

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

12. **IA-4989/2023 in C.P.(IB)/61(MB)/2023**

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **23.11.2023**

NAME OF THE PARTIES: Small Industries Development Bank of India
Vs
Viola Resorts Private Limited

SECTION: 7, 60(5) OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

1. Mr. Amir Arsiwala a/w Mr. Amey Hadwale and Ms. Geeta Lundwani, Ld. Counsel for the Applicant present. Mr. Chaitanya B. Nikte a/w Mr. Esha Malik, Ld. Counsel for the Respondent-1 present.
2. **IA-4989/2023:** This is an Application filed under Section 60(5) of the IBC, 2016 by the suspended Director of the Corporate Debtor who is also a Prospective Resolution Applicant (PRA) intending to submit a Resolution Plan, seeking relief that the company is MSME unit and is not required to comply with the condition of submitting any EMD for submission of the Resolution Plan.
3. The Applicant submits that the Corporate Debtor is an MSME unit. The applicant is promotor and suspended board director and the CIRP commenced vide order dated 06.06.2023. The Resolution Professional (RP) has called for the Resolution Plans from the PRAs with EMD/Bank Guarantee (Bank Guarantee) of Rs. 50,00,000/-. However, the Applicant

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herein requested the RP and CoC to waive the EMD/BG for submission of Resolution Plan as the Applicant is the erstwhile Director of the Corporate Debtor, which is an MSME unit. The CoC in its sixth meeting declined to consider the request of the applicant.

4. Aggrieved by the action of the Committee of Creditors, the Applicant approached this Tribunal for seeking above relief. The Applicant relied upon various orders of NCLAT and coordinate bench of NCLT. In one of the citations submitted by the Applicant, the NCLT Amaravati Bench held in the case of "*M/s. Blue Park Seafoods Private Limited*" between *Mr. Hemanth Naga Mumar Nerella (Applicant) and Mr. Rajesh Chillale & State Bank of India (Respondents)*" (26.07.2023) as follows:

"9. The rationale for exempting MSME from competing with other Resolution Applicants is evident from the reasoning reflected in Sarvana Global Holdings Ltd. The possibility of settlement before the Constitution of Committee of Creditors (CoC) or in terms of Section 12A of IBC on the basis of offer given by the promotor of the CD was also taken into consideration by the NCLAT, while holding that all the other procedure for calling up of application of the Resolution Applicant, etc, need not be applied to an MSME. The main concern for allowing the MSMEs who are promoters, to submit resolution plan and to participate in the process is that the promoters would be inclined to run the CD as a going concern. In the case of C.Raja John vs. R.Rahavendran, RP of Springfield Shelters Pvt. Ltd., & Ors., rendered by the NCLAT, Chennai, the NCLAT permitted the appellant who has undertaken in the said case to submit the net worth certificate, to submit the said certificate. But that was not considered as a mandate for an MSME, which can be understood from the following paragraph wherein it was held that in any event,

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it is unequivocal that the CD is an MSME and it is not necessary for the promoters to compete with other resolution applicants to regain the control of the CD. Hence, not only the exemptions under Section 29 (c) & (h) but the MSMEs are also exempted from the other formalities like EMD, net worth certificate, etc., the underlying reason being to provide an opportunity for the promoters who are inclined to run the CD as a going concern. Hence, in view of the above, I deem it fit to allow the application and R1 is directed to place the Resolution Plan submitted by the Applicant before the CoC for its consideration."

5. This Bench has taken a considered view that following the above order, the Resolution Professional is hereby directed to receive the resolution plan from the Applicant without insisting for the EMD, if otherwise qualified, and put before the Committee of Creditors for further consideration, as per law.
6. With the above direction, IA-4989/2023 is **allowed** and **disposed** of.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)