



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

I.A. 894/2022

In

C.P. No. (IB) 4345/MB/C-III/2019

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules,
2016

Filed by

Prince Pipes and Fittings Limited

Having its registered address at:

Plot No. 1, Honda Industrial Estate, Phase II, Honda Sattari,
Honda, Goa- 403530

...Applicant

V/s.

1. Amit Chandrashekhar Poddar

(Resolution Professional of Prince SWR Systems Private Limited)

Having its address at:

A101/102, 1st Floor, Sunshine Plaza, Naigaon Cross Road,
Dadar East, Mumbai- 400014

... RP/Respondent No.1

**2. Committee of Creditors of Prince SWR Systems Private
Limited**

Having its address at:

A101/102, 1st Floor, Sunshine Plaza, Naigaon Cross Road,
Dadar East, Mumbai- 400014

...Respondent No.2



IN THE MATTER OF

Midas Impex Private Limited.

...Petitioner/ Operational Creditor

Vs

Prince SWR Systems Private Limited.

...Respondent/ Corporate Debtor

Order delivered on: **10.01.2024**

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Applicant: Adv. Rohan Rajadhyaksha a/w. Ms. Nishi
Bhankharia & Kaazvin Kapadia i/b.
Trilegal

For the Respondent: Sr. Adv. Vikram Nankani a/w. Mr. Amol
Bavare a/w. Mr. Rahul Pillai

For the Successful Resolution Applicant: Adv. Zain Khan a/w.
Mr. Ayush Rai

Per: Shri Charanjeet Singh Gulati, Member (T)



ORDER

1. The above I.A. is filed by the Applicant/Prince Pipes and Fittings Limited ('PPFL') under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code"), seeking following reliefs;
 - a. *Direct Respondent No. 1 to convene a meeting of the Committee of Creditors and place the Applicant's Resolution plan dated 23 March 2022 for consideration prior to opening of the voting on various plans;*
 - b. *Direct Respondent No. 1 to permit the Applicant to present the resolution plan dated 23 March 2022 to the Committee of Creditors;*
 - c. *Pending hearing and final disposal of the present Interlocutory Application, this Hon'ble Tribunal be pleased to direct the Committee of Creditors of the Corporate Debtor and the Respondent No. 1 to not commence the voting on the other resolution plans received by the Respondents in respect of the Corporate Debtor;*
 - d. *This Hon'ble Tribunal be pleased to adjudicate and finally decide any other question of law arising out of the present Interlocutory Application;*
 - e. *Grant such other reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*



2. **Submissions of the Applicant, in briefs, are extracted hereunder;**

2.1 PPFL/the Applicant was incorporated in 1987 under the Companies Act, 1956, and is listed integrated piping solutions and multi-polymers manufacturer. The primary business of the Applicant involves designs, innovations and manufacture of plumbing, irrigation and sewerage technologies and products.

2.2 Prince SWR Systems Private Limited ('PSSPL'), the Corporate Debtor is engaged in the business of manufacturing and supply of piping systems. The Corporate Debtor was admitted to CIRP under the provisions of the IBC vide an order of this Tribunal dated 16 April 2021 in CP (IB) 4345 of 2021 and Mr. Hirachand Nemichand Bafna was appointed as the Interim Resolution Professional ('IRP') and was later confirmed as the Resolution Professional ('RP') of the Corporate Debtor. Mr. Bafna was replaced and Mr. Amit Chandrashekhar Poddar (RP/Respondent No. 1) was subsequently appointed as the RP of the Corporate Debtor vide order of this Tribunal dated 18 October 2021.


2.3 Respondent No. 2 is the committee of creditors (CoC/Respondent No. 2) of the Corporate Debtor, constituted pursuant to the Admission Order of this Tribunal, consisting of the following members:

- i. Canara Bank
- ii. ICICI Bank Limited
- iii. Standard Chartered Bank
- iv. Siemens Financial Services
- v. Axis Bank Limited




- vi. National Realty (P) Limited
- vii. American Express Banking Corporation
- viii. Tata Capital
- ix. Bajaj Finance
- x. Rajesh B. Parekh

- 2.4 On 29 October 2021, Respondent No. 1 invited expression of interest from prospective resolution applicants/interested bidders in respect of the Corporate Debtor.
- 2.5 On 29 December 2021, the Applicant sent an email to Respondent No. 1 indicating its interest to submit a bid. Thereafter, the Applicant received an email dated 23 February 2022 from the Respondent No. 1, rejecting the Applicant's intent to participate in the CIRP of the Corporate Debtor basis that the Applicant was not eligible to participate since the Applicant had not submitted its expression of interest before 13 November 2021.
- 2.6 Subsequently, on 25 February 2022, the Applicant addressed an email seeking an opportunity to be heard and present the key terms of its financial proposal, including the Applicant's eligibility to bid as a prospective resolution applicant. The Applicant also proposed to present the feasibility and viability of its proposal, including key terms surrounding its financial proposal to the CoC.
- 2.7 In furtherance thereof, Respondent No. 1 agreed to permit the Applicant to present its proposal, in the capacity as a prospective resolution applicant to members of the CoC. Accordingly, Respondent No. 1 circulated the dial-ins for the



virtual meeting of CoC to be held on 28 February 2022, via email, and requested the Applicant to remain available for the meeting.


- 2.8 The Applicant along with its representatives attended the 14th meeting of CoC held on 28 February 2022 to present its financial proposal. Thereafter, the Applicant addressed an email to the Respondents on 10 March 2022, submitting an offer for the acquisition of the Corporate Debtor as part of the CIRP. Further, it submitted resolution plan to Respondent No. 1 vide email dated 23 March 2022. Also, the Applicant apprised the Respondents that a reputed bank has agreed to provide a letter of comfort, if the Applicant's resolution plan is placed for consideration before the CoC. The Applicant also submitted a support letter from its banker in this regard.
- 2.9 In the absence of any response or acknowledgement from Respondent No. 1 towards submission of the resolution plan, the Applicant sent an email on 29 March 2022 to Respondent No. 1, requesting for the Applicant's resolution plan to be tabled before CoC.
- 2.10 Thereafter, on 29 March 2022, Respondent No. 1 addressed an email to the Applicant indicating that the Applicant's resolution plan cannot be considered by the CoC, since the Applicant did not submit its expression of interest for the Corporate Debtor on or before 13 November 2021.
- 2.11 The Applicant submits that it is the most suitable candidate to be considered as the successful resolution applicant of the



Corporate Debtor since the Applicant possess necessary technical knowledge of the industry in which the Corporate Debtor operates and has sufficient market exposure in the same. The Applicant also submits that its commercially competitive and legally compliant resolution plan has not been put up for consideration before the CoC and therefore, the Applicant is constrained to file the present Application in the interest of justice.


3. **Written submission on behalf of the Applicant, in brief, is extracted hereinunder:**

- 3.1 The Applicant submits that the RP did not table the Applicant's resolution plan before the CoC on the basis that the Applicant had submitted its resolution plan after the last date for submission of resolution plans. Aggrieved by this decision of the RP, the Applicant filed the captioned Application seeking directions for the Applicant's resolution plan dated 10 March 2022 to be placed before the CoC for its consideration.
- 3.2 Thereafter, the RP in its reply to the captioned application stated that the Applicant's plan was not tabled before the CoC, since the Applicant submitted its plan after the stipulated timeline and was ineligible as per Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC). However, it is pertinent to note that this Tribunal by way of its order dated 12 April 2023 directed the RP to take the opinion of the CoC members, and if they concur, then the plan be placed before the CoC for consideration. In view of the order dated 12 April 2023, the RP




(during the final hearing on 16 October 2023) has merely limited its objection to the Applicant's plan from being considered in view of purported ineligibility on account of Section 29A and not on account of delay.

- 3.3 The Applicant is not a related party to the Corporate Debtor as per Section 29A of the IBC merely on account of its directors having family relations with the suspended management of the Corporate Debtor. The RP has alleged that by virtue of the director of the Applicant being a relative of the suspended promoter/director of the CD, the Applicant is barred from submitting a resolution plan under Section 29A of the IBC.
- 3.4 It is undisputed that the director of the Applicant, Mr. Jayant Chheda (Jayant) and one of the suspended promoter/director of the CD, Mr. Piyush Chheda (Piyush) are relatives, insofar as Piyush is Jayant's nephew. However, save and except for some family ties between the director of the Applicant and the suspended promoter/ director of the CD, there is no other element of "connectedness" between the Applicant and the CD.
- 3.5 In this regard, the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. and Ors. vs. Union of India [(2019) 4 SCC 17 @ Para 108]*** in the context of eligibility of a prospective resolution applicant under Section 29A of the IBC, held that the mere fact where somebody is a relative of an ineligible person cannot be a ground to oust such a person/ company from becoming a resolution applicant if he is otherwise qualified. The Hon'ble Supreme Court further held that the 'relative' (i.e. the suspended promoter/director of the CD, *Piyush*) would have to



have a connection with the business activity of the '*resolution applicant*' i.e. the Applicant (i.e. PPFL) herein. It is submitted that the suspended promoter/ director of the CD, i.e. Piyush on whom the disqualification/ ineligibility applies, has no connection, whatsoever with the business activity of the resolution applicant, i.e. the Applicant (i.e. PPFL) herein.

- 3.6 Therefore, in the absence of there being any business connection or business nexus between the Applicant and the suspended promoter/director of the CD, the Applicant herein cannot and ought not to be considered as ineligible under the IBC. In any event, the business activities of the CD and the Applicant are completely independent of each other and are run as part of distinct companies. In view of this, it is clear that since the CD, or its suspended management is not "connected" with the business of the Applicant, the Applicant is not ineligible to submit a resolution plan in the CIRP of the CD.
- 3.7 The Applicant is not a related party to the Corporate Debtor as per Section 29A of the IBC on account of its director being a partner in a partnership firm with the suspended director of the Corporate Debtor
- 3.8 It is further submitted that Jayant and Piyush are partners in a partnership firm, namely Ellora Chemical Works (ECW). The RP has sought to argue that by virtue of them being partners in a partnership firm, the Applicant herein suffers from a disqualification as per Section 29A of the IBC. In this context, Section 5(24A) of the IBC, defines a "related party" in relation to



an individual. The relevant extract of Section 24A is produced below:

"24A. "related party", in relation to an individual, means-


(...)

*(b) a partner of a limited liability partnership, or a limited liability partnership or **a partnership firm**, in which the individual is a partner; (...)*

3.9 Therefore, it is clear that the aforesaid does not include the individual partners in a partnership firm and merely includes the partnership firm. The legislature has made a distinction wherein partners of a limited liability partnership are included, however partners in a partnership firm are not included. Therefore, Section 29A read with Section 5(24A) of the IBC would only take within its purview at best, a partnership firm where the director of the CD (Piyush) is a partner, i.e., ECW and not extend to any other partner of ECW, i.e., the Director of the Applicant and by extension the Applicant itself.

3.10 Section 29A of the IBC is a disqualifying provision and any disqualification needs to be strictly and technically interpreted. If the contents of Section 29A of the IBC along with the relevant definitions are not interpreted strictly, it will lead to perverse outcomes where a resolution applicant, such as the Applicant offering maximization of value of assets of the CD may be disqualified based on a creative interpretation of the provision.

3.11 The resolution plan submitted by the Applicant provides an upfront amount of INR 80,02,00,000 (payable within 90 days



from the date of the NCLT's approval of the resolution plan) and will create a sustainable capital structure that will enable the CD to continue as a "going concern". The Applicant not only has sufficient funds to ensure the interest of stakeholders of the CD are safeguarded, but also has the relevant market dominance to maximize the value of assets of the CD and ensure it flourishes as a successful manufacturing concern. The resolution plan provides a pay-out of almost 44% to secured, financial creditors.

3.12 It is an undisputed fact that the Applicant approached the RP to participate in the CIRP of the CD on 29 December 2021, when the last date to submit resolution plans was 28 December 2021. However, it is settled law that a resolution plan can be permitted to be submitted and even considered, even after the prescribed timelines. in the interest of value maximization of the CD. **[Ref: Andhra Bank v. Oracle Home Textile Limited (2019 SCC Online NCLT 3677), Axis Bank v. Lanco Mandakini (MANU/NC/2581/2021)].**

3.13 Further, it is the commercial decision of the CoC on whether a plan, submitted after the stipulated timeline ought to be considered and approved or not. The commercial wisdom of CoC is not to be interfered with, other than in the limited scope as provided under Sections 30 and 31 of the IBC. **[Ref: Kalpraj Dharamshahi v. Kotak Investment (2021 SCC Online SC 204)].** In the present case, the CoC itself has given its consent to consider the Applicant's resolution plan.



3.14 Accordingly, the RP approached the members of the CoC on 13 April 2022 to determine whether they were willing to consider the Applicant's resolution plan. In this regard, ICICI Bank, Standard Chartered Bank, Axis Bank and National Realty (P) Ltd. constituting 61.49% of the CoC, provided their consent to consider PPFL's resolution plan. However, despite the CoC's consent, till date, the RP has failed to place the Applicant's resolution plan for the CoC's consideration, contrary to the directions passed by this Hon'ble Tribunal vide order dated 12 April, 2022.

3.15 In view of the foregoing, the Applicant submits that the resolution plan submitted by it is compliant in terms of the provisions of the IBC including Section 29A, provides for value maximization of assets of the CD and effective resolution of the CD as a going concern. Therefore, the Applicant's resolution plan ought to be placed before the CoC for its consideration.

4. **Submissions of the Respondent No.1, in briefs, are extracted hereunder:**

4.1 Mr. Amit C. Poddar, the RP of PSSPL/CD has filed affidavit in reply and submits that the order for appointment of the erstwhile IRP came to the knowledge of the erstwhile IRP only on 30th April, 2021. Thereafter on 3rd May, 2021, the erstwhile IRP issued Public Notice in terms of Regulation 6 of the CIRP Regulations in the national edition of Free Press Journal (English Edition) and Navshakti (Marathi Edition), inviting submission of claims from the creditors of the Corporate Debtor. Pursuant to such Public Announcement made on behalf of the Corporate Debtor, various



claims have been received and the Committee of Creditors ("CoC") has also been formed. The members of the CoC formed are listed hereinbelow:

- i. Axis Bank Limited
- ii. Canara Bank
- iii. ICICI Bank Limited
- iv. Standard Chartered Bank
- v. National Realty Private Limited.
- vi. American Express Banking Corporation
- vii. Tata Capital Financial Services Limited
- viii. Siemens Financial Services Private Limited

4.2 In the 2nd COC meeting held on 29th June, 2021, resolution was passed for his appointment as the Resolution Professional. Accordingly, Interlocutory Application being IA No. 1646 of 2021 was filed before this Tribunal, wherein vide order dated 18th October, 2021, he was appointed as the Resolution Professional of the Corporate Debtor.

4.3 In the meanwhile the erstwhile IRP prepared Information Memorandum on the basis of all the data available and pursuant to discussions and resolution passed by the CoC, the erstwhile IRP published Form 'G' inviting Expression of Interest (EOI) under Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for the first time on 16th July, 2021. There were two Prospective Resolution Applicants which were shortlisted. However, no resolution plans were received within the stipulated time. In view thereof, advertisement for invitation of Expression of Interests was once again published for the second time on 29th October, 2021. The last date for submitting



the Expression of Interest was on or before 13th November, 2021. The RP submits that in response to the Form G published on 29th October, 2021, 8 Expression of Interests were received within the stipulated time. After considering the EOIs, RP prepared the Provisional List of Prospective Resolution Applicants on 23rd November, 2021. Thereafter the final List of Prospective Resolution Applicants was also issued on 8th December, 2021. Admittedly the Applicant had not submitted its EOI within the stipulated time and only expressed its willingness to acquire the Corporate Debtor in a competitive valuation, vide its email dated 29th December, 2021. RP submits that despite being aware about the CIRP of the Corporate Debtor, the Applicant failed to submit its EOI at the appropriate stage and thus, the Applicant has no vested right to submit its Resolution Plans for consideration in the CIRP of the Corporate Debtor, even if the same maybe at a competitive valuation.

- 4.4 However, RP placed the email dated 29th December, 2021 before the CoC in its 9th meeting, when the CoC requested the RP to check if the Applicant would be eligible to participate in the resolution process of the Corporate Debtor. The CoC further directed the RP to check if the Applicant falls under the definition of "related party" as per the provisions of IBC. Accordingly, RP has taken legal opinion and accordingly to which the Applicant would fall under the definition of 'related party' in view of the fact that one of director of the Applicant and one of the suspended directors, being family members were also partners in a partnership firm. RP submits that the members of the CoC also have received legal opinions internally regarding the eligibility of



the Applicant to participate in the CIRP of the Corporate Debtor. Pursuant to various discussions, the CoC unanimously agreed to go ahead with the evaluation of the plans received from the Prospective Resolution Applicant and negotiations on such plans, thereby declining the proposal of the Applicant. Accordingly vide email dated 23 February, 2022, RP informed the Applicant its ineligibility to participate in the CIRP of the Corporate Debtor due to non-submission of EOI within the stipulated time. It was further informed that the CoC's decision was to not publish fresh Form -G in the matter and continue with the ongoing process.

- 4.5 The Applicant thereafter repeatedly requested the RP to grant the applicant a physical meeting with the CoC. Accordingly, and pursuant to the CoC's directions, RP informed the Applicant to attend the 14th CoC meeting, wherein Mr. Nihar Chheda, the representative of the Applicant and representative of Trilegal being the Advocate on behalf of the Applicant attended the CoC meeting. In the meeting the Applicant explained how it would maximise the value of the Corporate Debtor at length. Further, the Applicant also suggested fresh FORM -G should be published in order to enable the Applicant to participate in the Resolution process and submit Resolution Plan. However, on being informed that such publishing of Form-G may not be permissible under the provisions of the IBC, the Applicant stated that publishing of fresh Form-G might lead to litigation only. Further at the time of the meeting, discussions specifically regarding the eligibility of the Applicant to participate in the resolution process of the Corporate Debtor, as per Section 29A of IBC also took place.



- 4.6 After the Applicant presented their proposal, the CoC directed the RP to seek legal opinion from reputed law firm Cyril Amarchand Mangaldas, Mumbai regarding the eligibility of the Applicant to participate in the Resolution Process of the Corporate Debtor. The opinion received from Cyril Amarchand Mangaldas also stated that the Applicant will not be eligible to participate in the resolution process of the Corporate Debtor. Pursuant to discussion with the CoC, vide email dated 29th March, 2022, the RP again informed the Applicant that the Applicant is not eligible to participate in the CIRP of the Corporate Debtor on the ground of delay in submission of the EOI.
- 4.7 In the present case, in addition to the Applicant not submitting its EOI in the appropriate stage, the CoC and RP are also mindful of the fact that the Applicant is ineligible under the provisions of Section 29A of IBC.
- 4.8 The Resolution Plans submitted by the Prospective Resolution Applicants have been discussed, negotiated and have been put to vote. The e-voting is completed on 11 April, 2022 and one of the Resolution Plans submitted has been approved with majority vote of the CoC.
- 4.9 In view of the same RP submits that the present Interlocutory Application filed seeking reliefs for consideration of its Resolution Plan dated 23rd March, 2022, cannot be allowed as the same is filed at a belated stage and is required to be dismissed with costs.



5. **Additional affidavit on behalf of the Respondent 1, in brief, is extracted hereunder:**

5.1 On 6th April, 2022, when the present Interlocutory Application was listed for hearing before this Tribunal, no interim relief was granted and the RP was directed to file an Affidavit in reply. In the meanwhile, the resolution plans submitted by the Prospective Resolutions Applicants were put for e-voting and successful Resolution Applicant was declared on 11th April, 2022.

5.2 Upon receipt of two e-mails both dated 13th April, 2022 addressed by ICICI Bank Ltd. on its behalf (having voting share of 24.6854%) and on behalf of Standard Chartered Bank (having voting share of 14.6222%), ICICI Bank Ltd. and Standard Chartered Bank have expressed their consent to place the Resolution plan by PPFL before CoC for further deliberations.

5.3 Vide e-mail dated 13th April 2022 Canara Bank (having voting share of 36.3663 %), has informed that in view of the ineligibility of the Applicant under Section 29A of the IBC, 2016, which has already been discussed and unanimously agreed upon in the CoC Meeting, the proposal of the Applicant herein cannot be entertained. Further, vide said e-mail it was also informed that Canara Bank is not in favour to indulge in the Interlocutory Application filed by the Applicants herein without their eligibility criteria is decided by the Court.




6. **Submissions of the Chemtrade Overseas Private Limited/ Successful Resolution Applicant, in briefs, are extracted hereunder:**

- 6.1 Mr Ashish Shah is the director of M/s Chemtrade Overseas Private Limited and submits that the present affidavit in reply pursuant to the order dated 18 April 2022 passed by this Tribunal in Interlocutory Application No 894 of 2022 in Company Petition No 4345 of 2019 ("Interlocutory Application") whereby this Tribunal was pleased to allow the Successful Resolution Applicant ('SRA') to file its objections to the captioned Interlocutory Application filed by the Applicant.
- 6.2 The SRA is a private limited company incorporated in the year 1992 under the Companies Act, 1956, The SRA is an exporter, importer, indenter, supplier of basic chemicals and pharmaceutical intermediates.
- 6.3 On 16 July 2021, the Resolution Professional/Respondent No 1 published Form G and republished Form G on 29 October 2021, inviting expression of interest ("EOI") from prospective resolution applicants on or before 13 November 2021. Accordingly, the SRA submitted its EOI on 13 November 2021.
- 6.4 The CoC vide its 16th meeting held on 28 March 2022 considered the resolution plan submitted by the SRA and a voting was conducted from 30 March 2022 to 11 April 2022. The Successful Resolution Applicant's resolution plan was approved by the CoC with 97.29% voting share.



- 6.5 Thereafter, on 13 April 2022, the Resolution Professional/Respondent No 1 issued a letter of intent ("LOI") in favour of the SRA. The LOI further directed the SRA to provide performance security to the tune of Rs. 5,00,00,000/- (Rupees Five Crore) in the form of performance bank guarantee or demand draft issued by a scheduled bank in favour of Prince SWR Systems Private Limited, payable at Nagpur.
- 6.6 In view of the above facts and circumstances, it is clear and is an admitted fact that (i) the Applicant failed to submit its EOI within the time stipulated in the invitation of EOI published by the Resolution Professional/Respondent No 1 even though being aware of the CIRP of the Corporate Debtor, (ii) even assuming without admitting that the Applicant submitted its EOI vide email dated 29 December 2021, the same was submitted beyond 13 November 2021, (iii) having failed to submit its EOI within the stipulated time, the Applicant's name was not included in the provisional list as well as final list of prospective resolution applicants prepared by the Resolution Professional/Respondent No 1, (iv) the Applicant was never a part of the CIRP of the Corporate Debtor and (v) the Applicant despite being aware of the CIRP of the Corporate Debtor, has filed the present Interlocutory Application to derail and delay the CIRP process of the Corporate Debtor. Therefore, the SRA submits that the resolution plan submitted by the Applicant cannot be considered by the CoC at such a belated stage. SRA further submits that one of the directors of the Applicant and one of the suspended directors of the Applicant being family members, are



also partners in a partnership firm namely, Ellora Chemical Works. Also, after going through the legal opinions and discussion the Resolution Professional/Respondent No 1 concluded that the Applicant is not eligible u/s 29A of the IBC to participate in the CIRP of the Corporate Debtor.

- 6.7 Further, without prejudice to what is stated above, SRA submits that the Applicant is willing to offer Rs 80-100 crores to the financial creditors of the Corporate Debtor and the Standard Chartered Bank has agreed to support the Applicant in relation to the Applicant's bid for the CIRP of the Corporate Debtor, which is contradictory as Standard Chartered Bank is one of the members of the CoC.

OBSERVATIONS/FINDINGS

7. Heard the Ld. counsels appearing for the parties and perused the record.
8. Vide order dated 16.04.2021 passed by this Adjudicating Authority CIRP was initiated against the CD and Mr. Hirachand Nemichand Bafna was appointed as IRP and was later confirmed as the RP of the CD. Mr. Hirachand Nemichand Bafna was replaced and Mr. Amit Chandrashekhar Poddar was subsequently appointed as the RP for the CD vide order dated 18.10.2021. Thereafter he is in effective control and administration of the CD.
9. The RP in compliance with the Regulations invited expression of interest from the prospective resolution applicants/interested bidders in respect of the Corporate Debtors on 16.07.2021. Thereafter



expression of interest was again called on 29.10.2021. The last date for submitting expression of interest for the second invitation of expression of interest was on or before 13.11.2021. In response to the same, the RP received 8 expression of interest and accordingly prepared list of prospective resolution applicants on 23.11.2021. Thereafter, the final list of prospective resolution applicants was also issued on 08.12.2021.

10. It is the submissions of the Applicant that in or around December, 2021 he made necessary arrangements for submitting a bid and sent an email to the Resolution Professional indicating its interest to submit a plan on 29.12.2021. It can be seen from the chronology of events given hereinabove that the applicant neither filed his expression of interest to the first invitation issued on 16.07.2021 nor to the second expression of interest invited on 29.10.2021. Rather, it was only much after a final list of prospective resolution applicants was issued by the Resolution Professional on 08.12.2021 that the Applicant expressed his interest by sending an email to the Resolution Professional on 29.12.2021. Thus, such expression of interest by way of an email should have been discarded as it is as inconsequential.
11. However, the Resolution Professional placed the email dated 29.12.2021 before the CoC in its 9th meeting wherein the CoC requested the RP to check if the Applicant would be eligible to participate in the Resolution Process of the Corporate Debtor. The CoC further directed the Resolution Professional to check if the Applicant falls under the definition of “related party” as per the provisions of IBC. Accordingly, the RP took legal opinion from an established law firm, who in their opinion stated that the Applicant would be hit by



provisions of Section 29A being caught in the mischief of definition of 'related party'.

12. It is the submission of the RP that the members of CoC also received legal opinions internally regarding the eligibility of the Applicant to participate in the CIRP of the Corporate Debtor and pursuant to such opinions and various discussions the CoC unanimously agreed to go ahead with the valuation of the plans received from the prospective resolution applicants and thereby declining the proposal of the Applicants. Accordingly, vide email dated 23.02.2022, the Resolution Professional informed the applicant about its ineligibility to participate in the CIRP of the Corporate Debtor due to non-submission of expression of interest within stipulated time. However, as the legal opinion were obtained by the members of the CoC as well the Resolution Professional, the CoC went ahead to evaluate the plans of prospective resolution applicants, list of which declared on 08.12.2021 and approved one resolution plan with 97.29% of majority for which E-voting was completed on 11.04.2022.
13. Despite such communication by the RP about the rejection of the request of the Applicant, the Applicant sent his so-called resolution plan through email to the RP as well as to the members of the CoC and latter also sent physical copy. It is the submission of the Applicant that the RP did not table the applicant's resolution plan before the CoC. Aggrieved by such action of the RP, the Applicant filed this application and this Tribunal by way of its order dated 12.04.2023 directed the RP to take the opinion of the CoC and if they concur then to place the said plan before the CoC for consideration. However, in the absence of any concurrence of the CoC members no further



consideration was given to the Applicant's mail or its so-called proposal.

14. Under the facts and circumstances as have been mentioned hereinabove, the issues for determination before the bench could be reduced as under:

- i. Whether the belated and unsolicited proposal sent by the applicant was rightly rejected by the CoC?
- ii. Whether in the fact and circumstances of the case, the Applicant is a related party and therefore ineligible to be part of the resolution process of the CIRP under Section 29A?

15. We first take issue no.1. The chronology of the events has been clearly brought out hereinabove and it is evident that the applicant had sent his unsolicited email on 29.12.2021 expressing his interest to be part of the bidding process which was much after the last dates of submission of expression of interests against invitations rolled out twice respectively on 16.07.2021 and 29.10.2021. It is noted that the last date of submitting the expression of interest against the second invitation for expression of interest was on or before 13.11.2021. The date on which mail was sent by the Applicant is also much beyond when the final list of prospective resolution applicant was issued by RP on 08.12.2021. It needs no emphasis that the CIRP is a time bound process and has to be completed expeditiously and within the time line. While maximization of value of asset of the Corporate Debtor through the process of resolution has to be kept in view, however, the other aspects such as timely completion of the CIRP etc. cannot be ignored. In catena of decisions of the higher courts including Hon'ble Supreme Court have emphasized so.



16. In Committee of Creditors of **Meenakshi Energy Ltd. Vs Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P Ltd**, the Hon'ble NCLAT has made some insightful observations which emphasize the need for adhering to timelines prescribed under the Code. The relevant extract has been produced hereunder:

“Observance of Time Frame

103. Indeed, all the concerned Authorities are necessarily required to adhere to the timeline enunciated in Regulation 40A of the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No wonder, the I&B Code, 2016 provides for the consequences of the period mentioned in Section 12 coming to an end in the event that the said period is over without the receipt of a ‘Resolution Plan’ or after rejection of a ‘Resolution Plan’ in terms of Section 31.

105. A Tribunal/ Appellate Tribunal is to follow the requirement and discipline of ‘I&B’ Code, 2016, enacted by the Parliament, to streamline the Resolution of Corporate Insolvencies, of course bearing in mind of the fact that the relevant provisions of the Code are well thought of in ‘public interest’ and to ensure good Corporate Governance. The repercussions in not following the timeline prescribed in IBC are that (i) maximisation of the value assets of the Corporate Debtor will weaken the realisation potential prospect of the Creditors; (ii) The promoters of the Company will remain undischarged from their obligation/liability. The individual who is to proceed against the Company, is suspended from exercising his right for moratorium remains in force till the CIRP period is continuing.

108. It is to be pointed out that the Tribunal/ Appellate Tribunal are showered with restricted jurisdiction mentioned in the ‘I&B’ Code, 2016 and they cannot function as ‘Courts of Equities’ or exercise plenary powers. In short, they are scrupulously bound by the ‘discipline of statutory provisions’ and they cannot traverse beyond the parameters of law.”



17. Regarding the viability and feasibility of the Resolution Plan, Respondent No. 1/RP emphasised that it cannot be questioned because it was approved by in the 16th COC meeting dated 28.03.2022. So much so. In the e-voting concluded on 11.04.2022, the plan selected has been approved by 97.27% voting. The relevant extract of the meeting is reproduced herein under:

"6. TO TAKE NOTE OF THE RESOLUTION PLAN RECEIVED FROM PRINCE PIPES AND FITTINGS LIMITED (PPFL).

The Chairman informed the members that Mr. Nihar Chheda through email dated 23.03.2022 had submitted his Resolution Plan with the RP. He had also sent an email dated 23.03.2022 giving his clarification relating to Ellora Chemical Works (ECW).

The RP mentioned that - Regulation 39 (1B) (b) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, states that the CoC shall not consider any Resolution Plan received from a person who does not appear in the final list of prospective resolution applicants. Therefore, the Resolution Plan received from Prince Pipes and Fittings Limited (PPFL) was not eligible to be put up for e-voting along with the other 2 Resolution Plans. The RP had also received an envelope containing the hard copy of the resolution plan of PPFL. The RP further mentioned that there was no point in opening the envelope and taking the resolution plan on record as the resolution plan did not have any legal sanctity. On the basis of legal opinion received from Cyril Amarchand Mangaldas, the members of CoC confirmed that PPFL was ineligible u/s 29A of IBC and the CoC also directed the RP to go ahead with the CIRP with existing resolution plans in hand."

18. Therefore, it is the fact of the case that after considering all the facts and circumstances of the case, the CoC in their wisdom have approved one Plan as successful Resolution Plan with a majority of 97.29%. It is also held by Hon'ble Supreme court that for CIRP under IBC the wisdom of CoC is paramount and not justiciable.



19. Accordingly, the issue no. 1 framed is answered in affirmative and it is held that the rejection communicated to the Applicant by the RP is justified and correct.
20. In regard to issue no. 2, it is important to examine the facts of the case. The details of the promoters and promoter group of the Applicant are as follows:

Name	Number of shares held	Shareholding (in percentage)	Entity Type
Vipul J. Chheda	2,21,48,300	20.03	Promoter
Parag J Chheda	2,15,83,303	19.52	Promoter
Tarla J Chheda	1,73,85,832	15.73	Promoter
Jayant Shamji Chheda	66,52,405	6.02	Promoter
Jayant Shamji Chheda (as a Karta of VS Family Trust)	12,00,000	1.09	Promoter Group
Jayant Shamji Chheda (HUF)	-	0.00	Promoter Group
Vaishali Hitesh Shah	5,00,000	0.45	Promoter Group
Jayantilal Kalyanji Gada	60,000	0.05	Promoter Group
Gunvanti Jayantilal Gada	40,000	0.04	Promoter Group
Heena Parag Chheda	12.616	0.01	Promoter



Ashwini Vipul Chheda	6,400	0.01	Promoter Group
Total	6,95,88,856	62.94	

21. The following individuals are also Directors in the Applicant:

<u>Name</u>	<u>Designation</u>
Jayant Shamji Chheda	Executive Chairman/Managing Director
Parag J. Chheda	Wholetime Director
Vipul Jayant Chheda	Wholetime Director

22. From the information as above, it is noted that:

- (a) Piyush Chheda (shareholder and Director of the Corporate Debtor) is the nephew (i. e. Brother's son) of Jayant Chheda (promoter and Executive Chairman/ Managing Director of the Applicant), and
- (b) Piyush Chheda (shareholder and Director of the Corporate Debtor) and Jayant Chheda (promoter and Executive Chairman/ Managing Director of the Applicant) are partners in Ellora Chemical Works, a partnership firm, bearing PAN no.: AAAFE0134D.

23. Therefore, it is to be examined that in view of the connection between Mr. Piyush Chheda and Mr. Jayant Chheda as set out above, whether the Applicant is ineligible under Section 29A of the IBC to participate as a resolution applicant in the CIRP of the Corporate Debtor?



24. Section 29A of the IBC stipulates that a resolution applicant will be ineligible to submit a resolution plan in respect of a company undergoing corporate insolvency resolution process if: (a) such resolution applicant, or (b) any person acting jointly or in concert with such resolution applicant, or (c) any Connected Person (as defined below) of (a) and (b) suffers from any of the conditions set out in paragraphs (a) through (j) of Section 29A (Disqualification Criteria”)
25. The Disqualification Criteria was introduced pursuant to the Insolvency and Bankruptcy (Amendment) Act, 2018. The Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 provides as follows:
- “2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible.”*
26. In *Chitra Sharma v. Union of India in Writ Petition (Civil) No. 744 of 2017*, the Hon’ble Supreme Court while placing reliance on the Statement of Objects and Reasons, elaborated on the purpose of Section 29A, as set out below:



“38. Parliament has introduced Section 29-A into IBC with a specific purpose. The provisions of Section 29-A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process. The Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Bill, 2017. Which was ultimately enacted as Act 8 of 2018, states thus:

...

Parliament was evidently concerned over the fact that persons whose misconduct has contributed to defaults on the part of debtor companies misuse the absence of a bar on their participation in the resolution process to gain an entry. Parliament was of the view that to allow such persons to participate in the resolution process would undermine the salutary object and purpose of the Act. It was in this background that Section 29-A has now specified a list of persons who are not eligible to be resolution applicants”

27. Further, the Supreme Court in ***Arcelor Mittal v. Satish Kumar Gupta in Civil Appeal Nos. 9402-9405 of 2018 (“Essar Steel Judgment”)*** also emphasized that while interpreting the provisions of Section 29A, it is important to pierce the corporate veil to see the real persons who presents the resolution plan. The relevant excerpts of the judgment are set-out below:

“29. The opening lines of Section 29A of the Amendment Act refer to a de facto as opposed to a de jure position of the persons mentioned therein. This is a typical instance of a “see through provision”, so that one is able to arrive at persons who are actually in “control”, whether jointly, or in concert, with other persons. A wooden, literal, interpretation would obviously not permit a tearing of the corporate veil when it comes to the “person” whose eligibility is to be gone into. However, a purposeful and contextual interpretation, such as is the felt necessity of interpretation of such a provision as Section 29A, alone governs, for example, it is well settled that a shareholder is a separate legal entity from the company in which he holds shares. This may be true generally speaking, but when it comes to a corporate



vehicle that is set up for the purpose of submission of a resolution plan, it is not only permissible but imperative for the competent authority to find out as to who are the constituent elements that make up such a company

....

34. It is thus clear that, where a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole.”

28. In light of the above, we now proceed to analyse the eligibility of the Applicant.


▪ **NPA Disqualification Criteria**

29. The relevant Disqualification Criteria is specified in Section 29A(c) of the IBC (“NPA Disqualification Criteria”), which provides as follows:

“29A. Persons not eligible to be resolution applicant.

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 (10 of 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

....

has a connected person not eligible under clauses (a) to (i).

(emphasis supplied)

30. The Explanation I to Section 29A provides the term “connected person” to mean:
- i. any person who is the promoter or in the management or control of the resolution applicant (“Category-I Connected Person”); or
 - ii. Any person who shall be the promoter or in management or control of the Business of the corporate debtor during the implementation of the resolution plan (“Category-II Connected Person”); or
 - iii. the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii) (“Category-III Connected Person”)
31. On a conjoint reading of the above, the Potential Resolution Applicant will not be eligible to submit a resolution plan if: (a) the Resolution Applicant; or (b) any person acting jointly or in concert with the Resolution Applicant; or (c) or any Connected Person of (a) or (b) above is disqualified pursuant to the NPA Disqualification Criteria, i.e. if any such person:



- i. 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 (“NPA”) in accordance with the guidelines of the RBI, and
- ii. at least a period of I (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.

32. We now proceed to examine whether Mr. Jayant Shamji Chheda and Mr. Piyush Chheda can be considered as “Connected Persons” of the Applicant:

a. Mr. Jayant Shamji Chheda as Connected Person of the Potential Resolution Applicant:

- i. As stated above, a promoter or a person in the management or control of the Potential Resolution Applicant will be considered as a Category-1 Connected Person.
- ii. In this regard, reference is drawn to the Essar Steel Judgment, wherein while interpreting the NPA Disqualification Criteria, the Supreme Court observed as follows:

“The expression “management” would refer to the de jure management of a corporate debtor. The de jure management of a corporate debtor would ordinarily vest in a Board of Directors, and would include, in accord with the definitions of “manager, “managing director” and “office” in Sections 2(53), 2(54) and 2(59) respectively of the Companies Act, 2013, the persons mentioned therein.

...



The expression "control" is therefore defined in two parts. The first part refers to de jure control, which includes the right to appoint a majority of the directors of a company. The second part refers to de facto control. So long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be "in control". A management decision is a decision to be taken as to how the corporate body is to be run in its day to day affairs. A policy decision would be a decision that would be beyond running day to day affairs, i.e. long term decisions. So long as management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholders agreements, voting agreements or otherwise, control can be said to exist.

...Thus, the expression "control", in Section 29A(c), denotes only positive control, which means that the mere power to block special resolutions of a company cannot amount to control. "Control" here, as contrasted with "management", means de facto control of actual management or policy decisions that can be or are in fact taken."

iii. The Supreme Court further observed as follows:

"The third concept is that of a promoter. "Promoter" is defined by Section 2(69) of the Companies Act, 2013 as follows:

"(69) "promoter means a person

(a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or



(c) *in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:*

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity:”

Here again, sub-clause (a) refers to a de jure position, namely, where a person is expressly named in a prospectus or identified by the company in an annual return as a promoter. Subclauses (b) and (c) speak of a de facto position. Under sub-clause (b), so long as a person has “control” over the affairs of a company, directly or indirectly, in any manner, he could he said to be a promoter of such company. Under sub-clause (c), such person need not be a member of the Board of Directors of a company, but can be a person who in fact advises, directs or instructs the Board to act. Under the proviso, only a person who acts in a professional capacity is excluded from the talons of sub clause (c).”

(emphasis supplied)

iv. In the facts and circumstances of the present matter:

- a. Mr. Jayant Chheda has been referred as a “promoter of the Applicant as per the Annual Report for Financial Year 2020-2021, and
- b. Mr. Jayant Chheda is the Executive Chairman/Managing Director of the Applicant, and accordingly he will be considered as the person in “management” of the Potential Resolution Applicant in light of the Essar Steel Judgment.



Therefore, as a “promoter” and as a “person in management” (in his capacity as Executive Chairman / Managing Director) of the Applicant, Mr. Jayant Chheda will be considered as a Category-I Connected Person of the Applicant.

b. Mr. Piyush Chheda as a Connected Person of the Applicant:

- i. As mentioned above, a “related party” of a Category-1 Connected Person will also be considered as a Category-III Connected Person of the Potential Resolution Applicant.
- ii. The term "related party" in relation to an individual is defined in Section 5(24A) of the IBC, as set out below:

“related party”, in relation to an individual, means-

- (a) a person who is a relative of the individual or a relative of the spouse of the individual;
- (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
- (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
- (d) A private company in which the individual is a director and holds along with his relatives, more than two per cent. Of its share capital:



- (e) a public company in which the individual is a director and holds along with relatives, more than two per cent. Of its paid-up share capital:
- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice. Directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice. Directions or instructions of the individual:
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act:
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent, of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation. For the purposes of this clause, -

- a) “relative”, with reference to any person, means anyone who is related to another, in the following manner, namely:-
 - i. Members of a Hindu Undivided Family.
 - ii. (husband,
 - iii. wife.
 - iv. father,



- v. mother,
- vi. son,
- vii. daughter,
- viii. son's daughter and son,
- ix. daughter's daughter and son.
- x. grandson's daughter and son,
- xi. grandfather's daughter and son,
- xii. brother
- xiii. sister
- xiv. brother's son and daughter
- xv. sister's son and daughter
- xvi. father's father and mother
- xvii. mother's father and mother,
- xviii. father's brother and sister
- xix. mother's brother and sister: and

b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included:"

33. In the facts and circumstances of the present matter:

- (a) Mr. Piyush Chheda (51% shareholder and Director of the Corporate Debtor) is the son of Mr. Gangji Chheda, who is the brother of Mr. Jayanat Chheda. Accordingly, Mr. Piyush Chheda is a "relative" of Mr. Javant Chheda as per Section 5(24A)(a) read with paragraph (a)(xiv) of the Explanation and therefore a "related party", and
- (b) Mr. Piyush Chheda (51% shareholder and Director of the Corporate Debtor) and Mr. Jayant Chheda are partners in Ellora Chemical Works which is a partnership firm. Accordingly, Mr. Piyush Chheda is the "related party" of Mr. Jayant Chheda as per Section 5(24A)(b) of the IBC.



34. Basis the above, as a “related party” of the Category-I Connected Person (i.e. Mr. Jayant Chheda), Mr. Piyush Chheda will be considered as a Category-III Connected Person.
35. However, it is relevant to note that disqualification of any relative may not be a ground of disqualification of a resolution applicant per se, as clarified by the Hon’ble Supreme Court judgment in the matter of Swiss Ribbons Private Limited and Another v. Union of India and Ors.” **(Swiss Ribbons Judgment”)**

“We are of the view that persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, all the categories of persons mentioned in Section 5(24A) show that such persons must be connected with the resolution applicant within the meaning of Section 29A(). This being the case, the said categories of persons who are collectively mentioned under the caption -relative obviously need to have a connection with the business activity of the resolution applicant. In the absence of showing that such person is -connected with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29A(j). All the categories in Section 29A(j) deal with persons, natural as well as artificial, who are connected with the business activity of the resolution applicant. The expression-related party, therefore, and relative contained in the definition Sections must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant.”

36. Accordingly, the Supreme Court in the Swiss Ribbons Judgment has narrowed the scope of “related party” by specifying that the disqualification under Section 29A will apply only if such “related party” has some nexus or connection to business activity of the




persons being tested under Section 29A of the IBC. Notably, the Supreme Court did not elaborate on what would be construed as “business connection” However, courts in India have analysed the term business connection from a tax perspective. Certain case laws relevant for the purpose of the analysis are set-out below:

37. The Supreme Court in Commissioner of Income Tax, Punjab v/s, R.D. Aggarwal & Ors. held as follows:

“8. The expression “business” is defined in the Act as any trade, Commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture, but the Act contains no definition of the expression “business connection” and its precise connotation is vague and indefinite. The expression “business connection” undoubtedly means something more than “business”. A business connection in Section 42 involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in the taxable territories which contributes directly or indirectly to the earning of those profits or gains. It predicates an element of continuity between the business of the non-resident and the activity in the taxable territories: a stray or isolated transaction is normally not to be regarded as a business connection. Business connection may take several forms: it may include carrying on a part of the main business or activity

Incidental to the main business of the non-resident through an agent, or it may merely be a relation between the business of the non-resident and the activity in the taxable territories, which facilitates or assists the carrying on of that business. In each case the question whether there is a business connection from or through which income, profits or gains arise or accrue to a non-resident must be determined upon the facts and circumstances of the case.



relation to be a “business connection” must be real and intimate and through or from which income must accrue or arise whether directly or indirectly to the non-resident.

38. In light of the above, while the “business connection” has to be established on a case-by-case basis, some of the guiding principles are as below:
- (i) Existence of close, real, intimate relationship and commonness of interest.
 - (ii) Continuity of activity or operation and not a stray transaction,
 - (iii) Control of management or finances or substantial holding of equity shares or sharing profits.
39. In the facts and circumstances of the present matter, as mentioned above:
- i. Mr. Jayant Chheda and Mr. Piyush Chheda are partners in a partnership firm (Ellora Chemical Works) and therefore the commonness of interest is clearly established,
 - ii. the partnership engagement is an ongoing arrangement and not a stray transaction, and
 - iii. as partners, Mr. Jayant Chheda and Mr. Piyush Chheda share the profits of the firm and are carrying on the business activity of the partnership firm.
40. Therefore, in view of the aforesaid, Mr. Jayant Chheda and Mr. Piyush Chheda undeniably have a business connection. Accordingly, Mr. Piyush Chheda will be considered as a Connected Person of the Potential Resolution Applicant (by virtue of being a relative as well as partner in partnership firm and thereby having a business connection with Mr Jayant Chheda) and accordingly, the eligibility of the



Applicant to participate in the resolution process of the Corporate Debtor has to be tested in light of the eligibility of the Mr. Piyush Chheda

41. Applicability of NPA Disqualification Criteria in relation to Mr. Piyush Chheda Mr. Piyush Chheda is ineligible as per the NPA Disqualification Criteria for the reasons set out below:

- (i) Mr. Piyush Chheda is a Director of the Corporate Debtor and therefore was in “management of the Corporate Debtor.
- (ii) Mr. Piyush Chheda holds 51% (fifty-one per cent) shares in his individual capacity and is also a Director of the Corporate Debtor and can be considered to have “control over the affairs of the Corporate Debtor and in turn would be considered as “promoter of the Corporate Debtor.
- (iii) The account of the Corporate Debtor was classified as NPA in accordance with the guidelines of the RBI, on March 01, 2020, and
- (iv) The Admission Order was passed on April 16, 2021 and therefore a period of 1 (one) year had lapsed from the date of NPA classification till the date of commencement of corporate insolvency resolution process in relation to the Corporate Debtor.
- (v) Given that Mr. Piyush Chheda (as a Category-III Connected Person of the Potential Resolution Applicant) is ineligible as per the NPA Disqualification Criteria, the Potential Resolution Applicant will also be ineligible under Section 29A(c) of the IBC.



▪ **Guarantee Disqualification Criteria**

42. Another potential Disqualification Criteria is set out in Section 29A(h) (“Guarantee Disqualification Criteria”), which provides as follows:

“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

43. In this regard, it is mentioned that:

- (i) Mr. Pivush Chheda (as the Director) has given personal guarantee to: (a) Canara Bank. (b) Axis Bank Ltd. (c) ICICI Bank Ltd., and (d) Standard Chartered Bank.
- (ii) The personal guarantees have been invoked by the said creditors, and
- (iii) The guarantees remain unpaid in full or part and the claims of such creditors have been admitted and the said creditors are members of the COC.

44. Accordingly, in the present case, even though the application against the Corporate Debtor made by an operational creditor (i.e. Midas Impex Pvt Ltd.) was admitted by the NCLT, the Guarantee Disqualification Criteria will be applicable vis-à-vis Mr. Piyush Chheda (as a Connected Person of the Potential Resolution Applicant) who is ineligible under Section 29A(h) of the IBC. Accordingly, the Applicant will also be rendered ineligible under Section 29A(h) of the IBC.

45. Therefore, the Applicant would be disqualified from submitting a Resolution Plan because of the legal impediment of Section 29A. Therefore, the issue number 2 is also answered in affirmative.



46. For all the above reasons and in the facts and circumstances of the case, it is the considered opinion of this bench that there is no merit in the above application and the same is accordingly **dismissed**.

Per: Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

47. I had the privilege of going through the judgment of my Ld. Brother. I concur with the conclusion of my Brother but would like to add further reasons for arriving at the conclusion.
48. Sequence of events are given below for quick capture of the facts illustrating the circumstances under which the Resolution Plan was submitted by the Applicant and factors leading to the filing of the present IA:

Date	Particulars
13.11.2021	Last date for submitting expression of interest.
08.12.2021	Final list of PRA was issued by the RP.
29.12.2021	After lefts of the last date for submission of EOI, the applicant vide email dated 29.12.2021 sent email to RP, and expressed to acquire the CD.
23.02.2022	RP rejected the request of the applicant stating that " <i>you are not eligible to participate in the Resolution Process of the CD</i> "
25.02.2022	Applicant responded to email of RP stating that applicant is willing to offer Rs. 80-100 crores to the FC and that they are not ineligible under section 29A.
28.02.2022	RP sent email to the applicant for participation of the applicant in 14 th CoC meeting started.



02.03.2022	14 th CoC meeting was conducted and it was decided to obtain legal opinion about eligibility of the applicant under section 29A of IBC.
17.03.2022-21.03.2022	15 th CoC meeting was conducted to take note of the opinion given by CAM, a law firm. In this meeting members of CAM explained the reasons for disqualification of the applicant.
23.03.2022	The applicant sent unsolicited email dated 23.03.2022 to RP submitting resolution plan. Thus, the applicant submitted the plan at a very belated stage.
28.03.2022	16 th CoC meeting was held but applicant's Resolution Plan was considered by CoC.

49. The CoC did not consider Applicant's Resolution Plan on following two grounds, which were discussed in 16th CoC meeting held on 28.03.2022:

- i. The applicant did not appear in the list of PRAs therefore, Resolution Plan submitted by applicant is at the belated stage.
- ii. On the basis of legal opinion received from CAM a law firm, Applicant is ineligible to submit Resolution Plan under section 29A of IBC.

50. It was only after 16th CoC meeting that applicant moved the present IA on 05.04.2022 seeking convening of meeting of the CoC to place applicant's Resolution Plan for their consideration. The I.A. was listed for hearing on 06.04.2022 wherein the Adjudicating Authority simply directed the RP and COC to file their Reply but no interim order was passed staying the process of e-voting on the Resolution Plans which were under consideration of CoC. Therefore, the plans submitted by



PRAs, excluding the Resolution Plan of the Applicant, were considered by CoC and on 11.04.2022 and M/s. Chemtrade Overseas Pvt. Ltd. was declared to be the Successful Resolution Applicant.

51. However, Adjudicating Authority vide order dated 12.04.2022 passed following orders:

“This is an application filed for seeking leave to permit the applicant to present the Resolution Plan of the RA to the CoC. During the course of hearing one of the CoC namely “Standard Chartered Bank” having 14% voting share mentioned that he had no objection if the plan is placed brgptr the CoC. This Bench directs the Resolution Professional to seek the approval/consent of the other members of the CoC and place the said Resolution Plan before the CoC”.


52. The applicant submitted that despite the above order passed by this Tribunal the RP has failed to place the Applicant’s Resolution Plan for CoC’s consideration.
53. It is to be noted that Canara Bank having 36.366 % voting share did not consent for considering the Applicant’s Plan on the ground that the Applicant is ineligible under section 29A of the IBC. Further Axis Bank having 20.351 % voting share consented to place the Resolution Plan before the CoC provided that the Applicant is eligible under section 29A of the IBC.
54. During the hearing before this Tribunal on 16.10.2023, the RP did not press the ground of delay and merely limited its objection to the Applicant’s Plan in view of ineligibility under section 29A of the IBC. However, we refer to a recent judgment of Hon’ble NCLAT titled as

**Jindal Power Ltd V. Dhiren Shantilal Shah, RP and Anr. (2024)**

ibclaw.in 15 NCLAT wherein it was held as follows:-

30. *The justification of the Appellant, and supported by RP/CoC, that by accepting its resolution plan, it maximises the value of the assets of the Corporate Debtor and it is in alignment of the primary objective of the Insolvency and Bankruptcy Code, 2023 (“Code”), cannot be accepted by giving a go by to the Code and particularly Regulations. Firstly, both AA and the Appellate Authority are bound by the Code and Regulations. Secondly, the Apex Court’s judgement relied upon by the Appellant of Kalpraj Dharamshi Vs. Kotak Investment Advisors Ltd. reported in (2021) 10 SCC 401 may not be of any help. This judgement holds that the commercial wisdom of the CoC is paramount and any decision of the CoC before the expiry of the timeline specified under the I&B Code is sacrosanct. And in this case CoC has applied its wisdom and AA has not questioned it as long as the process of resolution plan was not in violation of the Regulations. As and when the RP/CoC recommended in contravention of the Regulations, it was not agreed to by the AA. This is not the commercial wisdom which has been not agreed to by the AA, but the violation of the Regulations. **Furthermore, we agree that in the name of the shelter of maximisation of value of assets and commercial wisdom, RP/CoC cannot be permitted to take any decision at any point of time, which is in contravention to the CIRP Regulations.***

31. If unsolicited plans are obtained at any stage it will cause unnecessary avoidable delay in the CIRP process. If resolution plans are allowed to be submitted at any



stage, it will make the whole CIRP process unending. To curtail the delay in the CIRP process, it is appropriate to restrain the tendency to consider resolution plans after the time as specified by the CoC and from someone not in the final list of PRAs.

(emphasis supplied)

Therefore in view of the above judgment the unsolicited plan submitted by the Applicant cannot be considered by the CoC in violation of regulations 39(1B)(b). Hence, the present Application deserves to be dismissed on this ground.

55. The detailed submissions by the Applicant, relating to eligibility under section 29A of IBC, are already mentioned in the preceding paragraph 40. The primary contention of the Applicant is that though Mr. Jayant Chheda, Director of Applicant Company and suspended director Mr. Piyush Chheda are admittedly relatives, yet mere family ties between the two does not bring any disqualification upon the applicant under section 29A of IBC.
56. To buttress his submissions, Mr. Rohan Rajadhyaksha, Ld. counsel for applicant relied on ***Swiss Ribbons Pvt. Ltd. and Ors. vs. Union of India (supra)*** and contended that to become ineligible under section 29A the relatives must have a connection with the business activity of the Resolution Applicant it was submitted that the suspended directors Mr. Piyush Chheda who is disqualified under section 29A has no connection whatsoever with the business activity of the Applicant Company therefore in the absence of any business nexus with suspended directors the Applicant is not hit by section 29A. In any event the business activities of CD and Applicant are completely independent of each other.



57. On behalf of the RP it was submitted that one of the directors of the Applicant i.e. Mr. Jayant Chheda and one of the suspended directors i.e. Mr. Piyush Chheda are family members and are also partners in a partnership firm namely, M/s. Ellora Chemical Works (ECW) and by virtue of them being partners in the partnership firm, the Applicant becomes ineligible under section 29A of the IBC. Therefore, after various discussions, CoC had unanimously agreed to evaluate the Resolution Plans received from PRAs only and had declined to consider the plan of the Applicant.
58. Mr. Vikram Nankani, Senior Advocate appearing for the RP referred to section 5 (24A) of IBC to contend that a person in a partnership firm is covered under the definition of “related party”. Therefore, Mr. Jayant Chheda and Mr. Piyush Chheda, being partners in Ellora Chemical Works are covered as “related party” under Section 5 (24A) of IBC and the applicant in which Mr. Jayant Chheda is the promotor director is hit by bar of section 29A of IBC.
59. We have considered the rival contentions and given our thoughtful consideration to the controversy. According to Section 29A of IBC 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 has any of the disqualification given clause (a) to (j) of this Section. In the present case, admittedly, Mr. Piyush Chheda, ex-director of the CD has disqualification under section 29A of IBC.
60. Further, section 5(24A) of IBC defines “related party” as follows:-
- Section 5*
- “(24A) ‘related party’ in relation to an individual, means ---*



- (a) *a person who is a relative of the individual or a relative of the spouse of the individual;*
- (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner.**
- (c) *a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;*
- (d) *a private company in which the individual is a director and holds along with his relatives, more than two per cent of its share capital;*
- (e) *a public company in which the individual is a director and holds along with relatives, more than two per cent of its paid-up capital;*
- (f) *a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;*
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;**
- (h) *a person on whose advice, directions or instructions, the individual is accustomed to act;*
- (i) *a company, where the individual or the individual along with its related party, own more than fifty per cent of the share capital of the company or controls*



the appointments of the board of directors of the company

61. The Applicant submitted that accordingly to clause (b) of section 5 (24A) of IBC, the disqualification is incurred only on following persons:
- i. a partner of a limited liability partnership;
 - ii. a limited liability partnership
 - iii. a partnership firm in which the individual is a partner.

According to the Ld. Counsel for the Applicant, legislature has used, under section 5(24A)(b), specific phrase “*a partner of a limited liability partnership*” but has omitted to use “a partner of a partnership firm” which implied that Parliament, in its wisdom, had intention to disqualify only the partners of a LLP but not all partners of a partnership firm. By including all partners of a partnership firm here, it would be adding to the intention of the Parliament which has been intentionally left out. According to him ECW is not an LLP and therefore all partners of ECW are not hit by disqualification under section 29A of IBC. Though admittedly, ECW is disqualified due to 5(24A)(b) but all its partners are not disqualified. Mr. Piyush Chheda, being suspended director is disqualified under 29A of IBC but Mr. Jayant Chheda is not disqualified on account of being a partner with Mr. Piyush Chheda in ECW and it is Mr. Jayant Chheda who is the promoter director of the Applicant Company on whose instructions the Applicant has proposed the resolution plan. Therefore, Applicant Company i.e. M/s. Prince Pipes Fittings Limited is not hit by bar under section 29A. According to him, disqualification on all the partner would have incurred if the ECW had been a limited liability partnership (LLP).



62. We are not persuaded by the submissions of the Applicant that even if a partnership firm is disqualified under section 29A but all its partners are not disqualified under section 29A of IBC. The fundamental principle of partnership firm is that all the partners constitute a partnership firm therefore a partnership firm represents all the partners. If a partnership is disqualified under section 29A of IBC, it leads to the disqualification of all its partners who are obviously actively involved with the business activities. In case of limited liability partnership, there is a separate and independent Act, namely, Limited Liability Partnership Act 2008 which grants an LLP a separate legal corporate entity to an LLP. That is why the Parliament has taken abundance precaution in mentioning LLP under section 5(24A)(b).
63. Further, clause (g) of 24A clearly refers to a LLP or a partnership firm whose partners in the ordinary course of business act on the advice, directions or instructions of the individual. It means that if a partnership firm has a business nexus with the Resolution Applicant then it would be hit by section 29A. As explained in paragraph 40. We have not doubt in coming to a conclusion that Mr. Jayant Chheda and Piyush Chheda, being partners of ECW have common business activities and therefore have business connection. Mr. Piyush Chheda is connected person with Mr. Jayant Chheda and Mr. Jayant Chheda is promotor director of the Applicant Company, therefore, Applicant Company disqualified under section 29A of IBC.
64. With the above observations, the above I.A. **is dismissed.**

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

---Rajeev---

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)