NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 2032 of 2025

(Arising against the impugned order dated 30.09.2025 passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench–I, in IA No. 766/(AHM)/2021 in CP (IB) No. 289(AHM) of 2020.

IN THE MATTER OF:

Malharshanti Enterprises, through its Sole Proprietor Mr. Sunil Pande, having its office at 59A/12, Nagari Niwara Parishad, Gen A.K. Vaidya Marg (Film City Road), Goregaon West, Mumbai – 400053. **...Appellant**

Versus

1. **Mr. Naresh Sevantilal Shah**, residing at Flat No. 103, Thosar House, Hanuman Cross Road No.I, Near Shiv Leela Hotel, Vile Parle (East), Mumbai – 400057. **...Respondent No.1**
2. **Mr. Nitin Narang**, Resolution Professional of Afcan Impex Private Limited, having office at Building No.19, Vijay Nagar, Kingsway Camp, New Delhi – 110009. **...Respondent No.2**

Present:

For Appellant: **Mr. Anshuj Dhingra, Ms. Akansha Sharma, Advocates.**

For Respondents: **Ms. Ganga Mitra, Advocate for SRA.**
Mr. Gaurav Joshi, Advocate for Monitoring Committee.

Cont'd..../

J U D G M E N T
(20th March, 2026)

INDEVAR PANDEY, MEMBER (T)

The present Appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to Code) by **Malharshanti Enterprises**, (**Appellant**) through its Sole Proprietor Mr. Sunil Pande, assailing the order dated 30.09.2025 passed by the National Company Law Tribunal, Ahmedabad Bench–I (Adjudicating Authority), in **IA No. 766/(AHM)/2021 in CP (IB) No. 289 of 2020** whereby the Resolution Plan submitted by Mr. Naresh Sevantilal Shah (**Respondent No.1**), in the CIRP of Afcan Impex Private Limited (**Corporate Debtor**) was approved, despite serious objections regarding his statutory ineligibility under Section 29A of the Code.

2. The Appellant contends that the impugned order has been passed without proper judicial scrutiny of material facts relating to Respondent No.1's status as promoter and director of CAN Enterprises Private Limited, a company already undergoing CIRP before the Hon'ble NCLT, Mumbai Bench, and whose admission order has attained finality up to the Hon'ble Supreme Court. The Appeal therefore arises out of alleged suppression of material facts, misrepresentation before the Adjudicating Authority, and non-consideration of mandatory statutory disqualifications.

Brief facts of the case

3. The brief facts of the case are as given below:

i. CIRP against Afcan Impex Private Limited/ Corporate Debtor commenced pursuant to admission of a Section 7 petition filed by the Bank of Maharashtra. Ld. NCLT, Ahmedabad Bench (Adjudicating Authority), vide order dated 17.02.2021 admitted the petition CP (IB) No. 289/2020 and appointed Mr. Nitin Narang (Respondent No.2) as IRP, who was later confirmed as RP.

ii. Form G was published on 19.06.2021 inviting Expression of Interest, pursuant to which five EOIs were received and three were shortlisted including Respondent No.1.

iii. The CoC, consisting of a sole Financial Creditor /Bank of Maharashtra, on 06.10.2021 approved the Resolution Plan submitted by Respondent No.1 with 100% voting share.

iv. The suspended Board of Directors had preferred an appeal against initiation of CIRP against the CD before this Tribunal, which was registered as Comp. App. (AT) (Ins.) No. 441 of 2021. The appeal was dismissed vide an order dated 11.08.2021. Thereafter, the suspended management challenged the admission order before the Hon'ble Supreme Court in Civil Appeal No. 5580 of 2021. The Hon'ble Supreme Court vide its order dated 01.04.2024 dismissed the aforesaid appeal. During the intervening period when the matter was pending before Hon'ble Supreme Court, there was not much progress in the CIRP proceedings before the Adjudicating Authority.

v. In compliance with subsequent orders of Adjudicating Authority dated 01.10.2024 the SRA filed an affidavit on 11.11.2024 under Section 29A of the IBC, 2016 along with the Resolution Plan submitted by SRA, wherein it has been declared that SRA along with all the SRA connected person are eligible under Section 29A of the IBC. Further, in the Resolution Plan, SRA has proposed that resolution applicant and his nominee shall be inducted as Director in the board of corporate debtor upon approval of Resolution Plan by this Tribunal. The SRA states that, upon approval of the Resolution Plan by this Tribunal, SRA shall take steps to induct the following Director in the Board of the Corporate Debor –

(a) Naresh Sevantilal Shah having DIN No. - 00928887

(b) Aalok Shah S/o Naresh Shah having DIN No. - 10831679

vi. During hearing on 12.11.2024, the Hon'ble NCLT, Ahmedabad recorded that Respondent No.1 was promoter/director of CAN Enterprises Private Limited which was undergoing CIRP before NCLT Mumbai and that he had sought time till December 2024 to "come clean" from the said CIRP.

vii. An affidavit dated 19.05.2025 was filed by Respondent No.1 before the NCLT Ahmedabad bringing on record the pendency of IA 1586 of 2025 before NCLT Mumbai and annexing copies of pleadings.

viii. The Adjudicating Authority vide the impugned order dated 30.09.2025 in IA/766/(AHM)/2021, approved the Resolution Plan submitted by Respondent No.1 while recording that the alleged settlement proposal had been rejected by the Appellant and that proceedings pending before NCLT Mumbai had no adverse consequence on approval of the plan.

ix. The Appellant asserts that the approval of the Resolution Plan was granted without independent adjudication of Respondent No.1's eligibility under Section 29A, without verification of actual status of CIRP proceedings of CAN Enterprises Private Limited, and despite pendency of liquidation proceedings therein.

4. The appellant had filed a petition under Section 9 of the Code against CAN Enterprises Pvt. Ltd. in which Respondent No.1 was one of the promoter-director of the company. It is relevant to state the facts relating to this particular case as the appellant has relied on this case to argue that the Respondent No.1/SRA was ineligible under Section 29A of the Code to submit the resolution plan in CP (IB) No. 289(AHM) of 2020. The brief details of the said CIRP proceedings are given below:

i. The Corporate Insolvency Resolution Process (CIRP) against CAN Enterprises Private Limited was initiated pursuant to admission of a Section 9 petition filed by the present Appellant, and Ld. NCLT, Mumbai Bench, vide order dated 27.01.2020 in CP (IB) No. 3753 of 2018, admitted the petition and commenced CIRP, thereby suspending the powers of the Board of Directors including Respondent No.1, who was promoter and director of the Corporate Debtor.

ii. The said admission order was challenged by Respondent No.1 before this Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 415 of 2020. The aforesaid Appeal was dismissed vide order dated 19.01.2021. The consequent civil appeal against the said dismissal by NCLAT filed before Hon'ble Supreme Court came to be dismissed as withdrawn vide order dated 10.03.2021, thereby rendering the admission of CIRP final.

iii. In the first CoC meeting held on 18.03.2020, the Interim Resolution Professional duly verified and admitted the claim of the Appellant as an Operational Creditor. Subsequently, M/s Paton Construction Private Limited emerged as the sole Financial Creditor with a claim of Rs. 1,00,000/- and consequently constituted the entire CoC holding 100% voting share, thereby exercising exclusive control over decisions in the CIRP. The said CoC resolved to replace the IRP and pursuant thereto Mr. Manish Jaju was appointed as Resolution Professional vide order dated 09.06.2020 passed by the Hon'ble NCLT, Mumbai Bench.

iv. The Resolution Professional thereafter rejected the duly admitted claim of the Appellant through an email dated 02.12.2020, which prompted the Appellant to file I.A. No. 47 of 2021 challenging such rejection. The Hon'ble NCLT, Mumbai Bench, vide detailed order dated 16.02.2023, allowed the said application and categorically held that the RP had acted illegally and exceeded his jurisdiction while rejecting the Appellant's claim.

v. Appeals preferred by Respondent No.1, the Resolution Professional and the CoC member against the order dated 16.02.2023 were dismissed by the NCLAT vide order dated 17.09.2024, wherein the conduct of the RP was termed deplorable and costs of Rs. 1,00,000/- were imposed.

vi. The Hon'ble Supreme Court, vide order dated 02.01.2025, dismissed the Civil Appeal filed against the NCLAT judgment, thereby affirming the validity of the Appellant's claim and exposing the attempt to introduce a nominal financial creditor.

vii. Pursuant to the Apex Court order, the Resolution Professional restored the claim of the Appellant vide email dated 06.01.2025. Respondent No.1 thereafter addressed a letter dated 05.03.2025 to the RP offering settlement of the entire claim, which proposal was rejected by the Appellant vide email dated 10.03.2025.

viii. An application being IA No. 1586 of 2025 was thereafter filed by Respondent No.1 before the Hon'ble NCLT, Mumbai Bench seeking directions to record settlement and stay CIRP, which application remains pending.

ix. In view of abnormal delay in the CIRP, the Appellant filed an application under Section 33 of the Code seeking liquidation of CAN Enterprises Private Limited, which application is also pending before the Hon'ble NCLT, Mumbai Bench.

5. The appellant submits that the Respondent No.1 was, at all relevant times, promoter and director of CAN Enterprises Private Limited undergoing CIRP since 27.01.2020. The present Appeal therefore arises from the alleged failure of the Adjudicating Authority to examine statutory ineligibility, suppression of material developments, and exercise of jurisdiction in conformity with Sections 29A, 30 and 31 of the Insolvency and Bankruptcy Code, 2016.

Submissions of the Appellant

6. Ld. Counsel for the Appellant submits that the approval of the Resolution Plan by the Hon'ble NCLT, Ahmedabad Bench is ex facie perverse and contrary to the statutory mandate of the Insolvency and Bankruptcy Code, 2016. It is submitted that Respondent No. 1 is admittedly a director/promoter of CAN Enterprises Pvt. Ltd., a company which has been undergoing CIRP since 2020 before the Ld. NCLT, Mumbai. In view of the admitted position that CAN Enterprises Pvt. Ltd. has been under CIRP and Respondent No. 1 continues to be associated with its management, Respondent No. 1 stands disqualified under Section 164 of the Companies Act, 2013 and is squarely hit by Section 29A(e) of the IBC, 2016. Consequently, he is ineligible to submit, implement, or derive any benefit under a Resolution Plan. The approval of the plan submitted by such an ineligible person vitiates the entire process.

7. Ld. Counsel further submits that Respondent No. 1, with a calculated and deliberate objective of securing approval of his Resolution Plan and unlawfully retaining the status of Successful Resolution Applicant, suppressed and misrepresented material facts before the NCLT, Ahmedabad. It is submitted that the satisfaction recorded by the Adjudicating Authority under Sections 30(2) and 31 of the Code is founded upon misleading disclosures. The statutory satisfaction contemplated under the Code must be based on full and true disclosure; any suppression strikes at the root of the jurisdiction exercised.

8. He submits that in November 2024, Respondent No. 1 filed an affidavit before the Hon'ble NCLT, Ahmedabad. The Ld. Bench recorded in its order dated 12.11.2024 that one of the companies where the SRA, i.e., Respondent No. 1, is a director was undergoing CIRP and that the matter was under challenge before the Hon'ble Supreme Court. The Bench further recorded the statement of Respondent No. 1 that he was attempting a settlement and sought time till the end of December 2024 to come clean from the CIRP of CAN Enterprises Pvt. Ltd. Ld. Counsel submits that this statement was made to create an impression of imminent settlement and compliance.

9. It is the submission of Appellant that the aforesaid representation was wholly contrary to the consistent conduct of Respondent No.1. From the inception of the Section 9 petition filed by the Appellant against CAN Enterprises Pvt. Ltd., Respondent No. 1 has persistently adopted every conceivable tactic to obstruct and derail the CIRP. It is submitted that Respondent No. 1 initially challenged the admission order before this Appellate Tribunal, which was dismissed by an order dated 19.01.2021. Thereafter, he approached the Hon'ble Supreme Court, however, there also the proceedings were dismissed as withdrawn on 10.03.2021. This constituted the first round of challenge and demonstrates his consistent attempt to frustrate the CIRP.

10. Ld. Counsel submits that upon failing to obtain relief through judicial scrutiny, Respondent No. 1 fraudulently inducted M/s. Paton Construction as a Financial Creditor in the CIRP of CAN Enterprises Pvt. Ltd. Acting in collusion with the said Financial Creditor, voting rights were arbitrarily

exercised to appoint a new Resolution Professional. Thereafter, in clear connivance with the newly appointed Resolution Professional, the Appellant's claim as an Operational Creditor, the very foundation upon which CIRP was admitted, was illegally rejected.

11. It is further submitted that the illegal rejection of the Appellant's claim was set aside by the Ld. NCLT, Mumbai Bench by order dated 16.02.2023 with adverse observations against the Resolution Professional. It is submitted that Respondent No. 1, in collusion with the Resolution Professional and the Financial Creditor, preferred three separate appeals against the said order. This Appellate Tribunal, by order dated 17.09.2024, dismissed all three appeals and imposed costs upon the Resolution Professional, thereby affirming the illegality and mala fides underlying their conduct. Even thereafter, Respondent No. 1 preferred a Civil Appeal before the Hon'ble Supreme Court challenging the order dated 17.09.2024, which came to be dismissed on 02.01.2025. This constituted the second round of challenge. Ld. Counsel submits that for more than five years, Respondent No. 1 has continuously sought to frustrate the CIRP with the sole objective of defeating the Appellant's legitimate claim.

12. Ld. Counsel submits that the statement made before the Ld. NCLT, Ahmedabad regarding settlement was merely a ploy to buy time until disposal of the Civil Appeal before the Hon'ble Apex Court on 02.01.2025. Thereafter, a camouflage of settlement was engineered with active involvement of the Resolution Professional of CAN Enterprises Pvt. Ltd. It is submitted that after five years of litigation, the Appellant's claim was

restored, and a settlement proposal dated 05.03.2025 was sent by Respondent No. 1, which was rejected by the Appellant on 10.03.2025. Subsequently, I.A. No. 1586/2025 was pressed into service before the Hon'ble NCLT, Mumbai dehors the provisions of the IBC to create an impression of settlement, and notice was issued on 04.04.2025. Ld. Counsel submits that even the Hon'ble Supreme Court recorded that the facts were startling and indicated an attempt to set up a financial creditor.

13. He submits that to further impress upon the Ld. NCLT, Ahmedabad, statements regarding I.A. No. 1586/2025 and its listing before the Hon'ble NCLT, Mumbai were recorded in proceedings dated 07.05.2025, and copies of orders were placed on record. It is submitted that these steps were taken to create a narrative of bonafide settlement.

14. Ld. Counsel submits that the Hon'ble NCLT, Ahmedabad, while passing the impugned order, relied solely upon the misleading averments made by Respondent No. 1 and, without independent verification of the proceedings pending before the Hon'ble NCLT, Mumbai, approved the Resolution Plan. The Adjudicating Authority recorded that the RA had already made a proposal for payment of the entire claim of the Appellant and that the Appellant rejected it with mala fide intention. Ld. Counsel submits that this finding is contrary to the record. The alleged settlement application remains pending adjudication before the Hon'ble NCLT, Mumbai. The Appellant cannot be saddled with adverse findings rendered in proceedings to which it was not a party.

15. It is further submitted that Respondent No. 1, despite being disqualified under Section 164(2)(a) of the Companies Act, 2013 read with Section 29A(e) of the IBC, has persistently indulged in calculated and mala fide misrepresentation before judicial forums. Such conduct constitutes a gross abuse of the process of law and vitiates the entire approval of the Resolution Plan.

16. Ld. Counsel submits that although the Appellant was not a formal party before the Ld. NCLT, Ahmedabad, it is a settled position of law that the expression “person aggrieved” under Sections 61 and 62 of the IBC is of wide import and cannot be narrowly construed. The right of appeal is conferred upon a “person aggrieved” and not merely upon a party to the proceedings. The determinative test is whether the impugned order adversely affects the legal rights and interests of such person. Ld. Counsel relies upon the judgments in *Southern Power Distribution Company of Telangana Ltd. v. Kalvakolanu Murali Krishna Prasad*, *Trimex Industries Pvt. Ltd. v. Bhuvan Madan (RP)*, *Bar Council of Maharashtra v. M.V. Dabholkar*, *Samir Agrawal v. Competition Commission of India*, and *Vishnu Vardhan v. State of Uttar Pradesh*, as cited in the written submissions.

17. Ld. Counsel further submits that the impugned order has caused direct and imminent prejudice to the Appellant in the pending I.A. No. 1586/2025 before the Hon’ble NCLT, Mumbai. The said application seeks acceptance of a purported settlement and closure of the CIRP of CAN Enterprises Pvt. Ltd., wherein the Appellant is the Operational Creditor. The adverse judicial observation that the Appellant rejected settlement with mala

fide intent, recorded without hearing the Appellant, is capable of materially affecting adjudication of the pending application. The prejudice is immediate and real. It is settled law that civil consequences extend to adverse findings capable of affecting a party's position in pending proceedings. The Appellant has therefore sustained a clear legal injury and squarely falls within the meaning of "person aggrieved" under Section 61 of the IBC.

18. It is submitted that this Hon'ble Tribunal has already issued notice in the connected appeals filed by the suspended board of Afcan Impex (P) Ltd., which inter alia raise similar issues, and the matter is listed for further proceedings on 19.03.2026. A copy of the order dated 29.01.2026 has been annexed on record.

19. The appellant has made the following specific prayers in the appeal:

> *'Therefore, in the light of the facts enumerated above, the Appellant hereinmost respectfully states and submits that this Hon'ble Tribunal may be graciously pleased to pass necessary directions:*
>
> *(a.) Setting aside the Order dated 30.09.2025 passed by the Ld. NCLT, Ahmedabad in IA No. 766 (AHM) 2021 on the facts and the grounds mentioned above;*
>
> *(b.) Directing the Ld. NCLT to declare the Respondent No. 1 Mr. Naresh Sevantilal Shah as ineligible for propounding any resolution plan for the Corporate Debtor Afcan Impex (P) Limited.'*

Submissions of Respondent No.1 (Mr. Naresh Sevantilal Shah/ SRA)

20. In his initial submissions, Ld. Counsel for R1 states that the Appellant is admittedly not a creditor of Afcan Impex Pvt. Ltd. It is an Operational Creditor of CAN Enterprises Pvt. Ltd. which is a completely separate corporate debtor undergoing CIRP before NCLT Mumbai. The Appellant has no admitted claim, no financial stake, and no status in the Afcan Impex CIRP proceedings. Section 61 of the IBC permits appeal only by a "person aggrieved" meaning a person with direct legal interest in the impugned order. A creditor in one CIRP cannot challenge resolution plans in unrelated CIRPs on speculative grounds. The IBC is a self-contained code, creditors in one proceeding cannot interfere in another proceeding, where they have no stake. The Appellant's claimed grievance is entirely collateral.

21. Ld. Counsel states that Being Promoter/Related Party of Company Under CIRP is Not Per Se a ground of ineligibility. The Section 29A(c) of the Code requires that the person have an account classified as NPA in accordance with RBI guidelines. Mere pendency of CIRP proceedings against a related company does not automatically disqualify a resolution applicant. The Appellant has not shown that any account of Respondent No. 1 or CAN Enterprises is classified as NPA. The Resolution Professional conducted due diligence and certified the SRA as eligible under Section 29A.

22. Ld. Counsel further states that for Director disqualification Under Section 164, the declaration of Registrar Of Companies (ROC)would be required. The Hon'ble Supreme Court in *M. K. Rajagopalan v. Dr. Periasamy Palani Gounder (2024)* has categorically held that there is no concept of

"deemed disqualification" under Section 164(2)(b) of the Companies Act, 2013. A resolution applicant cannot be rendered ineligible based on an assumed disqualification under Section 164. The disqualification must be formally declared by the competent authority i.e. ROC/Ministry of Corporate Affairs, it cannot be inferred by this Tribunal. There is no ROC or MCA order declaring Respondent No. 1 disqualified as a director has been placed on record. The Section 29A(e) ground therefore fails entirely.

23. He submits that the Appellant admittedly did not appear before or participate in the NCLT Ahmedabad proceedings. The grounds it now raises (Section 29A ineligibility) were never put before the Adjudicating Authority. It is a settled principle that new grounds cannot be raised for the first time in appellate proceedings. The Appellant had ample opportunity to intervene if genuinely aggrieved, but it chose not to, despite CIRP proceeding of Afcan continuing for five years i.e. from 2021 to 2025. It cannot now take advantage of appellate jurisdiction to raise issues it never brought before the Adjudicating Authority.

24. Ld. Counsel states that The Appellant's real purpose is to exert pressure on Respondent No. 1 in the parallel CAN Enterprises CIRP before NCLT Mumbai and not to vindicate any genuine right in the Afcan Impex CIRP. The Appellant has zero financial stake in Afcan Impex, yet it has challenged a resolution plan, where every creditor with an admitted claim has been paid in full. This is a textbook case of abuse of process. An appeal filed not to enforce a legal right, but as a weapon of pressure in unrelated proceedings must be dismissed with exemplary costs. The present Appeal is

a transparent attempt to use these proceedings as leverage in the CAN Enterprises CIRP, where Respondent No. I has made repeated bona fide settlement offers.

25. He submits that Respondent No. 1, in complete good faith and with genuine intent to settle all dues in the CAN Enterprises CIRP, offered to pay 100% of the Appellant's entire admitted claim of Rs. 1.97 Crores plus all CIRP costs. as evidenced by:

(a) Letter dated 05.03.2025 addressed to the Resolution Professional of CAN Emerprises Pvt. Ltd. offering settlement of the claim in its entirety;

(b) I.A No. 1586/2025 filed before NCLT Mumbai formalizing the settlement proposal and seeking directions to accept payment and close CIRP proceedings;

(c) NCLT Mumbai Order dated 10.12.2025 which records that Corporate Debtor reiterated willingness to pay Rs. 1.97 Crores to Malharshanti + CIRP Costs + Rs. 1 lakh to Financial Creditor.

26. Ld. Counsel states that despite being offered full 100% payment, the Appellant vide email dated 10.03.2025 rejected the settlement without any justifiable reason whatsoever. The Hon'ble NCLT Ahmedabad itself specifically recorded in Para 20 of the impugned order that the Appellant rejected Respondent No. 1’s proposal with "mala fide intentions".

27. It is the submission of Ld. Counsel that the question therefore which would fall for consideration is that: Whether a creditor which refuse 100% of its admitted claim and then file an appeal in an unrelated proceeding? The answer is self-evident-the purpose is not recovery of dues but harassment and arm-twisting.

28. He further submits that The Appellant has also filed IA(IBC)(LIQ.)/89/2025 on 04.11.2025 before NCLT Mumbai seeking liquidation of CAN Enterprises Pvt. Ltd. under Section 33 of the IBC i.e. immediately after approval of Resolution Plan by NLCT Ahmedabad, this despite having been offered 100% settlement of its admitted claim. This application itself demonstrates the Appellant's mala fide intent and misuse of legal proceedings. An individual Operational Creditor has no independent locus to file a liquidation application. He invites attention to Section 33 of the IBC in this regard.

29. Ld. Counsel for R1 further states that the liquidation application filed in CAN Enterprises CIRP proceedings, when a 100% payment offer is pending and when the Resolution Plan for Afcan Impex (approved on 30.09.2025) has been fully implemented reveals the sincerity of the respondent and true motive of the Appellant, which is not recovery of dues but destruction of the company to prevent Respondent No. 1 from completing his obligations and coming clean.

30. He further submits that the Resolution Professional in the NCLT Mumbai proceedings reported receipt of Form-318 under Rule 48 of the Maharashtra Value Added Tax Act, a demand of Rs. 1.48 Crores against

Malharshanti Enterprises itself for VAT dues (NCLT Mumbai Order dated 10.12.2025), further casting serious doubt on the Appellant's bona fides and financial standing.

31. Ld. Counsel states that the Resolution Plan was approved vide order dated 30.09.2025 and has been completely implemented within the stipulated period of 30 days. All payments totalling 6,51,19,488.68 have been made to all creditors; Management has been taken over by SRA; new Board has been constituted; and assets handed over to SRA. The law is settled that an implemented Resolution Plan cannot be unscrambled.

32. Ld. Counsel for R1 further states that in light of the above submissions, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

(a) Dismiss the Appeal being wholly devoid of merit, filed without locus standi, and constituting an abuse of process;

(b) Impose heavy costs on the Appellant for filing a frivolous and vexatious appeal with ulterior motives and for misusing the legal process to arm-twist Respondent No. 1 after rejecting a 100% settlement offer in a separate proceeding

Submissions of Respondent No.2/ Resolution Professional

33. In his preliminary submissions, Ld. Counsel for R2 states that the Appellant is not a shareholder or creditor or any stakeholder of Afcan Impex Pvt. Ltd. It is an Operational Creditor of CAN Enterprises Pvt. Ltd. a

completely separate entity. Section 61 of the IBC confers right of appeal only on a "person aggrieved" by an order of the Adjudicating Authority. The concept of "person aggrieved" requires direct and legal aggrievement, not remote or speculative injury. The Appellant has no admitted claim in the Afcan Impex CIRP. Its grievance is collateral-arising from the alleged involvement of the SRA in a separate CIRP. The IBC is a self-contained code; creditors in one CIRP cannot interfere in another CIRP on speculative grounds.

34. Ld. Counsel states that being Promoter/Related Party of Company Under CIRP is not per se a ground of ineligibility. Section 29A(c) of the Code requires that the person have an account classified as NPA in accordance with RBI guidelines. Mere pendency of CIRP proceedings against a related company does not automatically disqualify a resolution applicant. The Appellant has not shown from the records that any account of Respondent No. 1 or CAN Enterprises is classified as NPA. The Resolution Professional conducted due diligence and certified the SRA as eligible under Section 29A.

35. Ld. Counsel further states that for disqualification as Director Under Section 164 of the Companies Act, 2013, the Declaration of ROC is required. The Hon'ble Supreme Court in *M.K. Rajagopalan v. Dr. Periasamy Palani Gounder CIVIL APPEAL NOS. 1682-1683 OF 2022 (2024)* has categorically held that a resolution applicant cannot be deemed ineligible solely based on assumed disqualification under Section 164(2)(b) of the Companies Act, 2013. There is no concept of "deemed disqualification" in the Companies Act, 2013, which requires a specific order from the Registrar of Companies/MCA. In the

present case, there is no ROC order declaring Respondent No. 1 disqualified as a director. The Appellant seeks to have this Tribunal presume a disqualification that has not been formally declared by any competent authority, which is impermissible in law.

36. He states that the Appellant admittedly did not appear before or participate in the NCLT Ahmedabad proceedings. The grounds it now raises (Section 29A ineligibility) were never put before the Adjudicating Authority. It is a settled principle that new grounds cannot be raised for the first time in appellate proceedings. In this regard he cites the judgment of this Appellate Tribunal in *'Anish Lawrence v. Renahan Vamakesan' (NCLAT Chennai) CA AT (CH) (INS) No. 377 OF 2023.*

37. It is stated that the Resolution Plan was approved vide order dated 30.09.2025 and has been completely implemented within the stipulated period of 30 days. All payments totalling Rs.6,51,19,488.68 have been made to all creditors as follows

38. Ld. Counsel further states that the identical impugned order dated 30.09.2025 was challenged by the State Tax Officer in Company Appeal (AT) (Ins) Nos. 1804 & 1805 of 2025. This Hon'ble Tribunal vide judgment dated 07.01.2026 dismissed both appeals and expressly upheld the Resolution Plan, holding it to be in full compliance with Section 30(2) of IBC. The Appellant's challenge would amount to unsettling an order already confirmed by this Tribunal.

39. He states that the Appellant is a "wait-and-watch" litigant seeking to derail a successfully implemented resolution. Having failed to participate before the Adjudicating Authority, they cannot now challenge a Plan that has already received the seal of approval from both the CoC and this Hon'ble Appellate Tribunal.

40. In light of the above, R2 prays that this Tribunal may be pleased to dismiss the present Appeal with exemplary costs.

Analysis and findings

41. We have heard learned counsel for the parties at length and carefully perused the record. The issues that arise for determination in this case are:

(i) Whether the appellant has locus to maintain the present Appeal challenging the order dated 30.09.2025 approving the Resolution Plan of Afcan Impex Pvt. Ltd., and

(ii) whether the impugned order suffers from any illegality on account of the alleged ineligibility of Respondent No.1 under Section 29A of the Insolvency and Bankruptcy Code, 2016 or alleged suppression of material facts.

42. The Appellant herein has challenged the approval of the Resolution Plan submitted by Respondent No.1 in the Corporate Insolvency Resolution Process of Afcan Impex Pvt. Ltd. The Appellant seeks setting aside of the impugned order on the ground that Respondent No.1 was allegedly ineligible to submit the Resolution Plan under Section 29A of the Insolvency and Bankruptcy Code, 2016, on account of his position as promoter/director of

another company, namely CAN Enterprises Pvt. Ltd., which has been undergoing CIRP before the NCLT Mumbai since the year 2020.

43. Learned counsel for the Appellant submits that the impugned order approving the Resolution Plan is vitiated in law because Respondent No.1 was ineligible to submit the Resolution Plan under Section 29A of the Code. It is submitted that Respondent No.1 is admittedly the promoter and director of CAN Enterprises Pvt. Ltd., a corporate debtor whose CIRP was initiated by an order dated 27.01.2020 passed by the NCLT Mumbai. The admission order was challenged up to the Hon'ble Supreme Court and has attained finality.

44. It is contended that Respondent No.1 deliberately suppressed these facts before the Adjudicating Authority and sought to create an impression that a settlement was imminent in the CIRP proceedings of CAN Enterprises Pvt. Ltd. According to the Appellant, no settlement under Section 12A of the Code was ever approved, and the CIRP of CAN Enterprises Pvt. Ltd. continues even today. The Appellant submits that the Adjudicating Authority accepted the Resolution Plan solely on the basis of the submissions made by Respondent No.1 without undertaking an independent examination of his eligibility under Section 29A of the Code. It is further submitted that the impugned order contains adverse observations regarding the conduct of the Appellant in rejecting the settlement proposal, which are likely to prejudice the Appellant in proceedings pending before NCLT Mumbai. On these grounds, the Appellant submits that the approval of the Resolution Plan is legally unsustainable and liable to be set aside.

45. Per contra, learned counsel appearing for the Respondents submits that the present Appeal is not maintainable at the instance of the Appellant as the Appellant was not a stakeholder in the CIRP of Afcan Impex Pvt. Ltd. It is submitted that the Appellant is an Operational Creditor only in the CIRP proceedings of CAN Enterprises Pvt. Ltd., which are entirely separate proceedings involving a different corporate debtor.

46. The Respondents further submit that the Resolution Plan submitted by Respondent No.1 was duly considered and approved by the Committee of Creditors with 100% voting share after evaluating its feasibility and viability. It is contended that the Adjudicating Authority, while approving the Resolution Plan, examined the relevant material on record and was satisfied that the plan met the requirements prescribed under Section 30(2) of the Code. According to the Respondents, the mere pendency of CIRP proceedings against another company where Respondent No.1 was a promoter does not automatically attract disqualification under Section 29A of the Code. It is further submitted that Respondent No.1 had indeed made a settlement proposal dated 05.03.2025 offering payment of the entire claim of the Appellant, which the Appellant rejected on 10.03.2025. The letter dated 05.03.2025 of the Respondent No.1 is extracted below:

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ANNEXURE - 9

STRICTLY WITHOUT PREJUDICE

05.03.2025

From,
Naresh Sevantilal Shah & Charu Naresh Shah
(Promoters/ &Members of Suspended Board of Directors)
103/C, Thosar House, Hanuman Cross Road No. 1,
Near Shiv Leela Hotel, Vile Parle (East),
Mumbai-400057
Mob: - 9820069337

To,
Mr. Manish Jaju
Resolution Professional
(IBBI/IPA-001/IP-P00034/2016-2017/10087)
CAN Enterprises Pvt. Ltd.
D 502 Neelkanth Business Park,
Vidyavihar West, Mumbai 400086
Mob: - 9819433452
cirp.canent@gmail.com

Sub: **Settlement of claims in its entirety in the corporate insolvency resolution process of CAN Enterprises Pvt. Ltd.**

RE: BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
COMPANY PETITION (IB) NO. 3753/(MB)/2018

Malharshanti Enterprises ... PETITIONER
VS.
CAN Enterprises Private Limited ...CORPORATE DEBTOR

Dear Sir,

1. This is in relation to the ongoing corporate insolvency resolution process of CAN Enterprises Pvt. Ltd. ("**Corporate Debtor**") pending before the National Company Law Tribunal, Mumbai Bench wherein you have been appointed as the Resolution Professional.

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2. As per the updated and most recent claims listed on the IBBI website, it appears that the following claims have been admitted by you in relation to the Corporate Debtor's corporate insolvency resolution process:

Sn	Name of Creditor	Amount Claimed	Amount Admitted	Type of Creditor
1.	Paton Construction Private Limited	1,05,877/-	1,05,877/-	Financial Creditor (Sole CoC Member)
2.	Naresh S Shah	1,77,24,370/-	1,77,24,370/-	Related Party Financial Creditor (Suspended Director)
3.	Malharshanti Enterprises	1,95,01,079/-	1,95,01,079/-	Operational Creditor (Petitioner)
4.	Total Claims	**3,73,31,326/-**	**3,73,31,326/-**	

Note: - This is the list of admitted Claims as per the IBBI website as on 31.12.2021. Kindly let us know if there is any change/modification or addition in the said list of admitted Creditors.

3. In order to bring a closure to the corporate insolvency resolution process of the Corporate Debtor and to preserve and protect its corporate entity, we are prepared to pay the entire amount admitted by Yourself to the financial and operational creditors of the Corporate Debtor. This is strictly without prejudice to our rights and without admitting the outstanding amounts as claimed by the Creditors.

4. We extend this offer with a view to reviving the Corporate Debtor and restoring it from the clutches of CIRP.

5. We offer to pay the entire outstanding amounts i.e. the entire admitted claims of the financial and operational creditors of the Corporate Debtor simultaneously upon the Hon'ble Tribunal passing an order directing closure of the Corporate Debtor's corporate insolvency resolution process.

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6. We undertake to bear the entire cost as provided under Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and any CIRP cost outstanding as on date. In the event any further costs are incurred for the purposes of the closure of the Corporate Debtor's corporate insolvency resolution process, the same shall also be paid by us, full.

7. You are therefore requested to place this proposal with the stakeholders of the Corporate Debtor and take necessary steps for closure of the corporate insolvency resolution process preferably within a period of 7 days from receipt hereof.

8. Needless to add, the above proposal is strictly without prejudice to the pending proceedings before the Hon'ble Adjudicating Authority or before any legal fora as also, any remedy available to the CD or its promoters, in law.

Thanking you,
Yours truly,

N. S. Shah

Naresh Sevantilal Shah (Promoter/Member of Suspended Board of Directors)	**Charu Naresh Shah** (Promoter/Member of Suspended Board of Directors)

Copy To:
1) **The Committee of Creditors**
   Paton Construction Pvt. Ltd.
   A1,1st Floor, Sagar Complex CHSL,
   M G Road, Vile Parle East, Mumbai-400057
   darshangroups@yahoo.com
2) **M/s. Malhar Shanti Enterprises, (Operational Creditor)**
   Sunil Malharrao Pande (Proprietor)
   59A/12, Nagari Niwara Parishad, General A K Vidya Marg, Film City Road, Goregaon East, Mumbai- 400063
   malharshanti@yahoo.com

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47. It is their submission that the issues related to another company under CIRP are being brought to these proceedings by a party which has not taken part in the proceedings before the Adjudicating Authority. The appellant is not a stakeholder in these proceedings in any capacity. He is not a Financial or Operational Creditor, Prospective Resolution Applicant, Resolution Professional or any other person/ entity affected by the approval of the resolution plan. At the threshold the appellant has no locus to maintain this appeal.

48. At the first instant it is necessary to determine whether the Appellant possesses the locus standi to maintain the present Appeal under Section 61 of the Code. The question of maintainability is of fundamental importance because the appellate jurisdiction of this Tribunal can be invoked only by a **"person aggrieved"** by the impugned order.

49. Section 61 of the Code deals with the 'persons who can prefer an appeal before this Appellate Tribunal, the grounds for challenge to Resolution Plan which are relevant in this matter are provided in Sub-sections 1 and 3 of Section 61, and the same are extracted below:

> *"**Section 61: Appeals and Appellate Authority.***
>
> *[*]**61.** (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*
>
> *(2) - - -*

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board."

50. The right to prefer an appeal under Section 61 of the Insolvency and Bankruptcy Code is conferred upon a **"person aggrieved"** by the order of the Adjudicating Authority. The expression "person aggrieved" necessarily implies that the impugned order must directly affect the legal rights or interests of the person invoking the appellate jurisdiction.

51. The matter relating to who can be person aggrieved in a CIRP proceeding was examined by Hon'ble Supreme Court in a bench headed by Hon'ble CJI in [*Civil Appeal No. 9986 of 2024] GLAS Trust Company LLC Versus BYJU Raveendran & Ors. [2024 INSC 811].* The relevant Paras 73, 74 and 75 of the Judgment are extracted below:

"73. The counsel for the respondents sought to argue that the appellant does not have the locus to maintain the

present proceedings before this Court. They contend that in a case for settlement between the Corporate Debtor and the second respondent, there is no scope for hearing any other creditors, such as the appellant. We do not find merit in this submission

74. Section 62 of the IBC governs statutory appeals to the Supreme Court from the orders of the NCLAT. The provision reads as follows:

"62. Appeal to Supreme Court – (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

75. The provision stipulates that "any person" who is aggrieved by the order of the NCLAT may file an appeal before the Supreme Court within the prescribed limitation period. Similar language is used in Section 61 of the IBC, which provides for appeals to NCLAT from orders of the NCLT. ***The use of the phrase "any person aggrieved" indicates that there is no rigid locus requirement to institute an appeal challenging an order of the NCLT, before the NCLAT or an order of the NCLAT, before this Court. Any person who is aggrieved by the order may institute an appeal, and nothing in the provision restricts the phrase to only the applicant creditor and the corporate debtor. As noted above, once the CIRP is initiated, the proceedings are no longer restricted to the individual applicant creditor and the corporate debtor but rather become collective proceedings (in rem), where all creditors, such as the appellant, are necessary stakeholders.*** *The appellant is not an unrelated party to the CIRP, but is*

> *in fact, an entity whose claims had been verified by the IRP vide letter 19 August 2024. The appellant who claims to be a Financial Creditor, has expressed reasonable apprehensions about the prejudice it would face if there were roundtripping of the funds, and the prioritization of the debts of the second respondent, an operational creditor."*

52. Hon'ble SC vide the above judgment had held that once the CIRP is initiated, the proceedings are no longer restricted to the individual applicant creditor and the corporate debtor, but rather become collective proceedings (in rem) where all creditors, such as appellant, are necessary stakeholders. The Hon'ble Court, thereby, expanded the scope of who all can be person aggrieved. More importantly, the Court's findings indicate that a person aggrieved has to be a stakeholder in the CIRP process. A stakeholder cannot be denied locus to maintain appeal against the orders of the Adjudicating Authority. In the Byju's case, the appellant claimed to be the Financial Creditor of the CD.

53. In the factual matrix of the present case, the impugned order arises from the CIRP of Afcan Impex Pvt. Ltd., in which the Appellant admittedly had no role and he did not participate in the CIRP proceedings at any stage, before the Adjudicating Authority. The Appellant has not demonstrated that it was a Financial or Operational creditor; Probable Resolution Applicant (PRA); Resolution Professional (RP); or any other participant in the CIRP process, who could be classified as stakeholder in the CIRP process of Afcan Impex Pvt. Ltd.

54. The appellant is admittedly an Operational Creditor in the CIRP of CAN Enterprises Pvt. Ltd., which is a separate corporate debtor undergoing independent insolvency proceedings before NCLT Mumbai. The grievance raised by the Appellant essentially relates to the conduct of Respondent No.1 in the CIRP proceedings of CAN Enterprises Pvt. Ltd., including disputes relating to settlement proposals and pending applications before NCLT Mumbai.

55. In view of the above factual matrix, we see that the appellant has not been able to establish any relation with the CIRP proceedings of Afcan Impex and is not a stakeholder in any capacity in these proceedings. Therefore, he cannot be considered as a 'person aggrieved' in accordance with Section 61 of the Code.

56. Appellant has relied upon several judgments to contend that the expression "person aggrieved" under Section 61 of the Code should be interpreted broadly so as to permit the present Appeal. We have examined their applicability to the facts of the present case hereinafter:

(i) The Appellant has relied upon the judgment of this Appellate Tribunal in '*Southern Power Distribution Company of Telangana Ltd. v. Kalvakolanu Murali Krishna Prasad, RP for Vaksh Steels Pvt. Ltd.'* (MANU/NL/0713/2024) to contend that the expression "person aggrieved" should be interpreted broadly. However, the said decision was rendered in a completely different factual context. As noted in that judgment Para 1 itself, the appeal arose in peculiar circumstances and primarily concerned the limited question of determination of limitation for filing an appeal under the Code. The observations regarding the expression "person aggrieved" were made in the context of examining whether the appellant therein could pursue an appeal in relation to the limitation issue. In the present case, the issue before us is not one relating to limitation but concerns the maintainability of the appeal itself in the absence of any direct legal grievance arising from the CIRP of Afcan Impex Pvt. Ltd. Unlike the appellant in the cited case, the present Appellant has no participation, claim, or legal stake in the CIRP proceedings of Afcan Impex Pvt. Ltd., and the impugned order does not directly affect its rights. The reliance placed on the said judgment is therefore misplaced, as the observations made therein arose in a different factual setting and do not apply to the circumstances of the present case.

(ii) The Appellant has relied upon the decision of this Appellate Tribunal in '*Trimex Industries Pvt. Ltd. v. Bhuvan Madan (RP) and Anr.*' [(2023 ibclaw.in 351 NCLAT] to contend that any "person aggrieved" can file an appeal under Section 61 of the Code. The Judgment in Trimex Industries is based on entirely different context. Relevant paras 1 and 13 of the Judgment are extracted below:

> *"1. The reference has been made for answering following two questions:-*
>
> *I. Whether in appeal filed under Section 61 of the I&B Code, by a third party who was not party to the proceedings before the Adjudicating Authority, an application seeking leave to prefer the appeal is necessary to be filed and decided before entertaining the Appeal?*

II. Whether the Two Member Bench judgement of Chennai Bench dated 24.05.2023 in Company Appeal (AT) (CHY) (INS) No.130 of 2023 in IA Nos 439, 440 and 441/2023, Trimex Industries Pvt Ltd Vs Bhuvan Madan, RP of Sathavahana Ispat Ltd & Anr holding that there is no requirement for filing an application for leave to appeal lays down current law?

13. At the very outset we may clarify that since reference has been made only to answer aforesaid two questions, it would not be appropriate for us to record anything on the point as to whether appellant in the present appeal is aggrieved person or not. Such questions are always open to be examined by the concerned Bench. Of course, Mr PH Arvindh Pandian, learned senior counsel besides arguing that there is no need for asking a third party to file leave application to file appeal, he tried to persuade that the appellant is aggrieved person, we are not in a position to record any observation on this issue in view of terms of reference to this Bench."

It can be seen from the para 1 of the Judgment Trimex supra that it arose in a different context. The reference before the Tribunal was made only to answer two specific questions, namely: (i) whether a third party who was not a party before the Adjudicating Authority is required to file an application seeking leave to prefer an appeal under Section 61 of the Code, and (ii) whether the earlier judgment of the Chennai Bench holding that such leave was not required laid down the correct law. Further, the Tribunal itself clarified in paragraph 13 of the judgment that since the reference was limited to answering the above questions, it would not be appropriate to record any finding on whether the appellant in that case was in fact a "person aggrieved". The Tribunal expressly observed that such question would remain open for examination by the concerned Bench. Thus, the judgment does not decide the substantive issue of whether a particular appellant qualifies as a "person aggrieved".

In the present case, the issue before us is precisely whether the Appellant can be regarded as a "person aggrieved" when it has no claim or participation in the CIRP of Afcan Impex Pvt. Ltd. Since the *Trimex* judgment itself refrained from deciding that question, the reliance placed by the Appellant on the said decision does not assist its case.

(iii) The Appellant has further relied upon the decision of the Hon'ble Supreme Court in '*Bar Council of Maharashtra v. M.V. Dabholkar and Ors.'* [MANU/SC/0003/1975] to contend that the expression "person aggrieved" should be interpreted broadly. However, the said judgment arose in a different statutory context. As recorded in paragraph 1 of the judgment, the question before the Hon'ble Supreme Court was whether the Bar Council of a State could be regarded as a "person aggrieved" for the purpose of maintaining an appeal under Section 38 of the Advocates Act, 1961. In para 27 of the Judgment Hon'ble Supreme Court observed as follows:

> *"27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably con fined to a person aggrieved or a per son who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to*

> *establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette."*

We can see from para 27 that the Hon'ble SC has clarified that meaning of the expression "person aggrieved" varies according to the context of the statute. The Court observed that while a broader interpretation may be adopted in statutes dealing with professional conduct and ethics, such as the Advocates Act where the Bar Council acts as a guardian of professional standards, in statutes dealing with protection of private legal rights, a more restricted meaning is applied which requires denial or deprivation of a legal right.

In the present case, the proceedings arise under the Insolvency and Bankruptcy Code, which governs the resolution process of a specific corporate debtor and primarily concerns the rights of its creditors and stakeholders. The Appellant has not demonstrated that the impugned order approving the Resolution Plan of Afcan Impex Pvt. Ltd. has denied or deprived it of any legal right in that CIRP. Therefore, even applying the test laid down in the said judgment, the Appellant cannot be regarded as a "person aggrieved" in the present case.

(iv) The Appellant has relied upon the judgment of the Hon'ble Supreme Court in '*Samir Agrawal v. Competition Commission of India and Ors.*' [MANU/SC/0940/2020] to contend that the expression "person aggrieved" should be interpreted widely. However, the said judgment was rendered in the context of the Competition Act, 2002. As observed in the judgment itself, the Competition Commission of India exercises powers in matters affecting competition in the market and consumer interest, and therefore the proceedings under the Act operate in rem and in public interest.

In that context, the Hon'ble Supreme Court held that the expression "person aggrieved" under the Competition Act should be construed broadly, particularly since Sections 53B and 53T of the Act use the expression "any person", thereby allowing even informants who provide information regarding anti-competitive conduct to challenge an adverse order of the Commission.

The statutory framework of the Insolvency and Bankruptcy Code is materially different. The CIRP process concerns the resolution of a specific corporate debtor and the rights of its identified stakeholders such as creditors and participants in the resolution process. In the present case, the Appellant has not demonstrated any direct participation or legal stake in the CIRP of Afcan Impex Pvt. Ltd. Therefore, the broader interpretation adopted in the context of the Competition Act cannot be applied to the present proceedings under the Insolvency and Bankruptcy Code.

(v) Lastly, the Appellant has relied upon the observations of the Hon'ble Supreme Court in '*Vishnu Vardhan v. State of Uttar Pradesh and Ors.'* [MANU/SC/0967/2025] to contend that procedural rules should be interpreted in a manner that promotes justice. However, the said judgment arose in a different context involving issues relating to the doctrine of merger, allegations of fraud, and disputes concerning land acquisition compensation.

The Hon'ble Supreme Court interfered in view of the peculiar circumstances of that case and the potential prejudice arising from strict application of procedural doctrines. The present case does not involve any such exceptional circumstances. The Appellant has not demonstrated any fraud in the resolution process of Afcan Impex Pvt. Ltd. or any issue of public importance. Therefore, the observations made in the said judgment do not apply to the facts of the present case.

57. Based on the factual matrix of the case and judicial pronouncements in this regard, we are of the view that the grievance sought to be raised in the present Appeal is not a direct grievance arising from the CIRP of Afcan Impex Pvt. Ltd., but rather a collateral objection arising from the alleged involvement of Respondent No.1 in another CIRP. The approval of the Resolution Plan in this CIRP proceedings has not resulted in any direct legal injury to the Appellant. Such remote or indirect grievance cannot confer locus standi to invoke the appellate jurisdiction under Section 61 of the Code.

58. We now consider the appeal on Merits also. The Appellant seeks to argue that Respondent No.1 was disqualified under Section 29A merely because he was a promoter or related party of a company undergoing CIRP.

> ***"Section 29A: Persons not eligible to be resolution applicant.***
>
> *[1][**29A**. A person shall not be eligible[1A] to submit a resolution plan, if such person, or any other person acting jointly[J1] or in concert[J1] with such person—*
>
> *(a) is an undischarged insolvent;*
>
> *(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*
>
> *(c) [2][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 [3][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;

[3][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.

(e) is disqualified to act as a director under the Companies Act, 2013;

[3][Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I*;]"*

59. The appellant has relied upon Section 29A (c) and Section 29A (e) of the Code to argue that the Respondent No.1/SRA is covered by these two sub-sections of Section 29A and is therefore barred from submitting the resolution plan.

60. A plain reading of Section 29A does not support such a proposition. The provision enumerates specific disqualifications which must be satisfied before a person can be rendered ineligible to submit a resolution plan. In particular, Section 29A(c) requires that the person concerned must have an account classified as a Non-Performing Asset in accordance with the guidelines of the Reserve Bank of India, and that such default must remain unpaid for the prescribed period. The language of the provision clearly links ineligibility to the existence of a financial default leading to NPA classification.

61. The provision does not state that mere association with another corporate debtor undergoing CIRP would automatically render a person ineligible. The Appellant has not placed any material to show that any account of Respondent No.1 or of CAN Enterprises Pvt. Ltd. was classified as

an NPA in terms of RBI guidelines. As the account of CAN Enterprises was not qualified as NPA, the disqualification contemplated under Section 29A(c) cannot be attracted merely on the basis of the pendency of CIRP against another entity.

62. The Appellant has also attempted to invoke Section 29A(e) by contending that Respondent No.1 stood disqualified as a director under Section 164 of the Companies Act, 2013. The Section 164 of Companies Act is extracted below:

> *"**Section 164: Disqualifications for appointment of director.***
>
> ***164**. (1) A person shall not be eligible for appointment as a director of a company, if —*
>
> *(a) he is of unsound mind and stands so declared by a competent court;*
>
> *(b) he is an undischarged insolvent;*
>
> *(c) he has applied to be adjudicated as an insolvent and his application is pending;*
>
> *(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:*
>
> *Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;*
>
> *(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;*
>
> *(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;*
>
> *(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or*

(h) he has not complied with sub-section (3) of section 152.

1[(i) he has not complied with the provisions of sub-section (1) of section 165.]

(2) No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

[Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.]

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

[Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.]"

63. The appellant has relied upon Section 164 (2) (a) and 164 (2) (b) of the Companies Act, 2013 to argue that in accordance with these provisions the Respondent No.1 is disqualified to act as Director of company and therefore ineligible to submit the resolution plan in accordance with Section 29A (e). However, this argument also does not withstand scrutiny, as Section 29A(e) specifically refers to a person who "is disqualified to act as a director under the Companies Act, 2013." The language of the provision indicates that the disqualification must already exist in law; it cannot be presumed or inferred.

64. In other words, for Section 29A(e) to apply, there must be a formal and operative disqualification under Section 164 of the Companies Act. Such disqualification is determined and declared by the competent statutory authority, namely the Registrar of Companies (RoC) or the Ministry of Corporate Affairs.

65. The Hon'ble Supreme Court in '*M.K. Rajagopalan v. Dr. Periasamy Palani Gounder' CIVIL APPEAL NOS. 1682-1683 OF 2022 (2024)* had held that there is no concept of "deemed disqualification" under Section 164(2) of the Companies Act, 2013, and that such disqualification cannot be presumed. The Hon'ble Supreme Court clarified that disqualification of a director must be formally declared by the competent authority such as the Registrar of Companies or the Ministry of Corporate Affairs, and cannot be inferred by a tribunal. In the present case, no material has been placed on record to show that Respondent No.1 has been formally declared disqualified under Section 164 by the competent authority. In the absence of such declaration, the ineligibility under Section 29A(e) of the Code cannot be presumed. Accordingly, the reliance placed by the Respondents on the said judgment supports their contention.

66. In the present case, no material has been placed on record to show that Respondent No.1 has been declared disqualified by the Registrar of Companies or any other competent authority under Section 164 of the Companies Act. The Appellant is essentially inviting this Tribunal to assume a disqualification which has not been formally declared. Such an assumption would be contrary to the statutory scheme of both Section 164 of the Companies Act and Section 29A(e) of the Insolvency and Bankruptcy Code.

We also note that the Resolution Professional has also placed on record that due diligence was carried out and the eligibility of Respondent No.1 as a Resolution Applicant under Section 29A was duly verified before the plan was placed before the Committee of Creditors. Therefore, the contention of ineligibility under Section 29A cannot be sustained.

67. Another aspect which needs to be examined is the conduct of the Appellant in the proceedings before the Adjudicating Authority. We now consider whether the Appellant, having not participated before the NCLT Ahmedabad, can raise these grounds for the first time in the present Appeal. The Appellant admittedly did not appear or participate in the proceedings relating to approval of the Resolution Plan. The objections now sought to be raised in the present Appeal, particularly the allegation of ineligibility under Section 29A, were never raised before the Adjudicating Authority. It is a settled principle that new grounds cannot be permitted to be raised for the first time in appellate proceedings.

68. The Chennai Bench of this Appellate Tribunal in *'Anish Lawrence v. Renahan Vamakesan (NCLAT Chennai)' [CA AT (CH) (INS) No. 377 OF 2023].* held that new grounds cannot be raised for the first time in appellate proceedings, if they were not urged before the Adjudicating Authority. In the present case, the Appellant did not raise any objection before the Adjudicating Authority in the CIRP proceedings of Afcan Impex Pvt. Ltd., which continued from 2021 to 2025. Despite having sufficient opportunity, the Appellant chose not to intervene in those proceedings. Therefore, the Appellant cannot now seek to raise fresh issues for the first time before this Appellate Tribunal.

69. It is also necessary to consider the stage at which the present challenge has been brought and the status of the implementation of the Resolution Plan. It is relevant to note that the Resolution Plan was approved by order dated 30.09.2025 and was implemented within the stipulated period. The payments under the plan amounting to Rs. 6,51,19,488.68 have already been made to all stakeholders, including secured financial creditors, operational creditors, statutory authorities and CIRP costs. The management of the Corporate Debtor has been taken over by the Successful Resolution Applicant, the new board has been constituted and the assets of the Corporate Debtor have already been handed over. Once a resolution plan has been fully implemented and the management of the corporate debtor has changed hands, the settled position of law is that such a plan cannot ordinarily be unsettled or unscrambled at a belated stage.

70. A further circumstance which weighs with us is that the very same impugned order dated 30.09.2025 approving the Resolution Plan has already been challenged before this Appellate Tribunal in other proceedings. The State Tax Officer had challenged the same order in Company Appeal (AT) (Ins) Nos. 1804 and 1805 of 2025. This Tribunal, by judgment dated 07.01.2026, dismissed those appeals and upheld the Resolution Plan, holding that the plan was in compliance with the requirements of Section 30(2) of the Insolvency and Bankruptcy Code. The challenge raised in the present Appeal would therefore amount to reopening and unsettling a resolution plan which has already been upheld by this Appellate Tribunal and implemented in its entirety.

71. Seen in this background, the conduct of the Appellant appears to be that of a “wait and watch” litigant, who did not participate before the Adjudicating Authority and now seeks to challenge a resolution process which has already been successfully concluded. The Insolvency and Bankruptcy Code is designed to ensure certainty and finality in the resolution process. Permitting such belated challenges by persons, who are not stakeholders in the CIRP would undermine the insolvency framework and defeat the very objective of timely resolution contemplated under the Code.

72. In view of the above discussion, we are of the considered view that the Appellant has failed to establish that it is a ‘person aggrieved’ within the meaning of Section 61 of the Code in relation to the impugned order approving the Resolution Plan of Afcan Impex Pvt. Ltd. Even on merits the Appellant has failed to demonstrate that Respondent No.1 was ineligible under Section 29A of the Code or that the impugned order suffers from any legal infirmity.

73. Accordingly, the present Appeal is not maintainable and is dismissed. Pending I.As, if any, are closed. There would be no order as to costs.

[Justice Ashok Bhushan)
Chairperson

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)