



13th December 2023

Subject: Judgment¹ dated 29th November 2023 of Hon'ble Supreme Court in Hari Babu Thota [Civil Appeal No.4422-2023]

Brief Facts:

Shree Aashraya Infra-Con Limited (CD) was registered an MSME entity post initiation of CIRP. Hari Babu Thota (RP) filed an application before AA seeking approval of resolution plan, submitted by promoters of MSME which was approved by CoC. AA rejected the resolution plan on the ground that MSME certificate was obtained post commencement of CIRP and the promoters of the CD were not entitled to rely on section 240A of the Code. NCLAT while affirming the AA's view, relied on its own order in *Digamber Anand Rao Pingle Vs. Shrikant Madanlal Zawar & Ors.*, and held that in the cases where the MSME certificate was obtained after the commencement of the CIRP, such an unauthorised application cannot be considered to tide over ineligibility to submit resolution plan by the promoters of CD. Aggrieved by the orders of NCLAT, RP filed an appeal before Hon'ble Supreme Court (SC).

Issues Before Hon'ble Supreme Court:

1. Whether the CD not having an MSME status at the time of commencement of CIRP would disqualify as a resolution applicant under section 29A of the Code?
2. Whether the promoters of CD i.e., resolution applicants would be entitled to avail the benefit provided under section 240A of the Code in cases, where CD got registered as MSME after the initiation of CIRP?

Findings & Observations of the Supreme Court:

- SC while allowing the appeal, set aside the orders passed by NCLT and NCLAT. SC held that even if the MSME registration was obtained post commencement of CIRP, the promoter of such CD would be eligible to submit a resolution plan as resolution applicant in terms of section 240A of Code. Further, the promoter of the CD was not disqualified from presenting the resolution plan under section 29A of the Code,
- SC further relied on the Insolvency Law Committee's Report 2018 which noted that “..... 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.”

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- Furthermore, SC clarified that NCLAT judgment in *Digamber Anand Rao Pingle v Shrikant Madanlal Zawar & Ors* lays down the incorrect position of law and remanded the matter to AA for reconsideration of the resolution plan presented by promoters of CD.