

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

**IA/33/CHE/2021 and IA/500/CHE/2021
In
CP/158/IB/2018**

*(Filed under Section 60(5)(c) of IBC, 2016 and Rule 11 of
NCLT Rules, 2016)*

C. Raja John

No.18, Thasami Park Residency,
G.V.K. Nagar, Singanallur,
Coimbatore – 641 005

... Applicant

-Vs-

R. Raghavendran

Resolution Professional of
M/s. Spring Field Shelters Pvt. Ltd.
& Anr.

... Respondent

Present:

For Applicant : R. Kannan, PCS
For Respondent : B. Dhanaraj, Advocate

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

Order Pronounced on 18th June 2021

COMMON ORDER

***Per:* R. SUCHARITHA, MEMBER (JUDICIAL)**

1. IA/500/CHE/2021 is an Application which is moved by the Applicant viz. C. Raja John, promoter / suspended Director of the

Corporate Debtor under Rule 11 of NCLT Rules, 2016 seeking for early listing of IA/33/CHE/2021 which is an Application filed by the promoter / suspended Director of the Corporate Debtor, aggrieved against the rejection of the Resolution Plan by the Resolution Professional on 20.11.2020 and sought for a direction against the RP to consider the same. Since the IA/33/CHE/2021 was posted to 24.05.2021, the Applicant has moved the present IA/500/CHE/2021 seeking relief as follows;

- a. To fix the date of hearing before 24-May-2021, to take up this matter on priority basis and held the applicant to participate in EOI process as the last date for the submission of the resolution plan is 24-May-2021.
- b. To issue necessary direction to Resolution Professional to consider the Applicant as an eligible "resolution applicant" and also issue necessary directions that until a decision is taken by the Hon'ble NCLT on this matter, the resolution process followed by the Respondent shall be kept in abeyance or stayed.
- C To issue necessary order as the Hon'ble Member may deem fit.

2. In so far as the prayer (a) is concerned, since the IA/500/CHE/2021 which was filed by the Applicant, came up for hearing before this Tribunal only on 17.06.2021 and the IA/33/CHE/2021 is posted for hearing on 02.07.2021, hence the prayer as sought for in relation to prayer (a) has become infructuous.



3. In so far as prayer (b) is concerned, it is seen that the CIRP in relation to the Corporate Debtor was initiated by this Tribunal on 12.02.2020 and thereafter, the RP has conducted the Committee of Creditors (CoC) meeting periodically. Thereafter, the CoC has fixed the minimum eligibility criteria in relation to the submission of the Resolution Plan by the prospective Resolution Applicant and in pursuance of the same, the RP has issued Expression of Interest in Form - G, to which the Applicant herein, among other have also submitted the Resolution Plan to the RP.

4. It is seen that the Resolution Plan submitted by the Applicant came to be rejected by the RP on the following two grounds;

- (a) He does not meet the eligibility norm as per Section 25(2)(h) of prescribed Net worth.
- (b) His DIN is under "default" Directors list and hence is disqualified to act as a Director under the Companies Act, 2013 (18 of 2013). Accordingly, he is not eligible as per Section 29A(e).

5. It is seen that the CoC has fixed the minimum eligibility criteria, from which it is evident that a prospective Resolution Application should have a net worth of Rs.2 Crore. Since the Applicant does not



meet the said criteria, his Expression of Interest and consequent submission of Resolution Plan was rejected by the CoC.

6. Thereafter, it is seen that the Applicant by way of his e-mail dated 18.11.2020 has sent a reply to the objections raised by the RP. The Applicant in response to the eligibility criteria has stated that he will be providing suitable Chartered Accountants Net worth certificate at the time of submissions of Resolution Plan and that the same will be done with an Investor. Further, in relation to the DIN being deactivated it was replied by the Applicant that he has filed a case before the Division Bench of the Madras High Court for reactivation of the DIN, however till date the Applicant has not placed on record any document so as to purge himself from the said disqualification.

7. Based on the response given by the Applicant, the RP on 20.11.2020, after recording his reasons has rejected the proposal of the Applicant for the submission of the Resolution Plan. Hence, aggrieved by the said order, the Applicant has moved IA/33/CHE/2021 seeking relief as follows;

- (a) To set aside the impugned order dated 20.11.2020 passed by the Resolution professional rejecting the Application for Resolution Plan by the Applicant and direct the respondents to consider the same in the light of the clarifications and materials furnished by the applicant in support of the Application for Resolution Plan.



- (b) Pass such further or other orders as deemed fit and necessary by the Hon'ble Adjudicating Authority and thus render justice.

8. Since, the relief (b) as sought for in IA/500/CHE/2021 is intermingled with IA/33/CHE/2021 and the pleadings made therein are similar, the IA/33/CHE/2021 is taken along with IA/500/CHE/2021 to pass a common order. In this connection, it was submitted by the Learned Authorized Representative for the Applicant that the Corporate Debtor is an MSME and as such they are not disqualified to submit a Resolution Plan. In this regard, it is seen that the Applicant has annexed the MSME Certificate as Annexure – 9. A perusal of the said certificate posits the fact that the Date of UDYAM Registration is seen mentioned as 19.12.2020. The CIRP in relation to the Corporate Debtor was initiated by this Tribunal on 12.02.2020 and after the initiation of the CIRP, the Applicant has obtained MSME Certificate from Government of India. At this juncture, it is relevant to refer to the decision of the NCLAT in the matter of **Harkirat Singh Bedi –Vs- The Oriental Bank of Commerce & Anr.** in *Company Appeal (AT) (Ins.) No. 40 of 2020*, wherein the Hon'ble NCLAT, dealing with the facts which are similar to present case, has held in para 39 as follows;

"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 5th June, 2019, i.e. after CIRP admission order dated 29th 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."

9. A perusal of the MSME Certificate attached with the typed set filed by the Respondent would go on to show that the said Certificate was only obtained on 19.12.2020. Thus, it can be seen that the Applicant is trying to play a fraud upon this Tribunal, in order to gain backdoor entry to the assets of the Corporate Debtor in the guise of projecting themselves as MSME. Further, section 240A of the IBC, 2016 exempts applicability of only 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. In the present case, the Applicant suffers disqualification under Section 29A(e) and unfortunately, such a protection is not being granted to the Applicant / Corporate Debtor, under Section 240A of IBC, 2016 who claims themselves to be an MSME. In any case, the Applicant suffers disqualification under Section 29A(e) of IBC, 2016.



10. The Learned Counsel for the Respondent during the course of submissions has submitted that they have issued a Fresh Expression of Interest and the last date for the submission of the Resolution Plan was fixed as 03.07.2021. Thus, the Applicant, being the Promoter / suspended Director of the Corporate Debtor is trying to stall the process of CIRP on the guise of projecting themselves as MSME and thereby trying to gain a backdoor entry to the assets of the Corporate Debtor.

11. In view of the reasoning and legal positions discussed *supra*, this Adjudicating Authority is of the considered view that the Respondent was right in rejecting the Application of the Applicant for the Resolution Plan and as such the order dated 20.11.2020 passed by the Resolution Professional is free from any legal infirmities and does not warrant any interference by this Adjudicating Authority. As a result thereof, IA/33/CHE/2021 and IA/500/CHE/2021 stands **dismissed**. No costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond