[2023] 16 S.C.R. 917 : 2023 INSC 1056

CASE DETAILS

HARI BABU THOTA

v.*

(Civil Appeal No. 4422 of 2023)

NOVEMBER 29, 2023

[SANJAY KISHAN KAUL AND SUDHANSHU DHULIA, JJ.]

HEADNOTES

Issue for consideration: Whether the resolution applicant was disqualified under the primary conditions as specified u/s.29A of the Insolvency and Bankruptcy Code, 2016 and; whether the corporate debtor not having an MSME status at the time of commencement of CIRP proceedings would disqualify the Resolution applicant u/s.29A of the Code as benefit of s.240A would not be available.

Insolvency and Bankruptcy Code, 2016 – ss.29A, 240A – Persons not eligible to be resolution applicant – Application of the Code to micro, small and medium enterprises – Appellant-Resolution Professional presented plan as propounded by the promoters and approved by the Committee of Creditors – Application dismissed by NCLT holding that the promoters could not have presented the plan – Order upheld by NCLAT relying on its earlier order in Digamber Anand Rao Pingle v. Shrikant Madanlal Zawar & Ors. – Sustainability:

Held: s.29A was added as an amendment by Act 8 of 2018 with effect from 23.11.2017 – The objective was to cure the mischiefs of the persons who may be responsible for the financial situation of the company against trying to submit a plan and take over the company – On facts, there is no per say disqualification u/s.29A – s.240A also was introduced as an Amendment in 2018 effective from 06.06.2018 – It begins with a "notwithstanding clause" – Clauses (c) and (h) of s.29-A which apply to the promoters and exempts them to apply for a plan is not applicable qua any micro, small and medium enterprises – The objective obviously was to due to the nature of business carried out by such entities – Excluding such industries from disqualification u/s.29A (c) and (h) is because qua such industries other resolution applicants

* Ed. Note: There was no respondent. Amicus Curiae was appointed in the matter.

may not be forthcoming which thus, would inevitably lead not to resolution but to liquidation – The submission that while interpreting s.240A, the reason for carving out an exception in micro, small and medium industries is set out on the date of application for making the bid as the crucial date and that while for some other aspects the initiation of the CIRP proceedings would be the cut off date, the same would not apply in the case of s.240A, in view of the statement by the Minister himself, accepted – Law laid down in Digambar Anand Rao Pigle case by the Tribunal is not the correct position in law and the cut off date will be the date of submission of resolution plan – Even on this count, the plan submitted in question will not incur the disqualification – Impugned orders of the NCLT and NCLAT set aside. [Paras 6, 10, 14, 17, 20-23 and 25]

LIST OF CITATIONS AND OTHER REFERENCES

Digamber Anand Rao Pingle v. Shrikant Madanlal Zawar & Ors. Decision of National Company Law Appellate Tribunal in Comp. App. (AT) (Ins.) No.43-43A/2021 – not the correct position in law.

India Private Limited v. Satish Kumar Gupta & Ors, (2019) 2 SCC 1 : [2018] 12 SCR 362; *Swiss Ribbons Private Limited and Anr. v. Union of India & Ors,* (2019) 4 SCC 17 : [2019] 3 SCR 535 – referred to.

Insolvency Law Committee Report 2018 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4422 of 2023.

From the Judgment and Order dated 02.06.2023 of the National Company Law Appellate Tribunal, Chennai Bench in Company Appeal (AT) (CH) (Ins) No.110 of 2023.

Appearances:

Bishwaji Dubey, Ld. Amicus Curiae, Adhitya Srinivasan, Nikhil Saran, Advs.

Ms. Pritha Srikumar Iyer, Arun Srikumar, Ms. Neha Mathem, Shubhansh Thakur, Advs. for the Appellant.

Praveen Kumar Jha, S. Thennavan, Bholle Taguru Phanendra, N. Sakthivel, Chembugari Abheeshna, Sunil Fernandes, Zeeshan Diwan, Ms. Priyansha Indira Sharma, Faraz Ahmed, Praveen Kumar Jha, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

SANJAY KISHAN KAUL, J.

1. Shree Aashraya Infra-Con Limited went into CIRP under the Insolvency and Bankruptcy Code, 2016 [for short "the Code"] and the appellant before us was appointed as the Resolution Professional. The Resolution Professional presented a plan before the National Company Law Tribunal, Bengaluru as propounded by the promoters and approved by the Committee of Creditors [COC] but in terms of the order dated 28.02.2023, the application was dismissed on the ground that the promoters could not have presented the plan. It is the say of the appellant before us that this has far reaching consequences for him and his role as the Resolution Professional as:

a) the appellant is ineligible to continue as a Resolution Professional;

b) the applicant is ineligible to be considered as Board is liquidator of the corporate debtor;

c) the case of the appellant is required to be referred to the Insolvency and Bankruptcy Board of India (IBBI) for further action in accordance with law on the ground that the appellant had erred in putting up a plan that was not in consonance with law for consideration of the adjudicating authority.

2. Since there was really no representation on behalf of the other side, we appointed Mr. Bishwajit Dubey, learned counsel as Amicus in the matter.

3. We have heard learned counsel for the appellant/Resolution Professional and the learned Amicus not only because it would affect the professional abilities of the appellant but because certain issues required

adjudication by us, more so, in view of the impugned order relying on an earlier order of the National Company Law Appellant Tribunal in *Digamber Anand Rao Pingle v. Shrikant Madanlal Zawar & Ors.*[1]

4. There are two aspects to be examined out of the contours of the submissions:

> Firstly: Whether the resolution applicant was disqualified under the primary conditions as specified under Section 29 A of the Code;
>
> and Secondly: Whether the corporate debtor not having an MSME status at the time of commencement of CIRP proceedings would disqualify the Resolution applicant under Section 29A of the Code as benefit of Section 240A would not be available.
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> It is the say of learned Amicus that if the MSME certificate is obtained prior to the presentation of the plan such disqualification would not be incurred and benefit of the provision would be available.

5. Learned counsel for parties have taken us through Section 29A of the said Code. It has been pointed out that other sub-Clauses except Clauses (c), (g) and (h) which apply to promoters and guarantors are generic in nature. We reproduce the relevant provisions as under:

> 29A. Persons not eligible to be resolution applicant-
>
> (C) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

1 Comp. App. (AT) (Ins.) No.43-43A/2021

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I – For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

Explanation II -For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code.

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential

transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction.

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part:"

6. We may note that the aforesaid section was added as an amendment by Act 8 of 2018 with effect from 23.11.2017. The objective was to cure the mischiefs of the persons who may be responsible for the financial situation of the company against trying to submit a plan and take over the company. If we turn to Clause (c), it provides a time frame i.e. a period of one year should elapse from the date of classification as a non-performing asset (NPA). In the factual scenario, it is stated that there are no bank dues/outstanding which would at all invite a concept of NPA much less the period of one year.

7. Insofar as Clause (g) is concerned, it is pointed out that only one preferential transaction was identified by the appellant but no order was passed by the adjudicating authority as on the date of the impugned order.

8. It is similarly stated that Clause (h) again has no factual application in the given scenario.

9. In effect, what is stated is that these aforesaid Clauses are specific to the promoters and thus, the promoter of the company was not disqualified per say under Section 29A as to dis-entitle him from presenting the plan. This issue is stated to have been noted even in the impugned judgment in para 3 as raised but there is no finding in the impugned order in this behalf. The impugned order has been based only on the issue of Section 240A of the said Code.

10. The aforesaid discussion thus, shows that as per the factual scenario on record, there is no per say disqualification under Section 29A and we could have left the matter at that. However, we proceed further as it is pointed out that the plea based on Section 240A needs the opinion of this Court as there are a number of such cases arising and the orders earlier passed are being followed.

11. In this behalf learned Amicus has drawn our attention to the judgment of this Court in *Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors.*[2]. The discussion in this behalf is contained in paras 46, 47 and 57 which are reproduced as under:

> 46. According to us, it is clear that the opening words of Section 29-A furnish a clue as to the time at which clause (c) is to operate. The opening words of Section 29-A state: "a person shall not be eligible to submit a resolution plan...". It is clear therefore that the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant. The contrary view expressed by Shri Rohatgi is obviously incorrect, as the date of commencement of the corporate insolvency resolution process is only relevant for the purpose of calculating whether one year has lapsed from the date of classification of a person as a non-performing asset. Further, the expression used is "has", which as Dr. Singhvi has correctly argued, is *in praesenti.* This is to be contrasted with the expression "has been", which is used in Clauses (d) and (g), which refers to an anterior point of time. Consequently, the amendment of 2018 introducing the words "at the time of submission of the resolution plan" is clarificatory, as this was always the correct interpretation as to the point of time at which the disqualification in clause (c) of Section 29-A will attach. In fact, the amendment was made pursuant to the Insolvency Law Committee Report of March, 2018. That Report clearly stated:
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> "In relation to applicability of Section 29-A (c), the Committee also discussed that it must be clarified that the disqualification pursuant to Section 29-A(c) shall be applicable if such NPA accounts are held by the resolution applicant or its connected persons at the time of submission of the resolution plan to the RP."
>
> 47. The ingredients of clause (c) are that, the ineligibility to submit a resolution plan attaches if any person, as is referred to in the opening lines of Section 29-A, either itself has an account, or is a promoter of, or in the management or control of, a corporate debtor which has an account, which account has been classified as a non-performing asset,

2 (2019) 2 SCC 1

for a period of at least one year from the date of such classification till the date of commencement of the corporate insolvency resolution process. For the purpose of applying this sub-section, any one of three things, which are disjunctive, needs to be established. The corporate debtor may be under the management of the person referred to in Section 29-A, the corporate debtor may be a person under the control of such person, or the corporate debtor may be a person of whom such person is a promoter.

57.The interpretation of Section 29-A (c) now becomes clear. Any person who wishes to submit a resolution plan, if he or it does so acting jointly, or in concert with other persons, which person or other persons or other persons happen to either manage or control or be promoters of a corporate debtor, who is classified as a non-performing asset and whose debts have not been paid off for a period of at least one year before commencement of the corporate insolvency resolution process, becomes ineligible to submit a resolution plan. This provision therefore ensures that if a person wishes to submit a resolution plan, and if such person or any person acting jointly or any person in concert with such person, happens to either manage, control, or be promoter of a corporate debtor declared as a non-performing asset one year before the corporate insolvency resolution process begins, is ineligible to submit a resolution plan. The first proviso to clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question *before* submission of a resolution plan. The position in law is thus clear. Any person who wishes to submit a resolution plan acting jointly or in concert with other persons, any of who may either manage, control or be a promoter of a corporate debtor classified as a non-performing asset in the period abovementioned, must first pay off the debt of the said corporate debtor classified as a non-performing asset in order to become eligible under Section 29-A(c)."

12. Thus, in a sense what is to be tested is whether the Tribunal's view in *Digambar Anand Rao Pingle's* case (supra) sets forth the correct position of law.

13. In the factual scenario of that case, the application for MSME certificate was made after the commencement of the CIRP and it was opined that such unauthorized application cannot be considered and cannot tide over the ineligibility under Section 29A. In order to appreciate the provision in question, we reproduce Section 240 A as under:

> Section 240A: Application of this Code to micro, small and medium enterprises.
>
> 240A. (1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.
>
> (2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—
>
> (a) not apply to micro, small and medium enterprises; or
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> (b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.
>
> (3) A draft of every notification proposed to be issued under sub-section (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.
>
> (4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.
>
> (5) The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.
>
> (6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

Explanation.— For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).]

14. The aforesaid provision also was introduced as an Amendment in 2018 effective from 06.06.2018. It begins with a "*notwithstanding clause*". Clauses (c) and (h) of Section 29-A which apply to the promoters and exempts them to apply for a plan is not applicable *qua* any micro, small and medium enterprises. The objective obviously was to due to the nature of business carried out by such entities.

15. Learned counsel has referred to the judgment in *Swiss Ribbons Private Limited and Anr. v. Union of India & Ors.*[3] The relevant paras are as reproduced under:

Exemption of micro, small, and medium enterprises from Section 29A

111. The ILC Report of March 2018 found that micro, small, and medium enterprises form the foundation of the economy and are key drivers of employment, production, economic growth, entrepreneurship, and financial inclusion.

112. Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 classifies enterprises depending upon whether they manufacture or produce goods, or are engaged in providing and rendering services as micro, small, or medium, depending upon certain investments made, as follows:

"7.Classification of enterprises. —(1) Notwithstanding anything contained in Section 11-B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family,

3 (2019) 4 SCC 17

associations of persons, cooperative society, partnership firm, company or undertaking, by whatever name called,—

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as—

(i) a micro enterprise, where the investment in plant and machinery does not exceed twenty-five lakh rupees;

(ii) a small enterprise, where the investment in plant and machinery is more than twenty- five lakh rupees but does not exceed five crore rupees; or

(iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

(b) in the case of the enterprises engaged in providing or rendering of services, as—

(i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;

(ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or

(iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

113. The ILC Report of 2018 exempted these industries from Section 29A(c) and 29A(h) of the Code, their rationale for doing so being contained in paragraph 27.4 of the Report, which reads as follows:

"27.4 Regarding the first issue, the Code is clear that default of INR one lakh or above triggers the right of a financial creditor or an operational creditor to file for insolvency. Thus, the financial creditor or operational creditors of MSMEs may take it to insolvency under the Code. However, given that MSMEs are the bedrock of the Indian economy, and the intent is not to push them into liquidation and affect the livelihood of employees and workers of MSMEs, the Committee sought it fit to explicitly grant exemptions to corporate debtors which

are MSMEs by permitting a promoter who is not a wilful defaulter, to bid for the MSME in insolvency. *The rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants*. (emphasis supplied)

114. Thus, the rationale for excluding such industries from the eligibility criteria laid down in Section 29A(c) and 29A(h) is because qua such industries, other resolution applicants may not be forthcoming, which then will inevitably lead not to resolution, but to liquidation. Following upon the Insolvency Law Committee's Report, Section 240A has been inserted in the Code with retrospective effect from 06.06.2018 as follows:

> "Section 240A: Application of this Code to micro, small and medium enterprises.- (1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) ofsection 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.
>
> (2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—
>
> (a) not apply to micro, small and medium enterprises; or
>
> (b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.
>
> (3) A draft of every notification proposed to be issued under sub-section (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.
>
> (4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.

(5) The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.

(6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

Explanation.— For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).

115. It can thus be seen that when the Code has worked hardship to a class of enterprises, the Committee constituted by the Government, in overseeing the working of the Code, has been alive to such problems, and the Government in turn has followed the recommendations of the Committee in enacting Section 240A. This is an important instance of how the executive continues to monitor the application of the Code, and exempts a class of enterprises from the application of some of its provisions in deserving cases. This and other amendments that are repeatedly being made to the Code, and to subordinate legislation made thereunder, based upon Committee Reports which are looking into the working of the Code, would also show that the legislature is alive to serious anomalies that arise in the working of the Code and steps in to rectify them."

16. Under the heading "*exemption of Micro, Small and Medium Enterprises from Section 29-A"* the discussion begins. It is referred to the ILC report of March, 2018 and its finding that Micro, Small and Medium Enterprises form the foundation of the economy and are key drivers of employment, production, economic growth, entrepreneurship and financial inclusion. The ILC report 2018 exempted these industries from Section 29-A (c) and (h) and the rationale for the same was contained in para 27.4 of the report which reads as under:

"27.4 Regarding the first issue, the Code is clear that default of INR one lakh or above triggers the right of a financial creditor or an

operational creditor to file for insolvency. Thus, the financial creditor or operational creditors of MSMEs may take it to insolvency under the Code. However, given that MSMEs are the bedrock of the Indian economy, and the intent is not to push them into liquidation and affect the livelihood of employees and workers of MSMEs, the Committee sought it fit to explicitly grant exemptions to corporate debtors which are MSMEs by permitting a promoter who is not a wilful defaulter, to bid for the MSME in insolvency. The rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants."

17. The aforesaid thus, makes it clear as opined in the said judgments also, that excluding such industries from disqualification under 29A (c) and (h) is because qua such industries other resolution applicants may not be forthcoming which thus would inevitably lead not to resolution but to liquidation.

18. We may also note that in para 93 of this very judgment the challenge to Section 29A was repelled and the statement of the then Finance Minister while moving the amendment Bill was extracted. The said statement reads as under:

93. ××× ×××

……."The core and the soul of this new Ordinance is really clause 5, which is Section 29-A of the original Bill. I may just explain that once a company goes into the resolution process, then applications would be invited with regard to the potential resolution proposals as far as the company is concerned or the enterprise is concerned. Now a number of ineligibility clauses were not there in the original Act, and, therefore, Clause 29-A introduces those who are not eligible to apply. For instance, there is a clause with regard to an undischarged insolvent who is not eligible to apply: a person who has been disqualified under the Companies Act to act as a Director cannot apply: and a person who is prohibited under the SEBI Act cannot apply. So these are statutory disqualifications. *And, there is also a disqualification in clause (c) with regard to those who are corporate debtors and who, as on the date of the application making a bid, do not operationalize the account by paying the interest itself i.e. you cannot say that I have an NPA. I am*

not making the account operational. The accounts will continue to be NPAs and yet I am going to apply for this. Effectively, this clause will mean that those, who are in management and on account of whom this insolvent or the non-performing asset has arisen, will not try and say, I do not discharge any of the outstanding debts in terms of making the accounts operational, and yet I would like to apply and get the same enterprise back at a discounted value, for this is not the object of this particular Act itself. So Clause 5 has been brought in with that purpose in mind."

(emphasis supplied)

19. The aforesaid statement, while giving the objective of interpretation of Section 29A and referring to the disqualification in Clause (c), is in regard to those who are corporate debtor and provides the cut off "*as on date of the application making a bid"*.

20. The common submission thus, is that while interpreting Section 240A, the reason for carving out an exception in micro, small and medium industries is set out on the date of application for making the bid as the crucial date. The submission is that while for some other aspects the initiation of the CIRP proceedings would be the cut off date, the same would not apply in the case of Section 240A, in view of the statement by the Minister themselves while introducing the amendment Bill.

21. We are inclined to accept the aforesaid plea as it is quite obvious that while seeking to protect this category of industries, the disqualification is not to be incurred, especially in view of the "*notwithstanding clause*".

22. We certainly can look to the statement of the Minister for purposes of a cut off date that "*there is no other specific provision providing for cut off date*" which submits that it should be the date of application of making a bid. Thus, to opine that it is the initiation of the CIRP proceedings which is the relevant date, cannot be said to reflect the correct legal view and thus, we are constrained to observe that the law laid down in *Digambar Anand Rao Pigle (supra)* case by the Tribunal is not the correct position in law and the cut off date will be the date of submission of resolution plan.

23. Thus, even on this count, the plan submitted in question will not incur the disqualification. We may also note that the aforesaid intent is

reflected in the statutory provision itself that in Section 29A (c) which begins with "*at the time of submission of the resolution plan*".

24. It is also pointed out that even if it was an NPA, the defect can be cured as set out in proviso (1) before submission of the plan, making the submission of the plan the crucial date.

25. We are thus, setting aside the impugned orders of the NCLT dated 28.02.2023 and NCLAT dated 02.06.2023 and allow the appeal leaving parties to bear their own costs.

26. We appreciate the assistance rendered by Mr. Bishwajit Dubey, learned Amicus.

27. As a sequiter, IA No.192/2022 in C.P. (IB) No.196/BB/2020 before the Adjudicating Authority would stand restored to National Company Law Tribunal for reconsideration.

28. Needless to say any consequential action in pursuance to the impugned order taken by the IBBI against the appellant will not survive.

IA No.230784/2023 for Intervention

In view of the view we have taken in the appeal, the application stands disposed of.

Headnotes prepared by:
Divya Pandey

Appeal allowed.