

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC) No. 46/2021
In
CP (IB) No. 09/GB/2019**

Coram: Hon'ble Mr. H. V SUBBA RAO, MEMBER (J)

Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL, GUWAHATI BENCH ON 07.10.2021.

Name of the Company: **Sandeep Khaitan, RP** Applicant
Versus
Suspended Board of Directors, NPIL. Respondent

Section: **Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016**

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. MRINMOY DUTTA	Advocate	Petitioner	Through
2.	MR. ABHIJIT SARKAR	Advocate	Respondent	Video Conference
3.	MR. ABHISHEK PRASAD	Advocate	Respondent	

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, Through Video Conferencing vide separate sheet.

Sd/-

**(PRASANTA KUMAR MOHANTY)
MEMBER (T) &
ADJUDICATING AUTHORITY**

Sd/-

**(HARI VENKATA SUBBA RAO)
MEMBER (J) &
ADJUDICATING AUTHORITY**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC) No.46/2021
In
CP (IB) No. 09/GB/2019**

In the matter of:

STRESSED ASSETS STABILIZATION

FUND (SASF) having registered address

at 3rd Floor, D-Wing, IDBI Tower, WTC Complex

Cuffe Parade, Mumbai- 400005

.... Petitioner

VERSUS

1) Mr. Piyush Periwal

Chairman cum Managing Director

having registered office at 12E, Judges Court

Road, Alipore, Kolkata-700027, West Bengal

.... Respondent No. 1

and

**2) Sandeep Khaitan (RP) of NATIONAL
PLYWOOD INDUSTRIES LIMITED (NPIL)**

having registered address at Sanmati Plaza,

2nd Floor, Christian Basti, GS Road,

Order delivered on **07.10.2021**

Coram: Hon'ble Mr. H. V SUBBA RAO, MEMBER (J)

Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (T)

Dated 07.10.2021

The matter is taken up through Video Conference. Heard the Ld. Counsels appearing on behalf of the Petitioners.

ORDER

[Per se: Shri HARI VENKATA SUBBA RAO, Member (J)]

1. The present Petition i.e. CP (IB)/09/GB/2019 has been filed by the Petitioner (Financial Creditor herein after referred as 'FC') under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') of National Plywood Industries Ltd i.e. the Corporate Guarantor.
2. It is submitted that CP (IB)/09/GB/2019 was admitted on 26.08.2019. The Respondent No. 2 i.e. Mr. Sandeep Khaitan was appointed as the Interim Resolution Professional. Subsequently he was confirmed as the Resolution Professional of the Corporate Debtor.
3. It is again submitted that the said admission was challenged before the NCLAT by the Respondent No. 1 i.e. Mr. Piyush Periwal in Company Appeal (AT) (Insolvency) No. 932/2019. However, the same was upheld by NCLAT vide order dated

25.11.2019. The said order of NCLAT was further challenged by the Respondent No. 1 before the Hon'ble Apex Court in Civil Appeal No. 9142/2019. The Hon'ble Apex Court vide order dated 20.01.2020 remanded the matter back to NCLAT for fresh consideration from the point of view of limitation.

4. It is submitted that the Hon'ble NCLAT on further adjudication of the issues remanded back for fresh decision, upheld the admission, vide order dated 24.11.2020.
5. It is again submitted that in the meanwhile one "PLBB Products Pvt. Ltd." had submitted a Resolution Plan which was approved by the Committee of Creditors. The said Resolution Plan was pending approval by this Hon'ble Tribunal in I.A No. 61/2020 initially but due to certain turn of events, which are detailed below, the application had become infructuous and was disposed of on 22.06.2021.
6. It is further submitted that Mr. Piyush Periwal, the promoter, shareholder and Chairman-Cum-Managing Director of the CD's suspended Board filed an Interlocutory Application being IA No. 05 of 2021 praying inter-alia that the suspended management of the CD may be allowed to file Composite Resolution Plan.
7. It is again submitted that this Hon'ble Tribunal vide order dated 10.02.2021 in IA No. 05 of 2021 held that the CD is an MSME Unit, the Corporate Guarantor to the Principal Borrower National Boards Ltd. (NBL). The CD is an enterprise established on 11.12.1973 functioning fully and the provisions of Section 240 A of IBC is applicable to the CD and accordingly directed that a chance be given to the Suspended Management of the CD, an MSME unit, as prayed for to submit a concrete composite Feasible and Viable Resolution Plan by 01.03.2021. The Resolution Professional was then required to place the Resolution Plan

immediately, if submitted in time, before the COC for their examination of the proposal in line with the Judgment of Hon'ble Supreme Court of India on 15.11.2019 in the case of COC of Essar Steel India Ltd. Vs Satish Kumar Gupta & Others.

The COC was granted the liberty to negotiate with the existing Resolution Applicant, the Suspended Management and accept the plan which is commercially viable, technically feasible based upon the ground realities by a majority with a view to achieving maximization of value of assets, promotion of entrepreneurship, availability of credit and balancing the interest of all the stakeholders. The COC was to take decision by 05.03.2021 and the Resolution Professional was to submit the report/plan, if any, before the Registry by 08.03.2021.

A copy of the order dated 10.02.2021 is annexed herewith and marked as **ANNEXURE 1.**

8. It is submitted that thereafter, the PLBB Products Pvt. Ltd., the Resolution Applicant, whose Resolution Plan was approved by the COC and awaiting approval by this Hon'ble Tribunal had challenged the order of this Hon'ble Tribunal dated 10.02.2021 before the NCLAT by filing Company Appeal (AT) (Ins.) No. 160 of 2021. The Hon'ble NCLAT vide order dated 18.05.2021 has directed that both the Resolution Plans may be placed before the CoC.

A copy of the order dated 18.05.2021 is annexed herewith and marked as **ANNEXURE 2.**

9. It is further submitted that the Resolution Plan of suspended management of the CD and a modified plan of the PLBB Products Pvt. Ltd. were discussed in the CoC meeting dated 25th May, 2021 and finally the CoC has approved the Resolution Plan submitted by PLBB Products Pvt. Ltd. The said Resolution Plan is pending approval by this Hon'ble Tribunal in IA No. 31/2021.

10. It is submitted that Mr. Piyush Periwal is also the Vice-chairman of the National Boards Ltd. (NBL for short), and a Personal Guarantor of the loan of NBL. His conduct with regard to the payment of the dues of Financial Creditor, through the Borrower or as a Personal Guarantor is far from satisfactory and there are enough evidences to show that he did not put up a bonafide effort to pay the dues of the Financial Creditor/Petitioner.
11. It is further submitted that a OTS was approved by the SASF for settlement of its dues. However, the Borrower did not adhere to the terms and conditions of the same. The conduct of the Borrower itself compelled SASF to revoke said OTS on account of non-payment of OTS amount and non-compliance of terms and conditions of the said OTS which was agreed by NBL vide letter dated May 9, 2005.
12. It is submitted that the Borrower failed to pay agreed OTS amount and also comply with the terms and conditions of agreed OTS despite lapse of more than 7 years and 4 months' time forcing SASF to revoke the said OTS vide letter dated September 24, 2012 after giving ample opportunities to the Borrower to pay OTS dues, after the Borrower expressed its inability to do so vide its letter dated November 1, 2011. Thus, it may be stated that the said OTS never materialized, as terms and conditions of the same were otherwise also not complied with by the Company/Principal Borrower.

A copy of the letter dated September 24, 2012 is annexed herewith and marked as **ANNEXURE 3**.

13. It is submitted that in 2009 NBL had requested Hon'ble Debts Recovery Tribunal to allow its Vice-Chairman Mr. Piyush Periwal to sell its landed immovable properties in order to settle the dues of SASF with the revenue generated from the sale proceeds. The Hon'ble Tribunal had considered the request of NBL and

allowed Mr. Periwal to sell 100 bighas of land vide its order dated August 26, 2009. The Hon'ble Tribunal further ordered that the property should not be sold below the reserve price of Rs. 10,000.00 per bigha. Therefore, as Mr. Periwal who had volunteered to sell the property, the onus of selling the said properties was on Mr. Periwal and he was undisputedly responsible for selling the properties of NBL. Thereafter, Mr. Periwal had also sold some properties from time to time exactly at the reserve price of Rs. 10,000 per bigha. It was observed that Mr. Periwal never tried to sell or shown to have sold the land above the reserve price. In all cases the lands were sold at the fixed reserve price which was far below the then market value or price to be offered by any intending purchasers. Therefore, SASF had prayed before Hon'ble DRT to grant stay for selling of the remaining land by Mr. Periwal and to get remaining land valued afresh with a view to fetch higher price in public auction and thereby recover maximum possible amount from such kind of chronic NPAs, where huge public money was locked for more than a decade.

14. It is submitted that the OTS sanctioned was revoked by SASF in September, 2012 due to the non-payment of agreed OTS amount and non-compliance of agreed terms and conditions of said OTS. Despite ample opportunities being presented, the borrower failed to fulfill the terms of OTS which resulted in non-materialization of OTS for more than 7 years i.e. from 2005 to 2012.

A copy of the DRT order dated December 7, 2011 is annexed herewith and marked as **ANNEXURE 4**.

15. It is again submitted that in January 2012, while replying to the evacuation notice dated November 15, 2011 issued by the Hon'ble Tribunal, some of the encroachers viz. Mr. Ram Parvesh Mahato, Mr. Jaduram Kalita, Mr. Ratan Das and Mr. Krishna Yadav have revealed that they have requested Mr. Periwal to sell the encroached land to them at Rs. 50,000.00 per bigha. However, Mr. Periwal preferred to sell

said land to one Mr. Shankar Charan Das merely at Rs. 10,000.00 per bigha. The encroachers also raised serious allegations that Mr. Periwal in order to avoid payment of income tax on capital gains had sold better quality of land than that of land in their possession at the rate of Rs. 10,000.00 per bigha whose real market price was much higher, which raises serious questions on the integrity of Mr. Periwal.

16. It is submitted that the Hon'ble DRT had made numerous attempts to attach the remaining mortgaged properties. However, due to the filing of various petitions by NBL before Hon'ble Gauhati High Court, the Hon'ble DRT could not attach the properties. In spite of multiple orders, the learned DRT could not attach the properties mortgaged due to various reasons, primarily on account of multiple litigations initiated by NBL itself. It is also to be clarified that the SASF was not a party to most of the litigations except WP (C) No. 3000/2016; WP (C) No. 3194/2016; WP (C) No. 3390/2016; WP (C) No. 3734/2016 and WP (C) No. 3718/2016 filed by NBL.

17. It is further submitted that in a hearing held on November 16, 2018, before the Hon'ble DRT, Mr. B.K Tripathi, Nodal Officer of IDBI Bank Ltd. had submitted 'that account has been assigned to SASF long back and IDBI Bank Ltd. is not interested to pursue the matter for the same reason'. Thus the IDBI Bank, the assignor, had appeared in the matter and conveyed that the IDBI Bank Ltd. is not interested to pursue the same as the account has been assigned by it to the SASF long back. The IDBI Bank Ltd. and SASF are two different entities. IDBI being the assignor had inter alia assigned the debts of NBL to SASF, a Trust settled by Govt. of India, in September 2004 itself. SASF has filed requisite application before this Hon'ble Tribunal for revival of execution proceedings which was duly accepted by this Hon'ble Tribunal and the recovery proceedings are going on against the NBL as well as Mr. Piyush Periwal.

A copy of the DRT order dated November 16, 2018 is annexed herewith and marked as **ANNEXURE 5**.

18. It is submitted that the Borrower i.e. NBL had filed multiple Writ Petitions before the Hon'ble Gauhati High Court. NBL also did not take timely steps for issuance of the notices in the proceedings before the Hon'ble High Court as as such some of the cases are pending at the service report stage.

19. It is further submitted that though the above referred omission and commissions were made by the Borrower, Mr. Piyush Periwal who happens to be in the Board of the Management of both the Borrower and Corporate Guarantor and also Personal Guarantor to the loan to NBL, had played an active role in ensuring that the dues of the Financial Creditor are not recovered. Thus attempts to submit Resolution Plan by Mr. Piyush Periwal would be nothing but an attempt to get a back door entry through the resolution process which is contrary to the scheme of the IBC, 2016.

20. It is again submitted that in the event Mr. Piyush Periwal is allowed to submit a Resolution Plan the same would negate the purpose of the legislation and legislative intent, which is to revive the business, in as much Mr. Periwal has been instrumental in working against the payment of the dues of the Financial Creditor/Petitioner.

21. It is submitted that on 26.08.2020 the petitioner had issued a Demand Notice under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.

A copy of the notice dated 26.08.2020 is annexed herewith and marked as **ANNEXURE 6**.

22. It is further submitted that Mr. Piyush Periwal has not responded to the aforesaid notice till date. The petitioner is filing application against Mr. Periwal for Personal Insolvency Resolution Process under IBC.
23. It is again submitted that the default against National Boards Ltd. (NBL) as on 01.08.2020 was Rs. 16,73,10,185.06 Mr. Periwal is not only on the board of the NBL but is also a Personal Guarantor and as such if Shri Piyush Periwal is allowed to participate and articulate in the resolution process, the recovery process of the dues of the applicant against NBL and Mr. Piyush Periwal would be adversely affected. Conversely the resolution process of the National Plywood Industries Ltd. would also be affected.
24. It is submitted that the proceedings before the DRT against the NBL, and Piyush Periwal as Personal Guarantor to the loan granted to NBL is pending and both are jointly and severally liable to pay the certificate amount and interest as directed by the learned Tribunal. As such there is a possibility that the assets of Piyush Periwal would be attached by the Hon'ble Debt Recovery Tribunal as Certificate debtor in the proceedings before it.
25. It is again submitted that a Demand Notice under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019 was issued to Shri Piyush Periwal on 26.08.2020. He has not responded to the notice showing the repayment of the debt. As such the petitioner is entitled to file an application against Mr. Periwal before this Hon'ble Tribunal for Personal Insolvency Resolution Process under IBC. As such there is also a possibility of attachment of his assets in such proceedings.

26. It is submitted that Mr. Piyush Periwal is a related party and as such there is a bar against him in participating in resolution process of the CD.
27. It is further submitted that the idea of proper Resolution Plan one which is commercially viable, technically feasible based upon the ground realities by a majority with a view to achieving maximization of the value of assets, promotion of entrepreneurship, availability of credit and balancing the interest of all the stakeholders. Participation of Respondent No. 1, Shri Periwal would go against the spirit and purpose of the IBC.
28. It is also submitted that in the event of attachment of the properties of the Respondent No. 1 either by the learned DRT or by this Hon'ble Tribunal in a Personal Insolvency Resolution Process under IBC would have adverse effect on any Resolution Plan of which he is a part of and also adversely affect any recovery process by the learned DRT.
29. It is again submitted that Mr. Piyush Periwal may be restrained from participating in the resolution process of National Plywood Industries Ltd.
30. The Petitioner in the present application has prayed for the below mentioned reliefs:

A. Direct that Mr. Piyush Periwal is not entitled to submit any Resolution Plan in the resolution process of National Plywood Industries Ltd. arising out of CP (IB)/09/GB/2019 (Corporate Insolvency Resolution Process of the National Plywood Industries Ltd.)

B. Direct that Mr. Piyush Periwal is not entitled to participate in the resolution process of National Plywood Industries Ltd arising

out of CP (IB)/09/GB/2019 (Corporate Insolvency Resolution Process of the National Plywood Industries Ltd.)

C. Pass such further or other order as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

31. The Respondent No. 1 i.e. Piyush Periwal has filed its reply to the above application i.e. IA (IBC) No. 46/2021 dated 30/08/2021 wherein the respondent has submitted the following clarifications:

- a. It is submitted that the instant application filed by the petitioner is frivolous, vexatious and devoid of any merit and is liable to be dismissed by this Hon'ble Tribunal. It is further submitted that the petitioner has no *locus standi* to file this application and has failed to raise any legal ground/issue for preferring this application before this Hon'ble Tribunal. It is important to note in this regard that any proceeding against the respondent based on the Recovery Certificate dated 05.01.2004 issued by the Hon'ble DRT, Guwahati in OA 27 of 2002 is barred by limitation and is not maintainable in law.
- b. It is also submitted that the instant application is not maintainable and that the petitioner has no *locus standi* to maintain this application, the Respondent denies and disputes all such allegations, submissions, averments and/or assertions made in the instant company appeal.
- c. It is stated that save and except what is the matter of record, the contents of all the paragraphs, each and every single averment, submission and contention in the application filed by the Petitioner are denied as wrong, incorrect and untenable in law as well as in the facts

of the present case, and the same are denied in entirety, until and unless any of the contents are specifically admitted.

- d. It is submitted again that the Insolvency and Bankruptcy Code (Second Amendment) Ordinance, 2018 has brought relief to the Micro Small and Medium Enterprises (MSME) by relaxing the applicability of the provisions of Section 29A as regards submission of a resolution plan in case of such entities their favour, It is one of the most significant amendments under the Insolvency and Bankruptcy Code and has a wide impact on the whole insolvency resolution regime, as the MSME sector is a major employment generator in the company's economy and this is therefore, a very politically sensitive matter.**
- e. That the Government has introduced certain exemptions from the applicability of the provisions of Section 29A as regards MSME. The amendment has introduced section 240A which specifically dispenses the applicability of Section 29A clause (c) to (h) in case the Corporate Debtor is a Micro, Small or Medium Enterprise. Further it also envisages power of Central Government to make specific directions as regards applicability and/or modifications in case of MSMEs. It is expected that with the introduction of these exemptions, the relatively smaller companies may find takers and won't have to face liquidation.**
- f. Additionally, the disqualifications for Resolution Applicants have been tempered down by way of amending clauses (d) to (e) of Section 29A.

These amendments, reducing the ambit of disqualifications makes sure that a genuine resolution applicant is not withheld from exercising his rights as what is being sought against Tata Steel in the Bhushan Power matter. The NCLT in the matter of RBL Bank Ltd. Vs MBL Infrastructures Ltd. stated that the object of Section 29A was not to announce all promoters ineligible to be resolution applicants. The Code's objective is to promote an efficient and speedy insolvency procedure, however, the introduction of Section 29A proved to be contrary to the set objectives.

- g. The Insolvency and Bankruptcy Code, 2016 was enacted in the year 2016 to provide a comprehensive consolidating legislation with regard to Insolvency and Bankruptcy in India. Vide the 2018 amendment to the Code, Section 29A was inserted which basically laid down provisions with regard to individuals who are not eligible to submit a Resolution Plan.
- h. In the Law Committee report, the Committee recognised the importance of the MSME's in the Indian economy, stating that MSMEs form the foundation of the Indian economy, and are key drivers of employment, production, economic growth, entrepreneurship and financial inclusion. According to the Annual Report of the Ministry of MSMEs there are 512 lakh MSMEs in India which contributes to around 37.22 percent of the country's GDP, further highlighting their importance in the economy in terms of job creation and economic growth.
- i. The report concluded 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. It suggested that MSME as a Corporate Debtor should be granted exemptions, by permitting a promoter, who is not a willful defaulter, to bid for the MSME in insolvency. MSMEs occupy a very significant and important position in the India economy and therefore, due preservation and creation of more MSMEs are to be encouraged. Incentives should be granted to these business units as they are the bedrock of our economy. In consideration of all views the best approach to encourage MSMEs and provide them relief is to exempt or relax applicability of certain provisions under the regular insolvency process.

- j. The introduction of Section 29A has not only brought a change in the corporate insolvency resolution process but, it also brought within its various aspects having economic effect. In the present economic scenario, the limited relief granted to the MSME under IBC regime is in line with our economic policy of protecting, preserving and promoting entrepreneurship in India.
- k. The soul of the Code is resolution of insolvency of a firm by a collective effort, to keep it going, to maximize the value of its assets, and to balance the interest of all stakeholders. Several pronouncements of the Adjudicating Authority reiterate prohibition on recovery. In the matter of M/s Nowfloats Technology Private Limited, the Hon'ble NCLT reiterated that resolution process is initiated for the benefit of the general body of creditors. It is a representative action and is not for the recovery of money for an individual creditor.
- l. That Hon'ble NCLAT in *Saravana Global Holdings Ltd. vs Bafna Pharmaceuticals Limited & Ors (CA(AT)(Insolvency) No. 203 of 2019*

decided on 04.07.2019) affirmed by the Hon'ble Supreme Court, it was now settled that, if the Corporate Debtor is an MSME, it is not necessary for the promoters to compete with other Resolution Applicants to regain the control of the Corporate Debtor. Although Section 240A of the IBC only exempts corporate insolvency resolution process of Micro, Small and Medium Enterprises from the operation of clauses (c) and (h) of Section 29A, there is no discussion in the impugned order with regard to the application of any of the other provisions of Section 29A while allowing the suspended management to file its plan. As none of the other provisions of Section 29A of the Code operate as a bar against the suspended management, upon taking into account the exemption of the provisions of Section 29A (c) and (h). The relevant portion of the orders reads thus:

“ 20. The 'Committee of Creditors' is to consider the feasibility, viability and such other requirements as has been specified by the Board. If it proposes maximization of the assets and is found to be feasible, viable and fulfil all other requirements as specified by the Board, the company being MSME, it is not necessary for the 'Committee of Creditors' to follow all the procedures under the 'Corporate Insolvency Resolution Process'. For example, if case is settled before the constitution of the 'Committee of Creditors' or in terms of Section 12A on the basis of offer given by Promoter, in such case, all other procedure for calling of application of 'Resolution Applicant' etc, are not followed. If the Promoter satisfies all the creditors and is in a position to keep the 'Corporate Debtor' as a going concern, it is always open to 'Committee of Creditors' to accept the terms of settlement and approve it by 90% of the voting shares. The same principle can be followed in the case of MSME.

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'.*

m. It is submitted that in *Swiss Ribbons Pvt. Ltd and Another vs. Union of India and others- 2019 SCC Online SC 73*, the Hon'ble Apex Court made it clear that I & B Code envisages maximization of value of Assets of the Corporate Debtor so that they are efficiently runs as going concerns and in turn will promote entrepreneurship.

n. In the afore-stated circumstances this application filed by the petitioner is liable to be dismissed *in limine*.

32. It is submitted by the Applicant that though in the meanwhile a resolution plan has been approved by the COC, this application was filed as a matter of abundant caution seeking direction restraining Sri Periwal from participating in any resolution process, in the event the matter is placed before the COC for any further

consideration, considering the fact that the resolution process has already been delayed.

ORDER

33. Heard the Counsels appeared from both the sides and perused the documents submitted. The CD is an MSME Unit and the Hon'ble NCLAT has passed an order in this regard dated 07.09.2021, wherein it was observed that:

"Keeping in mind the intention of the legislature, there is no harm in giving an opportunity to the MSME in accordance with the provisions of the Code for keeping the promotion of entrepreneurship alive. The Adjudicating Authority has only provided an opportunity to the MSME and has given the liberty to the CoC to negotiate with existing Resolution Applicant and MSME unit also and accept the one which is commercially viable and technically feasible.

Considering the above observations, we do not find any infirmity in the order and hence, we are dismissing the appeal. However, the Adjudicating Authority is requested to consider IA No. 51 of 2020 in CP (IB) No. 09/GB/2019 before finally approving any Resolution Plan."

34. Section 29 A of IBC provides for the eligibility of Resolution Applicant and Section 240 A explains how IBC code is applicable to MSMEs. Relevant portion of both the sections are reproduced below:

34.1 "29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person:

(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 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:

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;

(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;

34.2 "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 2[or pre-packaged insolvency resolution process] of any micro, small and medium enterprises.

35. One Resolution plan has been approved by the COC and placed before this bench and the Applicant has filed this Petition as a matter of abundant caution.

36. Considering the points mentioned above, we do not find any substance in the prayers made by the Applicant here:

a. to direct that Mr. Piyush Periwal is not entitled to submit any

Resolution Plan in the resolution process of National Plywood

Industries Ltd. arising out of CP (IB)/09/GB/2019 (Corporate

Insolvency Resolution Process of the National Plywood Industries Ltd.) and

b. direct that Mr. Piyush Periwal is not entitled to participate in the resolution process of National Plywood Industries Ltd arising out of CP (IB)/09/GB/2019 (Corporate Insolvency Resolution Process of the National Plywood Industries

37. Hence this IA is dismissed with above observations so as to no costs.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

Sd/-

**(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority**