



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**I.A. (IB) No. 2250/KB/2024**

**In**

**Company Petition (IB) No. 730/KB/2019**

***An Application under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016, read with Rule 11 of the National  
Company Law Tribunal Rules, 2016.***

**IN THE MATTER OF:**

**RSI Private Limited (In CIRP)**

**... Corporate Applicant.**

**And**

**IN THE MATTER OF:**

**Goverdhan Das Bhaiya**

**... Applicant.**

**Versus**

- 1. Mr. Pratap Mukherjee, Resolution Professional of RSI Pvt. Ltd.**
- 2. The Office of Dy. Commissioner of Customs (Preventive)**
- 3. The Office of the Assistant Commissioner of Customs (Okha)**

**... Respondents.**

**Date of Pronouncement: December 03, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant: Ms. Urmila Chakraborty, Adv.  
Mr. Rantu Kumar Das, Adv.**

**For RP: Ms. Rakhi Purnima Paul, Adv.**

**ORDER**

Per D. Arvind, Member (Technical)

1. The Court congregated through a hybrid mode.
2. Heard both the parties in *extenso*.



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3. Through the present application, the Applicant herein who is an MSME promoter of the corporate debtor, is praying for relaxation and/or exemption and/or dispensation of the net worth criteria for submitting resolution plan in CIRP of the corporate applicant. The corporate applicant is an MSME concern registered under MSMED Act, 2006, classified on 06.04.2023. The Copy of the MSME Certificate is annexed at page 56 to this application.

4. The CIRP has commenced in respect of the corporate applicant on 24.04.2024 and the Form G was issued on 04.10.2024.

5. Ld. Counsel for the applicant would submit that the applicant is eligible under Section 240A read with Section 29A of the I&B Code has first submitted his EoI with all requisite documents and refundable process participation fees within the due dates. The RP has raised some queries which were replied by the applicant. However, the RP in the provisional list of PRAs has not included the name of the applicant, on the ground that the applicant does not meet the net worth criteria as approved by the CoC in its 2nd CoC meeting convened on 14.08.2024.

6. In reply, the applicant issued an email on 01.11.2024 challenging the RP's decision of excluding the applicant from PRA list and rejecting the applicant's EoI. RP in counter issued an email on 03.11.2024 to the applicant contending that the CoC has approved the eligibility criteria unanimously, upon that the RP has no power to relax the same for applicant.



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7. We would refer the judicial precedents to consider the present issue:

**a. *Swiss Ribbons Pvt. Ltd. vs. Union of India* reported in (2019) 4 SCC 17: MANU/SC/0079/2019:**

*“79. 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.***

*80. 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.”*

**(Emphasis Added)**

In arguably, exemption has already been accorded to the MSME promoter to participate in the bid to acquire the MSME to save it from insolvency as well as from



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liquidation. Now, whether such promotion would be entitled to a further exemption of EMD or Net worth, in addition to an exemption granted already in terms of Section 240 of the I&B Code, requires determination.

- b. Further, we rely upon the judgment passed by the Hon'ble NCLAT, New Delhi in the case of **Saravana Global Holdings Ltd. v. Bafna Pharmaceuticals Ltd.**, being **Company Appeal (AT) (Insolvency) No. 203 of 2019**, reported in **MANU/NL/0280/2019** at Para 21 and 22 that:

*“21. The Parliament with specific intention amended the provisions of the ‘I&B Code’ by allowing the Promoters of ‘MSME’ to file ‘Resolution Plan’. **The intention of the legislature shows that the Promoters of ‘MSME’ should be encouraged to pay back the amount with the satisfaction of the ‘Committee of Creditors’ to regain the control of the ‘Corporate Debtor’ and entrepreneurship by filing ‘Resolution Plan’ which is viable, feasible and fulfils other criteria as laid down by the ‘Insolvency and Bankruptcy Board of India’.**”*

*“22. **Therefore, we hold that in exceptional circumstances, if the ‘Corporate Debtor’ is MSME, it is not necessary for the Promoters to compete with other ‘Resolution Applicants’ to regain the control of the ‘Corporate Debtor’.**”*

**(Emphasis Added)**

- c. In **R. Raghavendran vs. C. Raja John** in **Civil Appeal No.2552/2022** reported in **(2023) ibclaw.in 107 SC**, the Hon'ble Apex Court has held that:



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**“21. The Parliament with specific intention amended the provisions of the ‘I&B Code’ by allowing the Promoters of ‘MSME’ to file ‘Resolution Plan’. The intention of the legislature shows that the Promoters of ‘MSME’ should be encouraged to pay back the amount with the satisfaction of the ‘Committee of Creditors’ to regain the control of the ‘Corporate Debtor’ and entrepreneurship by filing ‘Resolution Plan’ which is viable, feasible and fulfils other criteria as laid down by the ‘Insolvency and Bankruptcy Board of India’.**

22. Therefore, we hold that in exceptional circumstances, if the ‘Corporate Debtor’ is MSME, it is not necessary for the Promoters to compete with other ‘Resolution Applicants’ to regain the control of the ‘Corporate Debtor’.”

9. A reading of the aforesaid shows that it begins with the fundamental principle that the Court envisages maximization of value of assets of the corporate debtor. Thereafter, it proceeds to discuss the scenario of a corporate debtor, which is an MSME, qua the ineligibility in terms of the inapplicability of Section 29A (c) & (h) of the Code to a promoter.”

**(Emphasis Added)**

8. We are sentient of the objectives the I&B Code as enshrined in the Preamble of the Code is to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

9. We have noted the Report of Insolvency Law Committee, 2018, for brevity “ILC Report” that the rationale for the exempting MSME entity from competing with other Resolution Applicants as



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the MSMEs are the bedrock of the Indian economy. The intent is not to push them into Insolvency or liquidation and affect the livelihood of employees and workers of MSMEs rather promote their entrepreneurship by granting 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.

10. Hence, we are of the considered view, keeping the objective of the Code as well as the ILC Report and the decisions cited above, that as various relaxations have already been provided under Section 240A of the Code, further, relaxation to satisfy the financial solvency possessed by the MSME Promoter will not serve the object of the code. To ensure a feasible and viable resolution plan to revive the business of the Corporate Debtor and to attain the objective of value maximization of the asset of a corporate insolvent person especially where public money is involved, an exemption of from satisfying the Net worth is uncalled for.

11. This view we have already taken in past in ***Mr. Mukesh Goel v. CA Santanu Brahma, RP of Aanchal Ispat Limited & Ors.*** in I.A. (IB) No. 68/KB/2024 In C.P. (IB) No. 1518/KB/2020 and in ***Mr. Manish Kumar v. Rachna Jhunjunwala, Resolution Professional of Wearit Global Limited,*** in I.A. (IB) No. 53/KB/2024 in Company Petition (IB) No. 100/KB/2019.



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12. Hence, we allow the relaxation and dispensation with the eligibility criteria of “Net Worth” in respect of the Applicant herein in submitting the EoI pursuant to the issuance of Form G dated 04.10.2024.

13. In terms directions supra, the instant Interlocutory Application is **disposed of** accordingly.

14. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on the 03rd Day of December 2024.**

Bose, R. K. [LRA]