

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Ins.) No. 40 of 2020**

**(Arising out of order dated 8<sup>th</sup> November, 2019 passed in Company Petition C.P.(IB) No. 17/BB/2019 by National Company Law Tribunal, Bengaluru Bench)**

**In the matter of:**

**Harkirat Singh Bedi**

**10<sup>th</sup> Floor, Delta Tower,**

**Sigma Soft-Tech Park,**

**7, Whitefield Main Road,**

**Bangalore- 560066**

**....Appellant**

**Vs.**

- 1. The Oriental Bank of Commerce & Anr.**

**RRL Cluster, No. – 92/95**

**HJS Chamber, Richmond Road,**

**Bangalore- 560025**

**Also At**

**E- Block Connaught Place,**

**New Delhi- 110001**

- 2. Velayudham Jayavel**

**F1, Windsor Meenakshi**

**5<sup>th</sup> Cross, Pai Layout**

**Hulimaavu**

**Bangalore – 560076**

- 3. State Bank of India, Bengaluru**

**...Respondents**

**Present**

**For Appellant: Mr. Sudhir K Sharma, Advocate.**

**For Respondents: Mr. Vinod Gupta & Mr. Sunil Shukla, For R-1.**

**Ms. Aparna Ravi, Ms. Khushboo Mittal & Mr. Velayudham Jayavel, For R-2. Mr. VM Kannan (Impleadment, SBI).**

## **J U D G M E N T**

**(12<sup>th</sup> January, 2021)**

**Mr. Balvinder Singh, Member (Technical)**

### **Introduction**

1. The present appeal has been preferred by Mr. Harkirat Singh Bedi (hereinafter referred to as 'Appellant'). He was an Erstwhile promoter of M/s IDEB Projects Private Limited (hereinafter referred to as 'Corporate Debtor'). The Appeal is preferred under section 61 of the Insolvency and Bankruptcy Code (hereinafter referred to as 'I&B Code') challenging the impugned order dated 8<sup>th</sup> November, 2019 passed by National Company Law Tribunal, Bangaluru Bench (hereinafter referred as 'Adjudicating Authority') in Company Petition No. C.P. (IB) No. 17/BB/2019. In the impugned order Adjudicating Authority have passed the order for liquidation of the Corporate Debtor.
2. The Adjudicating Authority while passing the impugned order dated 8<sup>th</sup> November, 2019 observed in para 7 and as follows:

“...In this regard, it is to be mentioned here that the Resolution Plan submitted by Mr. H.S Bedi is dated 16.09.2019, whereas Section 29A of the code was inserted by Insolvency and Bankruptcy Code (Amendment) Act, 2018 w.e.f. 23.11.2017, whereas it is inter-alia declared that a person shall not be eligible to submit a resolution plan, if such person acting jointly or in concert with such person is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under Banking Regulation Act, 1949.

Therefore, Section 29A will be applicable to the instant case and thus the rejection of the Resolution Plan of Mr. H.S. Bedi by the COC is not in contravention of the provisions of the Code. However, this order will not preclude Mr. H.S. Bedi to approach the Hon'ble High Court of Karnataka in pending Writ Petition, by seeking appropriate directions in this matter.”

Consequently, admitted the application and ordered the liquidation of the Corporate Debtor by appointing Shri Velayudham Jayavel as Liquidator and issued other consequential directions.

### **Brief Facts of the Case**

3. The Corporate Debtor was in the business of Civil Construction. The Corporate Debtor had availed the working capital credit facility from a Consortium of Banks in the year 2007. On default in payment, the Corporate Debtor and the Appellant were declared as 'willful defaulters' by SBI, Oriental bank of Commerce and State Bank of Travancore (now SBI). The Consortium of Banks initiated recovery proceedings before the Debt Recovery Tribunal (DRT), Bangalore by filing O.A. No. 862 of 2010. A Compromise Petition was filed thereafter. However, there was default in payment under the compromise and a recovery certificate was issued against the Corporate Debtor on 23<sup>rd</sup> March, 2016.
4. Thereafter, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by Oriental Bank of Commerce (OBC) (hereinafter referred as Respondent No. 1) under section 7 of I&B Code. By an order dated 29<sup>th</sup> March, 2019 passed in C.P. (IB) NO. 17/BB/2019, the Adjudicating Authority declared moratorium and admitted the Corporate Debtor under CIRP. Mr. Velayudham Jayavel (hereinafter referred as Respondent No. 2) was appointed as IRP and later confirmed as Resolution Professional (RP). An appeal against CIRP order was preferred by the Appellant, which was dismissed by this Appellate Tribunal by its order dated 8<sup>th</sup> May, 2019.
5. Thereafter, Expression of Interest (EOI) was published by RP on 16<sup>th</sup> June, 2019, in pursuance of which the Appellant submitted its EOI on 28<sup>th</sup> June, 2019. However, EOI of the Appellant was not considered by the Committee of Creditors (COC) and RP on the ground that the Appellant was declared as 'willful defaulter' by SBI, State Bank of Travancore and OBC and the resolution plan cannot be considered as per section 29A(b) of I&B Code. The Appellant challenged the decision of COC and preferred a Writ Petition No. 35567/2019 against the OBC and SBI. The High Court vide its order dated 23<sup>rd</sup> August, 2019, issued notice in the said Writ and permitted the Appellant to submit his Resolution Plan to the RP on the ground that section 29A(b) of I&B Code prima facie appears to be prospective in nature.
6. Thereafter, COC upon perusal of the said order, unanimously agreed to allow the Appellant to submit his resolution plan. After deliberating and discussing the resolution plan, the COC in its meeting rejected the resolution plan of the Appellant on the following grounds:

- a) The Appellant is declared as a willful defaulter by SBI, State Bank of Travancore and Oriental bank of Commerce and the same is visible in CIBIL database.
  - b) The resolution plan was not in compliance with the IBC.
  - c) The Appellant did not file affidavit under regulation 39 of the code regarding eligibility of the Appellant under section 29A of the IBC.
  - d) Further, the Appellant had also failed to provide undertaking under regulation 38 of the IBC for payment to Operational Creditors.
  - e) Appellant also failed to provide undertaking that all the information which Appellant had provided with his resolution plan are true and accurate.
7. In view of the above, the COC decided to liquidate the Corporate Debtor as per the provisions of Section 33(2) of the IBC, with 92.63% of the COC members voting in favor of the same and thereafter, the CIRP period expired on 25<sup>th</sup> September, 2019. Thereafter, the Adjudicating Authority vide its order dated 8<sup>th</sup> November, 2019 confirmed the Corporate Debtor is to be liquidated in terms of the liquidation process given under I&B Code and further appointed Respondent No. 2 as liquidator of the Corporate Debtor.
  8. Having being aggrieved by the impugned order, the Appellant therefore, preferred the instant Appeal before this Appellate Tribunal.
  9. The State Bank of India filed an impleadment application through **I.A. 622 of 2020** for impleadment in the present Appeal. SBI is the lead bank of the consortium, one of the Financial Creditor of the Corporate Debtor. The Applicant was a party before the Adjudicating Authority. However, the applicant has not been made a party to the present appeal. This Tribunal allowed the Impleadment application through its order dated 19<sup>th</sup> August 2020 and directed the learned counsel for the Appellant to amend the Memo of parties in the present Company Appeal. The I.A. No. 622 of 2020 is disposed of accordingly.

### **Submissions on behalf of Appellant/Erstwhile promoter of Corporate Debtor**

10. The Learned Counsel for the Appellant submitted that the consortium members including the Respondent bank without declaring the account of the Corporate Debtor as a Non Performing Assets took steps to classify the

Appellant as a willful defaulter by passing a resolution in consortium meeting held on 23<sup>rd</sup> July, 2010.

11. The Learned Counsel for the Appellant further submitted that under the compromise petition accepted by DRT dated 30<sup>th</sup> October, 2014 he substantially fulfilled its obligation under the aforementioned compromise petition and paid Rs. 28.67 Crores and issued cumulative redeemable preference shares (“CRPS”) value at Rs. 270 Crores to the Consortium banks between 2012-2018.
12. It is stated by the learned counsel for the Appellant that the COC in its third meeting dated 11<sup>th</sup> June, 2019 requested RP to call for Expression of Interest (“EOI”) for submission of the resolution plan in respect of the Corporate Debtor. Pursuant to the aforementioned meeting RP through Form G invited the EOI on 16<sup>th</sup> June, 2019 and the last date for the receipt of EOI from the potential resolution applicant was 1<sup>st</sup> July, 2019. The Appellant submitted his EOI on 28<sup>th</sup> June, 2019 along with the required affidavit. It is pertinent to mention that except for the EOI filed by the Appellant, the RP did not receive any other EOIs.
13. It is further stated on behalf of the Appellant that EOI of the Appellant was not considered on the ground that the Appellant was allegedly declared a willful defaulter by SBI, State Bank of Travancore and Oriental Bank of Commerce and his name further continued to show as a willful defaulter in the CIBIL database. Thereafter, vide email dated 12<sup>th</sup> July, 2019, COC informed Appellant that his EOI was rejected on the ground that the Appellant is a willful defaulter and therefore, the resolution plan of the Appellant cannot be considered as per section 29A(b) of the IBC.
14. It is further stated on behalf of the Appellant that thereafter, in the sixth meeting of the COC held on 30<sup>th</sup> August, 2019, the Appellant informed the COC of the order passed in the Writ Petition preferred by the Appellant and upon perusal of the said order the COC unanimously agreed to allow Appellant to submit his resolution plan without issuing Request For Resolution Plan (RFRP) to him as per regulation 36B (3) of I&B Code. In the said meeting RP also tabled the proposal for extension of time of CIRP of the Corporate Debtor. However, Oriental Bank of Commerce and ICICI Bank did not agree for the extension of time.
15. It is also stated by the learned counsel for the Appellant that in seventh COC meeting held on 18<sup>th</sup> September, 2019 COC was taken a view that time period

of the CIRP of the Appellant must be extended in order to give complete 30 days' period to the Appellant to submit his resolution plan as the 30<sup>th</sup> days period was ending on 30<sup>th</sup> September, 2019 which was as such, beyond the expiry of CIRP period which was completing on 25<sup>th</sup> September, 2019. However, in the 8<sup>th</sup> meeting of COC held on 23<sup>rd</sup> September, 2019, the COC voted against applying for extension of CIRP process of the Corporate Debtor and further after deliberation and discussion of the resolution plan rejected the resolution plan of the Appellant.

16. The learned counsel for the appellant contended that the Adjudicating Authority have erred in not taking into consideration that the Hon'ble High Court of Karnataka vide its order dated 23<sup>rd</sup> August, 2019 allowed the Appellant to submit his resolution plan to RP. However, even if COC agreed to allow the Appellant to submit his resolution plan but the Appellant was not given the statutory time period of 30 days to place his resolution plan and the COC abruptly decided not to seek extension of time for CIRP process from the Adjudicating Authority.

17. It is further contended by the learned counsel for the Appellant that the Appellant was declared a willful defaulter by SBI, State Bank of Travancore and Oriental Bank of Commerce without following the guidelines of RBI and also, the Adjudicating Authority ought to have considered that the COC after discussing and deliberating the feasibility and viability of the resolution plan submitted by the Appellant, rejected the plan solely on the ground that the member bank declared the Appellant a willful defaulter.

18. It is further contended that RP had never instructed the Appellant to file affidavits and undertaking with the resolution plan before submitting the resolution plan to COC and also, any resolution plan submitted by the resolution applicant is only required to be evaluated strictly as per its feasibility and viability.

19. It is also contended on behalf of the Appellant that the resolution plan submitted by the Appellant offered maximum amount to the financial and operational creditors. Also, the Adjudicating Authority has failed to consider that the fair value of the Corporate Debtor is more than the liquidation value.

### **Submissions on behalf of Respondent No. 1/Financial Creditor**

20. Per se, the learned counsel for the Respondent No. 1 submitted that the Appellant had been declared as a willful defaulter in terms of Reserve Bank of India both by Respondent No. 1 bank i.e. OBC and SBI. Pursuant to default in repayment of the bank dues, the consortium of banks had filed Original Application (O.A.) proceedings in DRT, Bangalore where consent terms were filed and in terms thereof recovery certificate was issued by DRT on 30<sup>th</sup> October, 2014. The Corporate Debtor and the Appellant had made default in compliance and payment of agreed terms of recovery certificate of DRT. As a result of further measure to resolve the bank dues, Respondent No. 1 viz, OBC filed the Company Petition under section 7 of I&B Code seeking initiation of CIRP.
21. It is also submitted on behalf of the Respondent No. 1 that pursuant to the interim order of High Court of Karnataka dated 23<sup>rd</sup> August, 2019, COC/RP allowed the Appellant to submit his resolution plan. Thereafter, the Appellant had thereafter submitted his proposal on 16<sup>th</sup> September, 2019 without approved RFRP documents, Evaluation Matrix (E.M.) and other called for documents under IBC. The Appellant cannot plead that in view of the High Court order permitting the Appellant to submit his proposal/plan, he is exempted from filing approved RFRP documents, evaluation matrix and compliance of provisions of IBC. The Appellant like any other resolution applicant is bound to follow and comply the provisions of IBC and submit necessary documents which he failed to comply/file despite having agreed to do so in the COC meetings.
22. It is also stated on behalf of the Respondent No. 1 that the proposal was duly considered by the RP/COC and it was found that the said proposal did not conform to the requirements of I&B Code. The grounds of rejection of the proposal of the Appellant are admitted as correct, viz, the proposal of the Appellant not in compliance of I&B Code, affidavit regarding eligibility of the Appellant as resolution applicant under section 29A of I&B Code not filed, the undertaking under regulation 38 of I&B Code for payment of operational creditors and that the information provided by Appellant are true and accurate not filed with proposal/resolution plan. Therefore, the proposal of the Appellant could not be termed as resolution plan.
23. It is argued by the learned counsel for Respondent No. 1 that the Appellant should not agitate that he was not given 30 days' period to submit his resolution plan. In view of the direction of the Adjudicating Authority to meet

the timelines of the Code, the Appellant had agreed in the COC meeting to submit the resolution plan on or before 16<sup>th</sup> September, 2019 and in fact he had submitted his proposal on 16<sup>th</sup> September, 2019.

24. The learned counsel for the Respondent No. 1 also contended that the specific liberty being given by the Adjudicating Authority to the Appellant that the impugned order shall not preclude Appellant from approaching the High Court of Karnataka in pending Writ Petition by seeking appropriate directions in the matter. Thus the Appellant ought to have approached the High Court of Karnataka in case Appellant has any grievance and present appeal is thus premature. It is further contended that impugned order is a well-reasoned order and detailed speaking order and do not require any interference, as sought by the Appellant.

### **Submissions on behalf of Respondent No. 2/Liquidator**

25. The learned counsel for Respondent No. 2 submitted that EOI in Form G was published by RP on 16<sup>th</sup> June, 2019, in pursuance of which, the Appellant submitted its EOI on 28<sup>th</sup> June, 2019 claiming exemption of section 29A (c) & (h) read with section 240A declaring that the Corporate Debtor is a registered MSME. Appellant's EOI was rejected by RP on 26<sup>th</sup> July, 2019 on the ground that the Appellant had been declared as 'willful defaulter' and his name appears as such on the CIBIL's database. Hence, he was not eligible to be a resolution applicant as per section 29A(b) of I&B Code. It was also informed that the registration of the Corporate Debtor as MSME was obtained by the Appellant on 5<sup>th</sup> June, 2019, i.e. after CIRP admission order dated 29<sup>th</sup> March, 2019. The application for registration of MSME by the Appellant was without authorization, being subsequent to initiation of CIRP and hence was invalid. The Appellant had no authority to act on behalf of the Corporate Debtor after the initiation of CIRP, as the management & affairs of the Corporate Debtor are in the hands of the appointed IRP/RP (**Innoventive Industries vs. ICICI Bank, (2018) 1 SCC 407, para 10-11**). Further, even if the Corporate Debtor was validly registered as an "MSME", the exemption under section 240A would not be applicable to the present case as, pursuant to section 240A, resolution applicants are exempt only from the provisions of section 29A(c) and 29A(h).

26. It is further submitted on behalf of the Respondent No. 2 that the Appellant's contention that there was a violation of Regulation 36B is baseless, as he was



invited to submit EOI on 16<sup>th</sup> June, 2019 i.e. more than 30 days before the expiry of CIRP process. The Appellant submitted EOI on 28<sup>th</sup> June, 2019 which was rejected under section 29A. Pursuant to the High Court's order dated 23<sup>rd</sup> August, 2019, the Appellant was permitted to submit a plan, and he had 30 days before the expiry of CIRP on 25<sup>th</sup> September, 2019. Hence the submission of the Appellant is without merit.

27. The learned counsel for the Respondent No. 2 further contended that as recorded in the impugned order, there is no dispute that the Appellant was a willful defaulter, and continues to be classified as such. As such, the resolution plan submitted by him was correctly rejected by the COC. The Appellant had challenged the 'willful defaulter' declaration before the High Court of Karnataka in Writ Petition No. 64053/2016, in which limited interim order was granted for a period of 3 weeks for non-publication of name and other details by SBI only. The Appellant again purported to challenge the declaration by Writ Petition No. 35567/2019. By order dated 23<sup>rd</sup> August, 2019, stay of declaration as 'willful defaulter' was not granted, and the Appellant was merely allowed to submit a resolution plan for consideration of the COC. Mere pendency of a Writ Petition cannot change the status of the Appellant/Corporate Debtor. The RP cannot go into the correctness or incorrectness of declaration as willful defaulter and can only rely on the present status of the applicant.

28. The learned counsel for the Respondent No. 2 also contended that the present appeal is not maintainable on the ground that the legislature has not provided any ground for the resolution applicant to challenge the "commercial wisdom" of the COC in rejecting a resolution plan. Under section 31 of the I&B Code, the Adjudicating Authority can only examine an 'approved' resolution plan on limited parameters, and not a 'rejected' resolution plan is not amicable to challenge before the Adjudicating Authority or before this Appellate Tribunal. The commercial wisdom of the COC in accepting or rejecting a resolution plan is "non-justiciable". (**K. Sashidhar v. Indian Overseas bank & Ors., (2019) 12 SCC 150 para 52, 55, 56**). Reliance Emphasized.

29. The learned counsel for the Respondent No. 2 further contended that COC applied its commercial wisdom and rejected for extension of time for CIRP. In the present case, the COC having declined to extend the statutory period, the only consequence is that the Corporate Debtor must go into liquidation, as provided by the impugned order.

### **Submissions on behalf of Respondent No. 3 viz. State Bank of India**

30. It is submitted by the learned counsel for the Respondent No. 3 that the Appellant is ineligible in view of section 29A (b) & (c) of the I&B Code. There is a clear bar under the proviso to section 30(4) of the I&B Code which provides that the COC shall not approve a resolution plan where the resolution applicant is ineligible under section 29A. Therefore, the impugned order passed by the Adjudicating Authority, rejecting the resolution plan and directing the Corporate Debtor to be liquidated, is appropriate and therefore the Appeal filed by the Appellant is ought to be dismissed.
31. It is also stated on behalf of the Respondent No. 3 that the Appellant has been declared willful defaulter by SBI and OBC on 14<sup>th</sup> March, 2011 and 18<sup>th</sup> May, 2012 respectively. The Appellant being the promoter is not eligible to submit a resolution plan without making payment of all overdue amounts with interest/charges, relating to NPA accounts. In the present case, the Resolution Applicant has not made the payment of overdue accounts. Hence is ineligible u/s 29A(c) and 30(4).
32. The learned counsel for the Respondent No. 3 has put his reliance on the leading case of **Chitra Sharma v. Union of India, (2018) 18 SCC 575**. The extract of the case is reproduced as below:

“38. Parliament has introduced Section 29 A into the IBC with a specific purpose. The provisions of Section 29 A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process....”

“39. ....the Court must bear in mind that Section 29 A has been enacted in the larger public interest and to facilitate effective corporate governance. Parliament rectified a loophole in the Act which allowed a back-door entry to erstwhile managements in the CIRP. Section 30 of the IBC, as amended, also clarifies that a resolution plan of a person who is ineligible under Section 29 A will not be considered by the COC.....”

### **Appraisal**

33. Having heard to the parties and pursued the records we have observed that section 29A (b) of I&B Code shall be applicable in the instant case. According to this provision of the code, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting

jointly or in concert with such person is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949. The Appellant had been declared as a willful defaulter in terms of Reserve Bank of India both by Respondent No. 1 bank i.e. OBC and Respondent No. 3 viz. SBI. Therefore, the Appellant has no locus standi to challenge the impugned order dated 8<sup>th</sup> November, 2019. The Appellant submitted a resolution plan pursuant to the order of Hon'ble High Court of Karnataka, which was placed before the COC which was rejected by the COC on the ground that it did not conform to the requirement of the code being Section 29A (b). The order of the Karnataka High Court only permitted the Appellant to submit its resolution plan to the RP. However, it did not in any way takes away the right of COC to reject the resolution plan on the ground that it is in contravention of the various provisions of law.

34. At this point, this tribunal worth recalls and recollects the decision of Hon'ble Supreme Court in the case of **K. Sashidhar v. Indian Overseas Bank & Ors, Civil Appeal No. 10673 of 2018** wherein it is observed as under:

“33. As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. **The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC muchless to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.** From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under

other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. **There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made nonjusticiable.”**

35. From the abovementioned landmark case it can be concluded that a limited judicial review is available in respect of an approved resolution plan. The grounds under Section 30(2) or 61(3) of the IBC are regarding testing the validity of the approved resolution plan by COC and not for approving the resolution plan which has been disapproved by the COC in exercise of its business decision.

36. It is worth mentioning the explanation provided under section 33 (2) of the I&B Code which states as follows:

**Section 33(2)** Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

**[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]**

37. The above provision clarifies that the commercial wisdom of COC shall not be challenged and it shall be the COC who shall decide whether the resolution plan is feasible or not. COC may at any time but before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum, may take the decision to liquidate the Corporate Debtor.
38. The contention of the Appellant that he was declared a willful defaulter by SBI, State Bank of Travancore and Oriental Bank of Commerce without following the guidelines of RBI is outside the jurisdiction of this Tribunal. The Appellant filed the Writ Petition No. 35567/2019 in the High Court of Karnataka challenging his being declared as a willful defaulter. The High Court of Karnataka passed an interim order dated 23<sup>rd</sup> August, 2019 merely allowing the Appellant to submit his resolution plan but no stay of declaration as 'willful defaulter' was granted. Since, the Writ Petition is still pending before the High Court therefore, the RP cannot go into the correctness or incorrectness of declaration as willful defaulter and can only rely on the present status of the resolution applicant.
39. The appellant in its EOI claimed the advantage of section 240A of the code claiming exemptions from applicability of section 29A(c) and 29A(h) in terms of eligibility to be a resolution applicant as a medium level enterprise under MSME Development Act, 2006. On reading the provisions under section 29A along with section 240A of I&B Code. It can be concluded that the exemption is only in respect of clause (c) and (h) of Section 29A of the I&B Code. However, in this case the Appellant is declared ineligible under clause (b) of Section 29A where no exemption has been given to MSME. Also, the date of registration of the Corporate Debtor as MSME as on record was 5<sup>th</sup> June, 2019, i.e. after CIRP admission order dated 29<sup>th</sup> March, 2019. The application for registration of MSME by the Appellant was without authorization, being subsequent to initiation of CIRP and hence was invalid. Therefore, the Appellant is ineligible to take the benefits of section 240A under I&B Code.
40. The Appellant cannot take plea that he was not given the statutory time period of 30 days to place his resolution plan as he had submitted his resolution plan well within time as agreed in the COC meeting i.e. on

or before 16<sup>th</sup> September, 2019. The contention of the Appellant that COC abruptly decided not to seek extension of time for CIRP process from the Adjudicating Authority is invalid as it is the commercial wisdom of the COC whether they want to seek extension of time or not after considering the feasibility and viability of the submitted resolution plan.

41. In view of the foregoing discussions this Tribunal finds no legal infirmity in the Impugned Order of the Adjudicating Authority. Appeal is therefore dismissed for the reason accredited by this tribunal. There shall be no order as to costs.

**[Justice Jarat Kumar Jain]**

**Member (Judicial)**

**[Balvinder Singh]**

**Member (Technical)**

Bm