Ravi Sethia, Resolution Professional of Suasth Healthcare Foundation & Ors. <sup>1</sup>
<b>CASE CITATION</b>	Civil Appeal No.4911 Of 2021
<b>SECTIONS/REGULATION</b>	Section 5(24) and section 21(2) of IBC
<b>DATE OF ORDER</b>	23.09.2022
<b>COURT/ TRIBUNAL</b>	NCLT Kolkata
<b>CASES REFERRED</b>	Swiss Ribbons (P) Ltd. Vs Union of India, (2019)

**Brief of the case:**

The present application was filed by one of the Financial Creditors, namely Hari Vitthal Mission(HVM), in terms of Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules (NCLT Rules). The Applicant being one of the stakeholders was included in the CoC and had also attended various CoC meetings. However, the Applicant was removed from the list of Financial Creditors as he was categorised as a Related Party to the Corporate Debtor by the Resolution Professional.

Therefore, this pertinent application was filed by the Applicant before NCLT with the prayer to quash the orders of Resolution Professional declaring the applicant herein as a related party to the corporate applicant and other consequential orders.

**Decision:**

Hon'ble NCLT rejected the application and held that,

*“22. Thus it is clear that the relationship of the Financial creditor (herein) and the corporate debtor is that the Kanodia foundation controls 31% of voting rights or a general control over the corporate debtor and by virtue of the fact that the HVM is owned to the extent of 99.9% by KF, it also controls crosses the bar of holding more than the 20% voting rights stipulated in Section 5(24)(j). Thus KF-HVM- SUASTH are related parties.*

*23...in terms of the stipulations of the code, HVM is a body corporate of a holding company (KF) to which the corporate debtor is a subsidiary (to the extent of ~ 31%) applicable.*

*24. Examining the status of the parties on the last postulate of Section 5(24)(h), it would be naïve to think that a director or a manager of the Suasth Healthcare would not be accustomed to act on the advice, directions or instructions of Kanodia Foundation, which would be synonymous with HVM being a 99.9% ownership of KF. Thus even on this count also the present case crosses the bar of 5(24)(h).*

*25. In light of the above, we have no hesitation in holding that HVM is a related party of the Corporate Debtor i.e. Suasth Healthcare Foundation and that the RP has not erred in holding the same ”*

**QR CODE FOR FULL ORDER/JUDGEMENT:**



<sup>1</sup> <https://ibbi.gov.in/uploads/order/16c60672bbc4399009f7422824ba20db.pdf>