

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 859 of 2025

**[Arising out of the Order dated 29.05.2025, passed by the
'Adjudicating Authority' (National Company Law Tribunal, New
Delhi) in IA/1240/ND/2025 in CP(IB)3/ND/2020]**

IN THE MATTER OF:

Myotic Trading Private Limited

Through its Director

Having its registered office at:

Room No. 320, Third floor,

7 Grant Lane, Kolkata, West Bengal – 700 012

...Appellant

Versus

**1. Deepak Maini, Resolution Professional of
Amzen Transportation Industries Limited**

Having its office at C-100, Sector 2,

Noida, Uttar Pradesh, 201301

...Respondent No.1

**2. Committee of Creditors of Amzen
Transportation Industries Limited**

Through Resolution Professional Having its
office at:

C-100, Sector 2, Noida,

Uttar Pradesh - 201301

...Respondent No.2

3. Cosmic CRF Ltd

Through its Chief Financial Officer

A company within the meaning of Companies
Act, 2013 Having its registered office at:

19, Manohar Pukur Road, Kolkata,

West Bengal – 700 029

...Respondent No.3

4. Prudent ARC Limited

Through its Managing Director Office at:

Unit No. 611, 6th Floor, D Mall,

Plot A-1, Netaji Subhash Place,

Pitampura, New Delhi -110034

...Respondent No.4

5. UCO Bank

Through its Managing Director

Head Office at: 10, B T M Sarani,

Kolkata, West Bengal - 700 001

...Respondent No.5

6. W.L.D. Investments Private Limited

Through its Director Address:
D-15 Pamposh Enclave,
Greater Kailash-1, New Delhi, 110048

...Respondent No.6

7. Fortune Global Solutions Pte Ltd

Through its authorised signatory
Office at: 11, Collyer Quay, #10-05,
The Arcade, Singapore – 049 317

...Respondent No.7

Present:

For Appellant : Mr. Navin Pahwa, Sr. Advocate with Mr. Pranav Sachdeva, Mr. P. Rohit Ram, Mr. Abhay Nair, Mr. Sidhartha Sharma, Mr. Arjun, Ms. Shalini Basu, Advocates.

For Respondent : Mr. P. Chidambaram, Sr. Advocate and Mr. Arvind Nayar, Sr. Advocate with Mr. Ashish Choudhary, Mr. Anand Verma, Mr. Abhishek Arora, Mr. Anand Kamal, Mr. Akash Agarwal, Mr. Akshay Joshi, Advocates for R-3.

Ms. Malvika Trivedi, Sr. Advocate with Mr. Akash Tandon, Mr. Shailendra, Advocates for R7.

Mr. Brijesh Kr. Tamber, Mr. Prateek Kushwaha, Arani Mukherjee, Ms. Chanchala Tiwari, Mr. Vinay Singh Bist, Advocates for UCO Bank.

Mr. Abhishek Anand, Mr. Karan Kohli, Advocates for RP-R1.

Mr. Arun Kathpaliya Sr. Advocate with Mr. Sumesh Dhawan, Mr. Ankit Singal, Mr. Shaurya Shayam, Advocates for R4 - Prudent ARC.

With
Company Appeal (AT) (Insolvency) No. 877 of 2025

[Arising out of the Order dated 28.05.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi) in IA/2548/ND/2025 in CP(IB)/3/ND/2020]

IN THE MATTER OF:

Myotic Trading Private Limited

Through its Director A company within the meaning of the Companies Act, 2013,
Having its registered office at:
Room No. 320, Third floor, 7 Grant Lane,
Kolkata, West Bengal – 700 012

...Appellant

Versus

1. **Deepak Maini, Resolution Professional of Amzen Transportation Industries Limited**
Having its office at:
C-100, Sector 2, Noida,
Uttar Pradesh, 201301
...Respondent No.1
2. **Committee of Creditors of Amzen Transportation Industries Limited**
Through Resolution Professional Having its
office at: C-100, Sector 2, Noida,
Uttar Pradesh – 201301
...Respondent No.2
3. **Insolvency and Bankruptcy Board of India**
Through is Chairperson 7th Floor,
Mayur Bhawan, Shankar Market,
Connaught Circus New Delhi-110001
...Respondent No.3
4. **UCO Bank**
Through its Managing Director Head Office at:
10, B T M Sarani, Kolkata,
West Bengal - 700 001
...Respondent No.4
5. **Prudent ARC Limited**
Through its Managing Director Office at:
Unit No. 611, 6th Floor, D Mall,
Plot A-1, Netaji Subhash Place,
Pitampura, New Delhi -110034
...Respondent No.5
6. **W.L.D. Investments Private Limited**
Through its director Address: D-15 Pamposh
Enclave, Greater Kailash-1,
New Delhi, 110048
...Respondent No.6

Present:

For Appellant : Mr. Navin Pahwa, Sr. Advocate with Mr. Pranav Sachdeva, Mr. P. Rohit Ram, Mr. Abhay Nair, Mr. Sidhartha Sharma, Mr. Arjun, Ms. Shalini Basu, Advocates

For Respondent : Mr. Arun Kathpaliya Sr. Advocate with Mr. Sumesh Dhawan, Mr. Ankit Singal, Mr. Shaurya Shayam, Advocates for R5 Prudent ARC.

Mr. Brijesh Kr. Tamber, Mr. Prateek Kushwaha, Arani Mukherjee, Ms. Chanchala Tiwari, Advocates for UCO Bank.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

Company Appeal (AT) (Insolvency) No. 859 of 2025 has been filed by M/s Myotic Trading Private Limited ('Myotic') which challenges the order/judgment dated 29.05.2025 dismissing the I.A. No.1240/2025 in C.P.(IB) No. 3/ND/2020 and Company Appeal (AT) (Insolvency) No. 877 of 2025 challenges order/judgment dated 28.05.2025 in I.A. No. 2548/ND/2025 in CP(IB) No. CP(IB)3/ND/2020. Since factual matrix in the two appeals are interrelated, they are being taken up together. We are taking CA(AT) (Ins.) No. 859 of 2025 as lead matter. A brief chronology of events extracted from CA(AT) (Ins.) No. 859 & 877 of 2025 are noted as follows:

04.05.2022	Corporate Insolvency Resolution Process ("CIRP") of Amzen Transportation Industries Limited ("CD") commenced.
20.04.2024	Form G was published in relation to CIRP of the CD. Minimum tangible net worth of Rs.100 crore was required for the eligibility.
06.05.2024	Appellant along with Fortune Global Solutions Pvt. Ltd (" Fortune ") submitted its Expression of Interest as a Consortium.
10.05.2024	Provisional List of the Prospective Resolution Applicants was issued wherein the 'Consortium' of Myotic and Fortune was shown as the Prospective Resolution Applicant.
02.07.2024	Appellant along with Fortune submitted its Resolution Plan as a Consortium.
16.08.2024	Respondent No. 1 informed the Applicant <i>via</i> email about the decision of the Respondent No. 2/CoC for conducting challenge Mechanism.
22.08.2024	Several rounds under the 'challenge mechanism process' were concluded. In the final round only two Prospective Resolution Applicants were left: i. Consortium of Myotic and Fortune, and ii. Cosmic CRF Limited ("Cosmic") 'Challenge mechanism process' was to be resumed on 28.08.2024.

27.08.2024	Energy Watchdog (an NGO/whistle blower) issued a letter to the RP, inter alia, alleging that Cosmic is not eligible for submitting Resolution Plan under Section 29A of IBC. Myotic sent the letter of Energy Watchdog to the RP and requested for deferment of swiss challenge mechanism for 2 weeks.
01.09.2024	IA No. 4493/ND/2024 was filed by the Consortium of Myotic and Fortune seeking deferment of 'challenge mechanism process' until eligibility of Cosmic under Section 29A of IBC is verified by the CoC.
19.10.2024	CoC in its 51 st meeting after considering the report of AHSK & Company on the eligibility under section 29A of the Code as well as the Reply of the Cosmic CRF Limited, in its commercial wisdom decided that <u>Cosmic CRF is ineligible</u> to submit a Resolution Plan under Section 29A of the Code.
04.11.2024	<i>Vide</i> letter the Respondent No. 1-RP informed the Appellant and Cosmic CRF the conclusion of the decision by the CoC. Respondent No. 1-RP in pursuance to the abovementioned decision declared the consortium of the Appellant as winner of the challenge mechanism process and requested the consortium to submit the finalized Resolution Plan.
06.11.2024	Cosmic CRF –R2 filed I.A. No. 5392 of 2024 challenging the <u>decision of CoC</u> , wherein, Cosmic CRF was declared ineligible to submit the Resolution Plan under section 29A of the Code as decided in the CoC meeting convened on 19.10.2024.
09.01.2025	I.A. No. 5392 of 2024 was listed before the Adjudication Authority, wherein, the issue raised regarding the eligibility was remanded back to CoC, <u>directing the Respondent No. 1</u> as well as CoC to provide Cosmic CRF a <u>fair opportunity</u> on the issue in hand. The Order dated 09.01.2025 was never assailed by the Appellant herein before this Appellate Tribunal under Section 61 of the Code.
27.01.2025	Respondent No. 1 sent an email to the Appellant seeking necessary clarifications explaining the source from which they received ineligibility of Cosmic CRF.
04.02.2025	Appellant <i>vide</i> email relied on the aforementioned email issued by the Respondent No. 1, explaining its stance.
06.03.2025	During the <u>55th CoC meeting</u> convened on the said date, the Respondent No. 1 informed the CoC member that the final report under Section 29A of the Code <i>qua</i> Cosmic CRF has been received from M/s Priyanka Sharma & Associates (hereinafter, referred to as ' PSA ') on 18.02.2025 and it was informed that a Legal opinion on the basis of the said Reply has been taken from Senior Advocate. During the discussion on the said report, it was inferred that <u>as per the report</u> the <u>Cosmic CRF was ineligible</u> to submit the Resolution Plan, whereas, as per the legal opinion obtained from the Senior Advocate, <u>Cosmic CRF was declared eligible</u> under section 29A of the Code. On resolution made by the CoC basis the aforementioned

	information, it may be noted that the <u>Legal Opinion</u> rendered by the Senior Advocate was <u>affirmed by the CoC with 100% voting in favour</u>, wherein, it was declared that Cosmic CRF as eligible under Section 29A. The continuance/resuming of the Challenge Mechanism process was <u>decided by the CoC</u>. And the same was conveyed to Cosmic CRF and Appellant.
17.03.2025	<u>Appellant</u> on its own without Fortune filed an Application bearing I.A. No. 1240 of 2025 <u>challenging the eligibility of Cosmic CRF</u>, wherein the Adjudicating Authority <i>vide</i> order dated 17.03.2025 issued <u>notice only on maintainability of I.A. No. 1240 of 2025</u> in view of the preliminary objections raised by the Respondents.
28.05.2025	Appellant filed an Application bearing I.A. No. 2548 of 2025 seeking <u>replacement of Respondent No. 1-RP</u>, reconstitution of CoC, setting aside of RFRP and IM and investigation on the findings given by the Enforcement Directorate in the provisional attachment order. Adjudicating Authority dismissed this Application bearing stating that the Appellant lacks locus to seek such reliefs.
29.05.2025	Adjudicating Authority <u>dismissed</u> the Application bearing I.A. No. 1240 of 2025 stating that the Appellant <u>lacks locus</u> to pursue the Application challenging the eligibility of Cosmic CRF.

Submissions of the Appellant – Myotic Trading

2. Appellant contends and brings to our notice that another entity called Cosmic Ferro Alloys Limited was admitted into insolvency on 16.10.2018. During its CIRP, resolution plan of consortium of United Tradeco FZC and QVC Exports Pvt Ltd was approved by NCLT, Kolkata vide order dated 11.10.2018.

3. In the meantime, Cosmic CRF Limited was incorporated on 21.12.2021. Mr. Aditya Vikram Birla and Ms. Purvi Birla were inducted in the Board of Directors on 14.07.2022 and 23.12.2022 respectively.

4. On around 19.01.2022 a business transfer agreement was entered between Cosmic CRF Ltd and Cosmic ferro Alloys Limited through which

one of the major units of Cosmic ferro Alloys Limited located at Singur Dist. Hooghly WB was sold by Cosmic CRF Limited ongoing concern on slump sale basis pursuant to which the said unit formed the sole asset of Cosmic CRF Ltd. Subsequent to such sale, charge was created in favour of Kotak Mahindra Bank Ltd to the tune of Rs 22 crores. The aforesaid transaction thereby demonstrates the backdoor entry of the erstwhile Promoter of Cosmic Ferro Alloys Ltd through its newly formed entity Cosmic CRF Ltd with control in the related and connected parties of the erstwhile company passing through insolvency process.

5. CIRP against the corporate debtor in the present case i.e. Amzen Transport Industries Pvt Ltd, commenced on 04.05.2022. The CIRP period has been extended and excluded by several orders passed by NCLT.

6. On around 27.02.2024 Hon'ble Supreme Court passed the judgment directing Directorate of Enforcement (ED), Govt of India has attached the assets and properties of the Corporate Debtor as the same were under its investigation. The said order states the following: -

“1. The petitioner who is a practicing advocate has invoked the jurisdiction of this Court under Article 32 of the Constitution of India raising an important issue regarding failure of the concerned agencies to address the humongous fraud allegedly committed by M/s. Amtek Auto Limited (hereinafter being referred to as ‘AAL’) and its associate companies in its banking related transactions, debt obligations, etc.

...

8. Prima-facie the evidence collected thus far has indicated that the funds of CUIs were diverted in land deals and real estate projects, etc. Undue benefits have been given to the family members and close relatives of the directors. It is contended by the learned counsel for the petitioner that the total amount involved in the fraud may touch the figure of Rs. 27,000 crores.

...

10. Be that as it may, looking to the above facts, we feel that the possibility of large-scale money laundering having taken place in relation to public monies procured from the Public Sector Banks cannot be ruled out and is rather imminent.

...

14. In this view of the matter, we hereby direct that an exhaustive investigation of the issues raised by the petitioner in this writ petition pertaining to huge banking fraud which may run into Rs. 27,000 crores of public money shall be conducted by the ED.

...

16. We also make it clear that mere closure/settlement of the accounts by the banks concerned shall not come into the way of the ED to investigate the matter fully and also regarding the entire amounts involved in the fraud.”

7. Form-G was published four times by the Resolution Professional. Pursuant to publication of the fourth Form-G on April 20, 2024, the Appellant submitted its Expression of Interest on 06.05.2024. As per the last Form G, the provisional list of prospective resolution applicants was published on 10.05.2024.

8. The Information Memorandum issued by the RP on 20.05.2024, failed to mention that investigations by CBI, SFIO and other authorities were on going against the CD and related parties and that the Hon’ble Supreme Court had also directed investigation by ED vide judgment dated 27.02.2024. The last RFRP was issued on the same date, by the RP and the same also does not make the said disclosure. Hence, these are extremely serious violation of the IBC by the RP.

9. The Appellant had submitted the Resolution Plan on 02.07.2024. The RP (Respondent No.1) through an email dated 16.08.2024 informed the Appellant about the decision by the RP/CoC for conducting Challenge

Mechanism to enable resolution applicants to improve their plans in terms of Clause 4.2.1 of the Request for Resolution Plan (RFRP).

10. In the meantime, the Appellant on around 27.08.2024 received a copy of complaint from an NGO named as Energy Watchdog on 27th of August, 2024 along with a note showing the ineligibility of Cosmic CRF Ltd (one of the Resolution Applicants) in the Resolution process of the Corporate Debtor. The Appellant herein immediately forwarded vide email the said letter to the Resolution Professional i.e. Respondent No.1 herein for his kind perusal and to intervene in the matter immediately and make proper inquiry about the same. On the very next date, i.e. 28.08.2024 the Appellant contacted one senior counsel with the documents received from the said NGO and sought his legal opinion regarding the eligibility of the said Resolution Applicant namely; Cosmic CRF Ltd. An opinion was received from the said senior counsel wherein it was categorically stated that if the documents and the information provided in the said complaint are correct, then the said Resolution Applicant namely; Cosmic CRF Ltd will be barred to become the Resolution Applicant of the Corporate Debtor, which, in other words, means that the said Resolution Applicant will be barred from participating in the ongoing Resolution Process. It was also stated in the said opinion that till the verification is done of the allegations, the RP should not proceed with the ongoing bidding process, if the said resolution applicant is one of participant in the bidding process. After obtaining the said legal opinion on 28th of August, 2024 the Appellant immediately forwarded the same to the Respondent No.1 for its kind perusal and necessary action.

11. Respondent No.1-RP replied to the Appellant on the very same date i.e. 29.08.2024 against the email issued by the Appellant stating that the said legal opinion has been given to the COC for their discussion and opinion. However, the COC members through majority opinion decided to continue with the ongoing challenge process, which would be subject to verification of the allegations against Cosmic CRF Ltd as raised by the Appellant, in spite of being objected by the Appellant. The respondents after the said email continued with bidding process till 1:40AM, 29th August, 2024 and since it was late midnight, deferred the final bidding process to be continued on 2nd September 2024. That the Appellant was forced to participate in the said bidding process, on the apprehension that other prospective resolution applicant (i.e. Cosmic CRF Ltd) may be clandestinely declared as the highest bidder in absence of the Appellant and further on the understanding that the current bidding process would be valid only if the COC/RP makes proper investigation against the said RA regarding its eligibility.

12. On 01.09.2024 the Appellant herein brought to the record of NCLT by filing IA / 4493 / ND / 2024 in C.P.(IB) No. 3 / ND/ 2020, mainly seeking a direction that the RP and CoC not to proceed with the challenge mechanism process till it decides the issue of eligibility of Cosmic CRF Ltd.

13. In the meantime, on the request of RP / CoC, a firm named AHSK & Co. submitted its report, dated 20.09.2024, to the RP, finding Cosmic CRF Ltd to be ineligible under Section 29A of IBC, 2016, recording, inter alia, the follow: -

- Shri Aditya Vikram Birla individually and through his family has direct/indirect interest in CFAL.
- In the resolution plan of CFAL approved on 11.10.2018, the concerned Resolution Applicant provided that Shri Aditya Vikram Birla, Shri Abhishek Birla and Shri Yash Birla will be working as Marketing Executive and Technical Executive for the operations of CRF plant. The financial debt of the CFAL of Rs. 178 Crores was sought to be settled at Rs. 50 Crores.
- On 21.12.2021, Shri Pawan Kumar Tibrewala, Father-in-Law of Aditya Kumar Birla incorporated Cosmic CRF Ltd. Shri Aditya. Vikram Birla was appointed as the Managing Director of the said Company.
- On 19.1.2022, pursuant to a Business Transfer Agreement entered into between CFAL and Cosmic CRF Ltd, the latter acquired the Cold Rolled Forming Unit on slump-sale basis.
- The Consultant has in terms demonstrated the relationship of promoters and directors of the Cosmic CRF Ltd with the promoters and directors of CFAL.
- The consultant analyzed Section 29A r/w. Sec.5(24) and 5(24A) and gave an opinion that Cosmic CRF Ltd is ineligible u/s. 29A of IBC, 2016.

14. In the 49th CoC meeting on 25.09.2024, the report of AHSK & Co was placed before the CoC for its opinion. After considering the report, the CoC required the RP to call for the response from Cosmic CRF Ltd. On 27.09.2024 the RP issued a notice to Cosmic CRF Ltd calling upon it to submit its response to the issue of ineligibility. Along with the notice, the RP

also attached a copy of the final report received from AHSK & Co. for the perusal of the Cosmic CRF Ltd and on 30.09.2024 Cosmic CRF Ltd gave its reply to the RP's notice. Cosmic CRF Ltd's reply, dated 30.09.2024, was placed before the CoC for its decision during CoC's 50th meeting on 05.10.2024. Upon perusal of the reply and the report, the CoC decided to appoint Priyanka Sharma and Associates for its opinion. In the meanwhile, the reply of Cosmic CRF Ltd was also forwarded by the RP to AHSK & Co. for its inputs. On 18.10.2024 both AHSK & Co. as well as Priyanka Sharma and Associates gave their respective reports, both opining that Cosmic CRF Ltd is ineligible under Section 29A of IBC, 2016.

15. In its 51st Meeting on 19.10.2024, the CoC considered the aforesaid reports as also the response given by Cosmic CRF Ltd. The CoC in its commercial wisdom decided to declare that Cosmic CRF Ltd is disqualified to participate in the CIRP and further to forfeit its deposit in terms of clause (i)(c) of RFRP. The CoC also decided to declare the Appellant herein as the winner of the Challenge Mechanism and to call for its final Resolution Plan.

16. On 04.11.2024, the RP informed Cosmic CRF Ltd about CoC's decision of 19.10.2024 that it has been declared ineligible for submission of Resolution Plan under Section 29A (a), (c), (h) and (j) of IBC, 2016. On 04.11.2024, the RP also sent an email to the Appellant herein informing it about Cosmic CRF Ltd's disqualification due to its ineligibility under Section 29A of IBC, 2016. Pertinently, vide the same email, dated 04.11.2024, the RP also communicated the CoC's decision declaring the Appellant to be the 'winner' of the Challenge Mechanism Process, and requested it to submit a

revised Resolution Plan.

17. On 05.11.2024, Cosmic CRF Ltd filed an application [I.A. No.5392 / 2024] in C.P. (IB) No.3 / ND / 2020 before NCLT challenging, inter alia, the CoC's decision of 19.10.2024 declaring it ineligible under Section 29A of IBC, 2016, as well as seeking setting aside of RP's letter dated 04.11.2024, intimating it about its ineligibility. Vide order, dated 09.01.2025, passed in I.A. No.5392 / 2024] in C.P. (IB) No.3 / ND / 2020, the NCLT, New Delhi partly allowed Cosmic CRF Ltd's application and remanded the matter to the CoC for reconsideration of the issue of ineligibility of Cosmic CRF Ltd under Section 29A IBC after giving it opportunity of being heard.

18. On 14.02.2025 RP requested the Appellant herein to make the necessary compliance pursuant to Section 31(4) of IBC, 2016 and Hon'ble Supreme Court's judgment, dated 29.01.2025, in Independent Sugar Corporation Ltd. V Girish Sriram Juneja & Ors., in Civil Appeal No. 6071 / 2023, and accordingly requested the Appellant herein to submit its resolution plan subject to the said compliance check.

19. After NCLT's order, dated 09.01.2025, RP / CoC on 03.03.2025 called for response of Cosmic CRF and asked M/s Priyanka Sharma & Associates (PSA) to give its final report / opinion based on all the previous reports and Cosmic CRF's response dated 20.01.2025, and it was decided to send the final report of PSA to a senior advocate for his opinion. The Final report, dated 18.02.2025, of PSA again declared Cosmic CRF to be ineligible under Section 29A of IBC, but the Ld. Senior counsel in his opinion, dated

03.03.2025, declared it to be eligible under the said section.

20. Pertinently, as it is evident from the minutes of the CoC's 55th meeting, dated 06.03.2025 [as annexed in UCO Bank's reply dated 25.03.2025], the CoC didn't apply its mind as to why the legal opinion of the Ld. Senior counsel (holding Cosmic CRF to be eligible) has to be preferred rather than M/s Priyanka Sharma & Associates' report (holding Cosmic CRF to be ineligible) and the previous reports of other auditors, experts and senior counsels, who had observed Cosmic CRF to be ineligible. As such, the CoC's decision of 06.03.2025 is completely arbitrary having been reached without due application of mind, and therefore, ought to be set aside, as prayed for by the Appellant herein in prayer (a) of its IA/1240/ND/2025. The Appellant, who has questioned the eligibility of Cosmic CRF, was also not given any hearing or notice of the same.

21. RP through attaching therewith a letter dated 07.03.2025 withdrew the declaration of the Appellant as the 'winner' of the challenge mechanism process and resumed challenge mechanism process. During the CoC meeting of 06.03.2025, it was decided that Cosmic CRF Ltd has been declared as eligible under Section 29A of IBC, 2016 and therefore the Appellant's declaration as the winner of the challenge mechanism process was withdrawn. Furthermore, in the said letter dated 07.03.2025, the RP, by making reference to certain emails of the Appellant's consortium partner, also sought the Appellant's reply to justify how its status as a resolution applicant is legally tenable.

22. On 08.03.2025 the Appellant herein sent a detailed response to the RP to its letter dated 07.03.2025.

23. On 10.03.2025, the Appellant filed IA/1240/ND/2025 in CP(IB)/3/ND/2020 before NCLT, New Delhi essentially seeking setting aside of CoC's decision of 06.03.2025 declaring Cosmic CRF Ltd to be eligible under Section 29A of IBC, 2016 and also seeking quashing of the RP's letter dated 07.03.2025 addressed to the Appellant communicating the CoC's decision of withdrawing its earlier declaration of the Appellant as the 'winner' of the challenge mechanism process. Vide Prayer (c) of the said application, the Appellant also sought an interim stay on the ongoing challenge mechanism process until the final disposal of the present application. Vide order, dated 17.03.2025, passed in IA/1240/ND/2025 in CP(IB)/3/ND/2020, the NCLT directed the CoC not to further proceed with the challenge mechanism till the next date of hearing, and parties were directed to file their respective replies on the maintainability of IA/1240/ND/2025.

24. In its 57th meeting dated 22.03.2025, the CoC was of the opinion that:

- In light of the provisions of RFRP, Consortium agreement executed between Myotic & Fortune, and Fortune's irrevocable power of attorney, the Consortium still subsists today as the same is irrevocable.
- Any dispute between Myotic and Fortune is their internal dispute, and should not concern the RP/ CoC
- Eligibility of Myotic is nowhere challenged by any party

before the NCLT. The only challenge is to the eligibility of Cosmic CRF.

- If the lead member (viz. Myotic) is saying that the consortium is valid so it should be treated as valid by the CoC as it is not a competent court to decide upon the validity of the Consortium.

25. It came to notice that on 25.03.2025, the Enforcement Directorate issued Provisional Attachment Order (PAO), which makes shocking revelations that go to the root of the present CIRP that has got riddled with illegalities.

26. The Appellant herein filed an appeal [C.A. (AT) (Ins) No. 598 / 2025] against the interim order dated 26.03.2025, passed by the National Company Law Tribunal as vide the interim order dated 26.03.2025, the NCLT, Delhi had removed to extend the aforesaid interim stay. On 17.04.2025, this Appellate Tribunal was pleased to dispose of the Appellant's appeal [C.A. (AT) (Ins) No. 598 / 2025] by directing that the interim order dated 17.03.2025 passed by the National Company Law Tribunal (directing that the CoC may not proceed with the challenge mechanism) shall continue.

27. On 23.04.2025 the Judgment/order was reserved in the said IA 1240/2025 filed by the Appellant herein on the issue of maintainability of the IA. In the meantime, stay on challenge mechanism has been continued by the NCLT pursuant to the order dated 17.04.2025 passed by this Appellate Tribunal.

28. On 24.04.2025, the Respondent No. 1 i.e. the RP had written an email

to the Appellant raising issues about eligibility of the Appellant. On 09.05.2025 the Appellant wrote an email to the Resolution Professional asking for any information if such order of attachment has been passed against the assets and properties of the CD. On 13.05.2025, the RP replied with an allegedly evasive response to the email dated 09.05.2025.

29. On 27.05.2025 the Appellant filed IA/2548/ND/2025 in CP(IB)/3/ND/2020 seeking, the following reliefs: -

- To appoint a new Interim Resolution Professional (IRP).
- Direct the IRP to reconstitute the CoC, excluding Respondents 5 (Prudent ARC Ltd.) and 6 (WLD Investments Pvt. Ltd.) as related parties, in line with Section 21(2) proviso of the IBC.
- Instruct the newly constituted CoC to appoint a Resolution Professional as per IBC provisions.
- Cancel the RFRP and Information Memorandum dated 20.05.2024, along with all related actions, for non-compliance with IBC and CIRP Regulations.
- Grant an ad-interim stay on all CIRP proceedings until a new CoC is formed and RP is appointed.
- Direct IBBI to cancel Respondent No. 1's Insolvency Professional license.

30. On 28.05.2025, NCLT dismissed IA/2548/ND/2025 stating that there is no locus without hearing the merits. Subsequently, NCLT passed the impugned order dated 29.05. 2025 dismissing the IA.No.1240/2025 filed by the appellant in Company Petition (IB) 3 of 2020, as not maintainable, without adjudication of merits.

31. Appellant contends that they are the lead member of a consortium

(PRA) and authorized to do all communications & bidding on its behalf. Appellant, being the sole point of contact as per RFRP, had done all communications, negotiations, paid EMD and submitted the resolution plan and it was declared the 'winner'. Thereafter basis Appellant's complaint against the violation of Section 29A of IBC, led to due diligence by the CoC and as a result the rival PRA – Cosmic CRF – R-3 was disqualified.

32. Appellant had moved IA No. 1240 of 2025 on 10.03.2025 challenging the decision of the CoC taken in its 55th meeting on 06.03.2025 to declare Cosmic CRF (Respondent No. 3) as an eligible PRA. This decision had overturned CoC's own earlier decision taken in its meeting on 19.10.2024. it is claimed that after Appellant's complaint and based on multiple detailed expert reports and legal opinions obtained thereafter, including by their own due diligence agencies, CoC had declared Respondent No. 3 as ineligible and had forfeited its EMD for false declaration, and had declared the Appellant's consortium as the 'winner'. While judgment in above IA was reserved, the Appellant basis information relating to Provisional Attachment Order of the ED dated 25.03.2025 that made startling revelations, filed Application No. 2548 of 2025 on 22.05.2025. This IA highlighted that the CIRP of the Corporate Debtor has been hijacked by the promoters of the CD who did massive frauds and against whom Hon'ble Supreme Court had ordered ED investigation, in addition to already pending investigations by the CBI and SFIO into all companies of Amtek group. ED had thereafter attached all assets of the Amtek Group, including of the CD. The Information Memorandum had failed to even indicate that CD was under investigation

by the CBI, ED and SFIO and its assets are likely to suffer attachment. The application sought reconstitution of CoC after removing related parties and issuance of fresh IM and RFRP in compliance with IBC and CIRP regulations. But in the Impugned order dated 28.05.2025, in IA 2548 of 2025. NCLT failed to exercise its jurisdiction under the IBC to ensure sanctity of the process and vide order dated 28.05.2025 dismissed the application at its first listing, without considering the facts stated therein by simply stating the Appellant herein does not have the locus to maintain the application. This order is being impugned in Company Appeal (AT) (Ins.) No. 877 of 2025.

33. It is further contended in the Impugned order dated 29.05.2025, that in IA 1240 of 2025. NCLT dismissed the application on the ground of locus of the Appellant based on the inter-se dispute between the Appellant and its consortium partner, without examining the legality of the CoC decision in favouring an ineligible and undesirable bidder, in clear violation of Section 29A of the IBC. This order is being impugned in Company Appeal 859 of 2025.

34. Appellant places it reliance on recent judgment, ***Kalyani Transco vs Bhushan Power & Steel Ltd. (2025 SCC Online SC 1010)***, wherein the Hon'ble Supreme Court has affirmed the principle that provisions of the IBC and regulations framed thereunder (including Section 29A are mandatory), and any departure or violation would make the resolution process and resolution plan as illegal.

35. It is contended by the Appellant-Myotic that the impugned order dated

28.05.2025 dismissing IA 2548 of 2025 is erroneous and perverse for 5 main reasons:

- Appellant was placing on record certain serious illegalities and facts that go to the root of the matter, that ought to have been considered by the NCLT, especially in light of the order passed by the ED.
- The illegalities highlighted by Appellant and relief sought had nothing to do with Appellant's rights or eligibility as a PRA, as Appellant had sought reconstitution of CoC & appointment of new RP and issuance of fresh RFRP & IM itself.
- Section 60 gives vast jurisdiction to the Adjudicating Authority (being the sole authority to oversee the entire CIRP) to entertain "any application" concerning the CIRP.
- The order is unreasoned, sans any consideration of the facts and without any adjudication, at the first listing of the application.
- The NCLT ignored the consortium provisions of RFRP and the consortium agreement between consortium members and irrevocable PoA signed by consortium partner, as well as the CoC decision dated 22.03.2025 in its 57th meeting.

36. Furthermore, the impugned order dated 29.05.2025 dismissing IA 1240 of 2025 is erroneous for six main reasons: -

- Appellant was placing on record detailed, cogent and extensive averments and documents demonstrating the ineligibility of the R-3/ Cosmic CRF.
- The illegalities highlighted by Appellant and relief sought was required to be adjudicated, as no resolution plan by an ineligible PRA can be accepted firstly by the CoC and secondly by the adjudicating authority.

- Section 60 gives vast jurisdiction to the Adjudicating Authority (being the sole authority to oversee the entire CIRP) to entertain "any application" concerning the CIRP.
- The order of dismissal is solely based on locus/eligibility and therefore suffers from non-adjudication of the issues raised and facts highlighted.
- The NCLT ignored the consortium provisions of RFRP and the consortium agreement between consortium members and irrevocable PoA signed by consortium partner.
- The NCLT decision overturns the CoC's decision taken in its 57th meeting dated 22.03.2025 to hold Appellant as eligible, that had been taken after considering all facts included the attempt to withdraw by Appellant's consortium partner, without their being a challenge to the said decision of the CoC dated 22.03.2025.

37. It is contended by the Appellant-Myotic that the foremost duty of the adjudicating authority is to first ensure strict compliance with the IBC and CIRP regulations framed under IBC, and in that light it has been entrusted with vast powers under various provisions of the IBC and to entertain any application under Section 60 of the IBC.

38. It is contended that the second application (IA 2548/2025) filed by the Appellant and the reliefs sought for reconstitution of CoC pertained to a stage anterior to the stage when applications by PRAs are invited and processed and their eligibility is examined. Therefore, the application was not premised on the rights of the consortium as a PRA of which Appellant is the lead member or its bid and resolution plan submitted by it, and hence ought not to have been dismissed on the ground of locus.

39. It is also contended that during the hearing of I.A. No.1240/2025 on the issue of ineligibility of Cosmic CRF Limited-R-3, the Respondent had raised the issue of the locus of the Appellant to maintain and pursue I.A. No.1240/2025. It is claimed by the Appellant that, in I.A. No. 4493/2024, which was filed by the Appellant herein, the Cosmic CRF Limited-R-3 was declared as ineligible earlier and the Appellant was declared as the winner of the challenge mechanism.

40. Further, the Appellant-Myotic being lead member had paid EMD from its account to the CoC, on the basis of the IM issued in violation of law by a CoC constituted in violation of law, and had diligently participated in the entire bidding process, and was also the sole complainant against the ineligible bidder Cosmic CRF and therefore had sufficient locus to maintain both the applications, especially when no one else was bringing on record certain glaring facts except the Appellant herein, even after all assets of corporate debtor had been attached by the ED pursuant to an investigation directed by the Hon'ble Supreme Court.

Submissions of Deepak Maini the Resolution Professional – R-1

41. It is contended that impugned orders dated 28.05.2025 and 29.05.2025 suffers from no legal infirmity and Adjudicating Authority has correctly held that held that the Appellant lack locus standi to maintain I.A. No. 1240 of 2025 & I.A. No. 2548 of 2025. The FORM-G, issued on 20.04.2024 by the RP, clearly stipulates the timeline of the process which has not been changed/modified/alterd in any manner and the last date of submission of objections to the provisional list of Prospective Resolution

Applicants lapsed on 15.05.2024. The Appellant failed to adhere to the timelines as stipulated in the FORM-G and in the Code and Regulations framed thereunder, wherein, they have filed the Application bearing I.A No. 1240 of 2025 on 10.03.2025, indirectly challenging the provisional list of Prospective Resolution Applicants with a significant delay of more than 10 months from the last date of challenge i.e., 15.05.2024. It is to be noted per Regulation 36A (11) of CIRP Regulations, any challenge to inclusion or exclusion of PRAs in the provision list may be made within 5 days from the date of issue of the provisional list.

42. Appellant filed an Application bearing I.A. No. 2548 of 2025, wherein the Appellant sought replacement/removal of the Respondent No. 1 being the Resolution Professional. Such a relief can be sought under Section 27 of the Code which states that only the CoC can replace the Resolution Professional with requisite majority of more than 66%. It is pertinent to note that the Appellant is not a part of the CoC/Creditor of the Corporate Debtor, hence, cannot seek the relief of replacing the Respondent No. 1.

43. Furthermore, since Fortune has filed an affidavit affirming its stand not to be part of Consortium with the Appellant, therefore, the Appellant on its own without its consortium partner cannot maintain any challenge in the CIRP of the Corporate Debtor as the Appellant on its own individually is not a PRA in the CIRP of the Corporate Debtor.

44. Furthermore, both the Application bearing I.A No. 1240 of 2025 and I.A. No. 2548 of 2025 filed by the Appellant before the Adjudicating Authority

were non- maintainable in law and Adjudicating Authority rightly held *vide* orders dated 28.05.2025 and 29.05.2025 that the Appellant has no locus to seek the reliefs as sought in the respective applications.

45. Furthermore, Respondent No. 1 being the Resolution Professional can only give opinion regarding eligibility under Section 29A of the code. It is contended that the reliefs sought by the Appellant cannot be granted as the process was conducted properly, following the CoC's decision and the Adjudicating Authority's direction. The CoC sought responses, obtained a legal opinion, and unanimously decided Cosmic CRF's eligibility. Further, Respondent No. 1 has complied with the Regulation 36A (8) & (9) of the CIRP Regulations while examining the eligibility of Respondent No. 3 under Section 29A of the Code, which categorises due diligence based on the material on record.

46. Resolution Professional places it, reliance on ***Arcelormittal India Private Limited v. Satish Kumar Gupta, [(2019) 2 SCC 1]***, and contends that the role of the Resolution Professional is merely to facilitate and the final decision is within the domain of the members of the CoC. RP also relies upon this Appellate Tribunal's decision in the matter of ***Sharavan Kumar Vishnoi v. Upma Jaiswal & Ors, [Company Appeal (AT)(Ins) No. No. 371 of 2022]*** which had relied upon the decision of the Hon'ble Supreme Court in ***Arcelormittal (supra)***.

47. It is claimed that the Respondent No. 1 even appointed M/s AHSK & Co for conducting the due diligence under Section 29A of the Code of all of

the Prospective Resolution Applicants in the CIRP of the Corporate Debtor, which subsequently was placed before the CoC for their perusal and further approval reserving the right of final decision with the members of the CoC. Therefore, the conduct of the Respondent No. 1 is not at all contrary to the role of a facilitator as envisaged under the Code and the Regulations framed thereunder.

48. It is also contended that in compliance with the order dated 09.01.2025 passed by the Adjudicating Authority in I.A. No. 5392 of 2024, wherein, it was directed to the Respondent No. 1 and the CoC to reconsider the eligibility of Respondent No. 3. CoC in its commercial wisdom basis the Legal Opinion received from the Senior Advocate decided that the Cosmic CRF is eligible to submit the Resolution Plan and hence, the challenge mechanism process was re-opened by the Answering Respondent and the same certainly cannot be re-opened at the behest of the Applicant. It is pertinent herein to mention herein that the Appellant failed to challenge the Order dated 09.01.2025 passed by the Adjudicating Authority before this Appellate Tribunal and has thus, attained finality.

49. That the Appellant has made allegations in Company Appeal (AT) (Ins.) No. 859 of 2025 against the Resolution Professional that the claim of the WLD Investments Private Limited which is the related party of the Corporate Debtor (indirect holding of 5.12% shareholding) has been admitted and WLD Investment is made part of the CoC in violation of the provisions of the Code. However, the pleading to such effect is part of I.A. No. 1240 of 2025 and thus, the same cannot be agitated in Company Appeal (AT) (Ins.) No. 859 of 2025

by the Appellant. It is pertinent to note that the sub clause (j) of the Section 5(24) of the Code provides that any person will become the related party of the Corporate Debtor if it holds more than 20% of voting rights in the Corporate Debtor on account of ownership or a voting agreement, which is in the present case is not applicable as the WLD Investments Private Limited has only 5.12% of indirect shareholding in the Corporate Debtor.

50. It is also claimed that the Adjudicating Authority, constituted under the Insolvency and Bankruptcy Code, 2016, does not possess the jurisdiction to examine or adjudicate upon the findings of the Enforcement Directorate, which are rendered under the statutory framework of the Prevention of Money Laundering Act, 2002 (PMLA). Adjudicating Authority is not empowered to sit in appeal or revision over the investigative conclusions or orders passed by authorities functioning under the PMLA. This legal position has been categorically affirmed in the judgment of ***Kalyani Transco v. Bhushan Power & Steel Limited & Ors.; Civil Appeal No. 1808 of 2020***, wherein it was held that the Adjudicating Authority cannot delve into the merits or validity of attachments or investigations carried out under PMLA. Furthermore, the instant appeal is entirely silent with respect to any challenge or reference to the findings of the Enforcement Directorate. There is no whisper in the pleadings, prayers, or grounds of appeal that refer to the provisional attachment or investigation conducted by the ED. Therefore, any adjudication or observation by this Appellate Tribunal regarding the same would amount to overstepping of jurisdiction and would traverse beyond the scope. It is further denied that independent and separate proceedings have

already been instituted and are pending before the competent authorities under the PMLA with respect to the subject matter arising out of the provisional attachment order issued by the Enforcement Directorate. That the Respondent No. 1 has duly filed its objection to the Original Complaint 193 of 2025 which is listed for hearing on 20.08.2025 before the Adjudicating Authority under PMLA.

51. It is also contended that the Appellant has not approached this Appellate Tribunal with clean hands as the affidavit filed by Fortune with respect to non-participation in the CIRP of the Corporate Debtor despite being part of I.A. No. 1240 of 2025 before the Adjudicating Authority has not been placed intentionally on record by the Appellant in order to hoodwink this Appellate Tribunal in obtaining favorable interim order.

52. Thus, in view of the submissions made there stands no legal infirmity in the Impugned orders dated 28.05.2025 and 29.05.2025 passed by the Adjudicating Authority and in view thereof the instant Appeals be dismissed.

Submissions of Cosmic CRF-R3

53. Cosmic CRF also an RA, contends that Consortium of Myotic & Fortune is the other Resolution Applicant and not Myotic in its individual capacity. Form-G was published by the RP on April 20, 2024 inviting Expression of Interest. The RP published the Provisional List of Prospective Resolution Applicants. As per the list, it is the Consortium of Myotic and Fortune who were shown as the Prospective Resolution Applicant. Fortune has categorically withdrawn the Power of Attorney granted in favour of Myotic and withdrawn as a member of the consortium. After withdrawal of Fortune, Myotic in its

individual capacity cannot be termed as Resolution Applicant and thus Myotic is a stranger to the CIRP of the Corporate Debtor.

54. It is also contended that I.A. 4493/ND/2024 was filed by the consortium but the subject application has only been filed by Myotic. In the midst of the Challenge Mechanism Process, an application being I.A. 4493/ND/2024 was filed seeking stay of the challenge mechanism process. The Applicant No.2 in such application is Fortune. In the affidavit alongwith the application it has been clearly mentioned that the Deponent is the authorised signatory of Myotic and Fortune. However, the subject application has been filed by Myotic alone and not by the Consortium. Fortune is not even a party to such application. Thus, the present application at the behest of Myotic individually is not maintainable.

55. It is also contended that Fortune has unequivocally withdrawn from the consortium. An email dated 06.03.2025 was sent by Fortune revoking the Power of Attorney issued in favour of the Myotic. Letter/Email dated 07.03.2025 was sent by Fortune to RP categorically stating that Fortune has withdrawn themselves as the member of the consortium and their participation in the CIRP shall be deemed as withdrawn. It was also mentioned in the letter that they have revoked the Power of Attorney which was granted in favour of Myotic. Email dated 18.03.2025 sent by Fortune to RP reiterating their stance as conveyed vide email dated 07.03.2025. Email dated 19.03.2025 sent by Fortune to RP reiterating that they hold no association, liability or responsibility for any actions, commitments or representations made by Myotic and that their withdrawal from CIRP of the

Corporate Debtor is final and irrevocable. It is a settled principle of law that when there are two partners in the JV and one of them goes out then it cannot be said that JV is a continuing entity especially when it draws its sustenance under a mutual agreement between two partners. It also places reliance on ***GVPREL-MEE (J.V.), Hyderabad v. Government of A.P. & Anr., (2005) SCC Online AP 531.***

56. Myotic individually does not fulfil the eligibility criteria to be a Prospective Resolution Applicant (PRA). The Invitation of Expression of Interest as issued by the RP puts forth the eligibility criteria for resolution application. As per the Invitation of Expression of Interest, in case the resolution applicant is a consortium then all the members of the consortium should together meet the eligibility criteria of minimum tangible net worth of Rs. 100 crores and individual members of the consortium should have minimum net worth of Rs. 10 crores each. As per the documents issued to CoC by Myotic, the total net worth of Myotic is Rs. 43.21 crores approx. As per the documents issued to CoC by Fortune, the total net worth of Fortune is Rs. 140.69 crores. Thus, on account of withdrawal of Fortune, Myotic individually will not be able to meet the eligibility criteria of minimum tangible net worth of Rs. 100 crores.

57. It is also contended that Myotic has played a fraud upon by relying upon spurious and Forged Documents. Myotic issued an email dated 18.03.2025 to the RP wherein, inter alia, Myotic submitted a purported unnotarized affidavit dated 11.03.2025 purportedly signed by Mr. Vineet Shah [Director of Fortune] purporting to withdraw the emails issued by Fortune on

06.03.2025 at 3:22 pm and at 7:15 pm and the letter dated 07.03.2025. The RP issued an email dated 18.03.2025 to Myotic and Fortune requesting clarification on the authenticity and genuineness of the unnotarized affidavit. Fortune through Mr. Vineet Shah on 19.03.2025 replied that they have neither signed the affidavit nor were they in Gurgaon nor have they purchased the stamp paper at Gurgaon and Myotic is presenting false and wrong documents to the RP and CoC. Thus, Myotic has played fraud upon the CoC and the NCLT.

58. It was argued by the Appellant that CoC in its 57th meeting dated 22.03.2025 held appellant to be eligible. Contrary that R-3- Fortune contends that Appellant is trying to mislead this Tribunal. The minutes of CoC dated 22.03.2025 were merely discussions of the CoC members and no voting and final resolution was passed by the CoC in respect of eligibility of Appellant. The CoC cannot hold any PRA as eligible without voting on a resolution to that effect. Such fact can be borne from the minutes of the 55th meeting dated 06.03.2025 where the eligibility of Respondent No.3 was decided upon a resolution proposed, voted and passed at such meeting.

59. Fortune-R3 contends that NCLT in para 13 of the impugned order dated 29.05.2025 has categorically recorded that the primary issue was locus standi to maintain the application on account of withdrawal of its consortium partner. Further, the NCLT vide the impugned order holds that the application of the Appellant is not maintainable as they do not have the locus standi. Thus, the NCLT was determining whether the Appellant had locus standi to maintain the present application. Further, NCLT vide order dated 17.03.2025

had directed the Appellant to file reply only qua the maintainability of the application. This order was not challenged and had therefore attained finality.

60. Appellant had argued regarding the conduct of RP and how the entire process of CIRP is vitiated. R-3 – Fortune claims that the Appellant is trying to mislead this Hon'ble Tribunal as such allegations were never subject matter of I.A. 1240 of 2025. All the arguments made are beyond the pleadings and beyond what was argued before NCLT. Further, these documents did not form part of the record of NCLT and without seeking leave of this Tribunal no new additional fact or document can be pleaded.

Submissions of Prudent ARC-R4

61. Prudent ARC Limited Prudent Trust 83/23 i.e., the Respondent No. 4, is holding 41.12% voting share in the Committee of Creditors of Amzen Transportation Private Limited i.e., the Corporate Debtor.

62. It is contended by Prudent ARC that Myotic Fortune Consortium is a joint venture that ceased to exist, Myotic has played a fraud upon the system not only by suppressing and concealing that its consortium partner has withdrawn but also by filing a false and fabricated affidavit of its Consortium Partner. The fact that a fraudulent document was filed before the Tribunal has not been denied by document and it has given no satisfactory explanation for the same. Further the Myotic Fortune Consortium is a joint venture and as per Clause 2.3 of the consortium agreement dated 09.05.2024, Myotic and Fortune are to have 50:50 shareholding in the Corporate Debtor. That Fortune by letter dated 07.03.2025, withdrew from the Myotic Fortune Consortium. Thus, the Myotic Fortune Consortium ceased to exist w.e.f. 07.03.2025.

63. Further by email dated 21.04.2025 (incorrectly stated as 26.04.2025 in appeal), Myotic provided consent letters dated 21.04.2025 from United Air express and United Infracore Ltd. to join the consortium. Thus, even as per Myotic itself, Myotic Fortune Consortium does not exist on account of withdrawal by Fortune.

64. Prudent ARC also contends that Myotic is ineligible to continue as a Resolution Applicant as per the Eligibility Criteria on account of dispute and withdrawal of Consortium Partner. Admittedly, as per the detailed Expression of Interest, the eligibility criteria for Net Worth Requirement for consortium was a minimum of Rs. 100 Crores (combined) which has been duly recorded in the impugned Order. Myotic and Fortune had stated their tangible net worth as under:

S. No.	Name	As on	Tangible Net worth (INR)
1.	Myotic	31.01.2023	43,21,79,093
2.	Fortune	31.01.2023	140,69,68,359

Myotic in its individual capacity, does not qualify the eligibility criteria for resolution applicant as its individual tangible net worth of approx. INR 43 crores is less than the required net worth of INR 100 crores. Thus, Myotic (in its individual capacity) cannot continue as a resolution applicant. That the provisions of the RFRP are applicable for a PRA and Myotic alone, not being a PRA cannot rely on the same. The eligibility criteria goes to the root of the matter and is an elementary criterion to ensure that the Successful Resolution Applicant is able to successfully implement the Resolution Plan. Myotic was very well aware that it was not individually eligible to meet the eligibility

criteria and once Fortune abandoned the Consortium, Myotic was left with no choice and therefore, first tried to fabricate/forged documents to keep consortium alive, while myotic subsequently tried to take aid of other partners. Furthermore, the CIR Process is a running process and neither the detailed EoI, nor the RFRP permits a change of partner, midway in the process. At the very inception, all PRAs are required to submit documents of their net-worth and also Section 29A compliances are required to be done at the threshold to make any party as an eligible PRA. The said process of checking the eligibility of PRA cannot be done at any stage at the whims and fancies of a particular PRA as that would tantamount to giving priority to certain individuals midway which is neither permissible under the provisions of the Code, nor under the Regulations framed thereunder and would also be contrary to principles of natural justice as such a step would denude other people to participate in the process.

65. Prudent ARC also points out that Myotic has itself agreed to replace the Consortium Partner with a third-party. Pertinently, vide email dated 21.04.2025 (incorrectly stated as 26.04.2025 in Appeal), Myotic provided consent letters dated 21.04.2025 [Annex A51@Vol. 4, Pg. 898] from United Air express and United Infracore Ltd. to join the consortium. Thus, even as per Myotic itself. Myotic Fortune Consortium does not exist on account of withdrawal by Fortune. Myotic by its own admission in the captioned Appeal [Ref. Para 102 @ Vol. 1, Pg. 1111 has stated that United Air Express and United Infracore Ltd. have agreed to the join the consortium to acquire the

Corporate Debtor through the CIRP Process. The relevant extract of the averment in the captioned Appeal has been reproduced below:

“(102) The Appellant subsequently on 21.04.2025 had received letters. from United Air Express and United Infracore Limited which formally expressed their intent to join the Appellant in the acquisition of the Appellant and financial Assistance. Therefore, it is pertinent to state that United Air Express and United Infracore Limited have expressed their consent to join the consortium to acquire the Petitioner company through the CIRP process which is conducted in a true and fair manner. A true copy of letters dated 29.04.2025 from United Air Express and United Infracore Limited is annexed herewith and marked as ANNEXURE A-51(COLLY).”

66. The Appellant i.e. Myotic on one hand, is claiming that the erstwhile Consortium with Fortune Global Solutions Pte. Ltd. is still holding good, while at the same time is stating that it has the support of 2 new consortium members as mentioned above to join him in place of Fortune Global, which is in complete contradiction to its own averments in the captioned Appeal that the Original Consortium still stands. Myotic has approached new members to join the consortium (which is impermissible under the provisions of the Code) since the erstwhile Consortium Partner has effectively withdrawn from the process and as on the date of filing of the captioned Application before the Adjudicating Authority, the erstwhile Consortium ceased to exist. Therefore, the captioned Appeal is liable to be dismissed on this ground alone.

67. Appeal is liable to be dismissed on the ground of reliance on events and facts subsequent to passing of the impugned Order, without the leave of this Appellate Authority. It is stated that the Appellant not only tried to play fraud upon the Tribunal below but has also tried to play a fraud upon this Appellate Authority. The Appellant has placed reliance on the ED Provisional

Attachment Order dated 25.03.2025 and also upon the various other pleadings in the Appeal which did not form part of the documents/pleadings of IA 1240/2025 upon which the impugned Order dated 29.05.2025. The entire argument in the impugned Order was made by the Counsel of the Appellant on the basis of the ED Order and averments made therein even though that was not the subject matter or the grounds urged before the Adjudicating Authority. The Appellant tried to play a fraud upon the Adjudicating Authority and unsuccessfully tried to do the same act before this Hon'ble Authority. Prudent ARC submits that IA 1240/2024 was based on certain grounds which were existing at that relevant point of time on basis of which the impugned Order dated 29.05.2025 was passed. The impugned Order cannot be tested on the basis of subsequent facts or events even though according to the Respondent, the subsequent passing of the Provisional Attachment Order also has no bearing on the reasoning of the impugned Order dated 29.05.2025. Prudent ARC contends that the sole reason that the Respondent is highlighting this issue is to show the fraudulent conduct of the Appellant in not informing the Court that it wishes place reliance on subsequent facts and events. Thus, the said additional documents cannot be considered by this Appellate Tribunal.

IA 1240/2025 (in which the impugned Order is passed) was only filed by Myotic without joining the consortium partner as an Applicant as such Application was not maintainable on this ground also.

68. The fraud being played by Myotic is apparent from the fact that on earlier occasion IA 4493/2024 was filed by Myotic as Applicant No. 1 and

Fortune Global as Applicant No. 2 together inter-alia seeking certain directions against the RP. However, the current IA 1240/2025 has been filed solely by Myotic without joining the Consortium Member as an Applicant and further there is no averment in the Application that has been made that the Application was filed on behalf of Fortune Global, based on the original authority. Myotic Fortune Consortium is a prospective resolution applicant in the list of PRAs dated 10.05.2024 and not Myotic or Fortune individually. Thus, the IA no. 1240/2025 is not maintainable having been filed by Myotic in its individual capacity and not as the Myotic Fortune Consortium.

69. Further as per the definition of Resolution Applicant in the Request for Resolution Plan dated 20.04.2024 ("RFRP"), the members of the consortium are collectively referred to as the Resolution Applicant.

70. As reflected in the Provisional list of PRAs dated 10.05.2024, Myotic and Fortune submitted the expression of interest as a consortium, namely Consortium of Myotic Trading Private Limited & Fortune Global Solutions Pte Ltd. ("Myotic Fortune Consortium").

71. Fortune by letter dated 07.03.2025, withdrew from the Myotic Fortune Consortium and also withdrew the power of Attorney given to Myotic. Thus, the Myotic Fortune Consortium ceased to exist w.e.f. 07.03.2025.

72. Myotic (in its individual capacity) filed the IA no. 1240/2025, inter-alia praying for setting aside the RP's letter dated 07.03.2025.

73. IA No. 1240/2025 was first listed before the Adjudicating Authority on 17.03.2025, when it directed the parties to file reply on maintainability of the IA no. 1240/2025. The above Order confining itself to the preliminary issue was never appealed against by the Appellant/Myotic.

74. On the very next day itself (i.e. 18.03.2025), an unnotarized affidavit dated 11.03.2025 was emailed by Myotic to the RP, claiming that Fortune has withdrawn the letter dated 07.03.2025. The RP by email dated 18.03.2025, sought clarification from Fortune with respect to the same.

75. Fortune by email dt. 19.03.2025 stated that no such affidavit dt. 11.03.2025 has been given by Fortune and reiterated its stand as stated in letter dated 07.03.2025.

76. Respondent no. 4 (Prudent ARC Ltd.) filed its reply on maintainability of IA 1240/2025 on 26.03.2025 and written submissions on 09.04.2025.

77. The CoC in its 59th meeting held on 05.04.2025, rejected the proposal to consider Myotic Fortune Consortium as eligible resolution applicant. The same was communicated to Myotic vide email dated 24.04.2025.

78. It is a settled principle of law that when there are two partners in the JV and when one of them goes out, then it cannot be said that JV is a continuing entity especially when it draws its sustenance under a mutual agreement between two partners. Reliance is placed on ***GVPREL-MEE (J.V.), Hyderabad v. Government of A.P. & Anr., (2005) SCC Online AP 531, para 30-36.***

Submissions of Fortune Global Solutions Pte Ltd -R7

79. Fortune along with Myotic had submitted their Expression of Interest in relation to the CIRP of Amzen Transportation Industries Pvt. Ltd. as a Consortium. Myotic was nominated as the Lead Member and all necessary documents as per the Request for Resolution Plan (RFRP) were executed by in their favour. However, during the CIRP, it had come to the knowledge of Respondent No.7 that Respondent No.7 had not been kept in loop regarding communications between Team Myotic and the Respondent No.1. Further there was lack of information about the discussions of Myotic with Respondent No.1. Hence, Respondent No.7 had categorically expressed their concern to Myotic by email dated 4th March, 2025 regarding lack of information of discussions between Respondent No.1 and Myotic. Further, Myotic had submitted the resolution plan to the Respondent No.1 without the knowledge, authority or consent of Respondent No.7 and despite multiple communications, Myotic failed to provide Respondent No.7 with the latest version of the resolution plan, thereby breaching mutual expectations of transparency and cooperative participation. Further the bid amount of the Corporate Debtor had escalated substantially beyond the initial contemplation and reasonable valuation of Respondent No.7, making continued participation commercially unviable. Also, several litigations and disputes had surfaced wherein a flurry of allegations and counter-allegations had been made and there was an uncertainty regarding the completion of the bidding process. Thus, Respondent No.7 decided not to remain involve in such controversies. In light of the aforesaid events and due to the complete lack of communication and coordination/ transparency from the end of Myotic,

Respondent No.7 decided to completely withdraw from the consortium and did not wish to remain involved in the bidding process.

80. Accordingly, Respondent No.7 sent an email dated 6th March, 2025 unequivocally revoking the Power of Attorney and all other authorisations which had been granted by us to Myotic in relation to the CIRP of the Corporate Debtor. The said email revoking the Power of Attorney and all other authorisations was sent to the Respondent No.1 as well. Further, Respondent No.7 had also issued a letter dated 7th March, 2025 to the Respondent No.1 wherein it was categorically expressed that Respondent No.7 no longer wished to remain a part of the consortium or the bidding process and will no longer participate any further in the CIRP and thus their participation in the bidding process shall be deemed as withdrawn. Further, in continuation of the categorical and unequivocal stand, an email dated 18th March, 2025 was again sent wherein it was reiterated that Respondent No.7 does not wish to further participate further and/or engage into discussions on the matter and the stand taken by letter dated 7th March, 2025 be taken on record. Thereafter, Respondent No.7 received an email dated 18th March, 2025 from the Respondent No.1 wherein Respondent No.1 had stated that Myotic had submitted an affidavit dated 11th March, 2025 allegedly signed by Mr. Vineet Govardhan Shah affirming that he is authorised signatory of Fortune and the contents of the affidavit were in contradiction to the stand taken by Respondent No.7 by email dated 18th March, 2025. Thus, the Respondent No.1 sought clarification in respect of the affidavit dated 11th March, 2025. Alongwith the email the affidavit of 11th March, 2025 was also attached. It

was mentioned in the purported unnotarized affidavit dated 11th March, 2025 that Respondent No. 7 had withdrawn our emails/letters dated 6th March, 2025 and 7th March, 2025. The said purported affidavit 11th March, 2025 was discovered by Respondent No.7 for the first time when the Respondent No.1 had sent it to Respondent No.7 by email dated 18th March, 2025. Respondent No.7 had never sent the affidavit to Myotic nor the purported affidavit dated 11th March, 2025 was signed by Mr. Vineet Govardhan Shah. Further, no stamp paper which is attached alongwith the affidavit was ever purchased by Mr. Vineet Govardhan Shah or by Respondent No.7. Further, Mr. Vineet Govardhan Shah had not visited Gurugram, hence, question of his purchasing the affidavit does not even arise. In fact, Mr. Vineet Govardhan Shah was not even in Gurugram on 11th March, 2025. It is evident that Myotic has submitted false and misleading documents and information to the Respondent No.1 and Respondent No.2. The stand taken by Myotic that the Respondent No.7 through its sister concern/group company, Mindsweep Ideas Private Limited has accepted an amount of Rs.2,00,00,000/- towards commitment amount for consummation of Amzen transaction is incorrect and misleading. Mindsweep Ideas Private Limited is not a party to the consortium agreement and is not involved in the financial structure, liabilities or undertakings. Mindsweep was paid such amount on account of providing financial advisory services and has no involvement in the consortium. The payment made has no relevance or connection with the consortium and do not relate to any obligations or commitments under the consortium agreement. Myotic is now resorting to play fraud on Fortune, the RP and the

CoC by submitting false documents purportedly signed by director of Fortune, inter alia, to mislead the CoC.

81. Fortune wrote an email dated 25.02.2025 to Myotic regarding lack of information about the discussion of Myotic with the RP. Myotic on 03.03.2025 furnished a Resolution Plan to RP and CoC by an email. Myotic had submitted the Resolution Plan without the Fortune's consent, authority or knowledge and despite multiple communications failed to provide Fortune with the latest version of the resolution plan, thereby breaching mutual expectations of transparency and cooperative participation. In light of the aforesaid events, Fortune on 06.03.2025 revoked the Power of Attorney issued in favour of Myotic. Therefore, Fortune contends that it has unequivocally revoked the power of attorney in favour of Myotic and withdrawn from the consortium. Fortune also issued an email dated 18.03.2025 to RP confirming that Fortune has already officially conveyed its stand vide letter dated March 07, 2025 and the same shall be taken on record and Fortune does not intend to engage into any discussions in respect of the matter. Myotic also issued an email dated 18.03.2025 to the RP wherein, inter alia, Myotic submitted a forged unnotarised affidavit dated 11.03.2025 signed by Mr. Vineet Shah [Director of Fortune]. Through such affidavit it was intended to portray that Fortune had withdrawn the correspondences issued on 06.03.2025 at 3:22 pm, 06.03.2025 at 7:15 pm and 07.03.2025. The RP issued an email dated 18.03.2025 to Fortune requesting clarification. Fortune through Mr. Vineet Shah by email dated 19.03.2025 clarified that Mr. Vineet Shah has not signed the affidavit so no question of its notarisation arises, the purported affidavit

is not notarized, Mr. Vineet Shah was not in Gurgaon on the relevant date nor have they purchased the stamp paper at Gurgaon, Myotic is presenting false and wrong documents to the RP and CoC and Fortune holds no association, liability of responsibility for any actions, commitments or representations made by Myotic and that their withdrawal from CIRP of the Corporate Debtor is final and irrevocable.

82. In light of the aforesaid it is submitted that Fortune has revoked the Power of Attorney and all other authorisations which had been granted to Myotic in relation to the CIRP of the Corporate Debtor. Fortune has withdrawn from the consortium and the bidding process and will no longer participate any further in the CIRP. Further the purported affidavit dated March 11, 2025 has neither been supplied nor been signed nor executed by Mr. Vineet Govardhan Shah and neither has Mr. Vineet Govardhan Shah purchased the stamp paper or visited Gurugram. False and misleading information and documents have been submitted by Myotic to Respondent No.1 and Respondent No.2.

Appraisal

83. Heard counsels from both sides and also perused the material on record.

84. Appeal Comp. App. (AT) (Ins) No. 859 of 2025 was preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 against the impugned order dated 29.05.2025 passed by the National Company Law Tribunal, New Delhi in IA/1240/ND/2025 in CP(IB)/3/ND/2020.IA No.1240/2025 which had been dismissed as "not maintainable" by the NCLT

on the sole ground that Myotic lost its status as a PRA due to Fortune's withdrawal from the consortium. The tribunal did not adjudicate the merits of the CoC's decision or R-3's ineligibility under Section 29A.

85. In the related Company Appeal (AT) (Insolvency) No. 877 of 2025 before us challenge was to IA 2548/2025, which was an IA seeking replacement of RP and reconstitution of CoC, which was dismissed by NCLT on the ground of lack of locus - without hearing on merits. Since both the appeals are interrelated, they are being taken up together.

86. Recapitulating briefly about the case we note that CIRP of the corporate debtor viz. Amazen Transportation Private Limited was initiated on 04.05.2022. Fresh Form-G was issued on 20.04.2024. The Appellant viz. Myotic in consortium with Fortune Global Solutions PTE Ltd. submitted an EOI on 06.05.2024. The Resolution Plan was submitted jointly by them on 02.07.2024. On 19.10.2024, the CoC, based on a due diligence report from AHSK & Co., initially found Cosmic CRF Limited – R3 as ineligible under Section 29A. On 06.11.2024, Cosmic CRF – R3 filed I.A. No. 5392 of 2024 challenging this ineligibility. The Adjudicating Authority, by order dated 09.01.2025, remanded the case back to the CoC for reconsideration and directed the RP and CoC to provide Cosmic CRF a fair opportunity to present its case.

87. It is the claim of the resolution professional that he fully complied with the order of the AA dated 09.01.2025. He sought legal opinion from a Senior Advocate on the eligibility of Cosmic CRF under Section 29A. The legal opinion

opined in favour of Cosmic CRF's eligibility. Based on this, the CoC, in its 55th meeting dated 06.03.2025, unanimously declared Cosmic CRF eligible under Section 29A and resolved to resume the challenge mechanism. At this stage we note that all earlier legal opinions on record found Cosmic – R3 to be in eligible.

88. The Adjudicating Authority in IA 1240/2025 in CP No. 3/ND/2020 has categorically dismissed the Application filed by Myotic on the sole ground of lack of locus of Myotic to maintain the IA 1240/2025 by virtue of withdrawal of its consortium Partner i.e., Fortune Global Solutions Pte. Ltd. The Adjudicating Authority by the Impugned Order has adjudicated on the locus standi of Myotic to maintain IA 1240/2025. The relevant extract of the Impugned Order is as under:

“13. The primary issue before this Authority is whether the Applicant, Myotic, has the locus standi to maintain the present application after its consortium partner, Fortune Global Solutions Pte. Ltd., withdrew from the consortium.

14. While the Applicant argues that internal disputes or unilateral communications by Fortune Global Solutions Pte. Ltd. are governed by the binding Consortium Agreement and Power of Attorney, and do not nullify its authorization as Lead Member, it is undisputed that Fortune Global Solutions Pte. Ltd. has, via email dated 07.03.2025 and reaffirmed by affidavit dated 28.03.2025, unequivocally withdrawn from the consortium and revoked the Power of Attorney granted to Myotic.

15. It is well settled that a consortium is treated as a single entity for the purpose of CIRP and its eligibility is assessed collectively. As per the EOI and RFRP, Myotic and Fortune Global Solutions Pte. Ltd. had submitted their interest as a consortium. However, with Fortune Global Solutions Pte. Ltd.'s subsequent withdrawal, the consortium has ceased to exist in its original form. As per the submission of the Respondent, Myotic alone does not meet the criteria of a Resolution Applicant as Myotic's individual net worth stands at 43.21 crores and Fortune Global Solutions Pte. Ltd. had a net worth of 140.69 crores. As a result, Myotic alone fails to meet the minimum tangible net worth of ₹100 crores (Qualification for eligibility criteria for resolution applicant) in its individual capacity

and is therefore is ineligible to be considered as Prospective Resolution Applicant.

16. Accordingly, Myotic Trading Pvt. Ltd., acting alone, cannot be considered a Prospective Resolution Applicant (PRA), and therefore, lacks the legal capacity to maintain this application.

17. In view of the above, the application suffers from a fundamental legal infirmity and the Applicant, being a partner of the Consortium has no locus to challenge as an individual entity of a consortium member, accordingly, the present application i.e. I.A. No. 1240 of 2025 in C.P. (IB) No. 3/ND/2020 stands dismissed.”

89. Adjudicating Authority vide orders dated 28.05.2025 and 29.05.2025 dismissed both applications filed by the Appellant bearing I.A No. 1240 of 2025 and I.A. No. 2548 of 2025 as being non- maintainable in law.

90. To decide these two Appeals, the crucial issue in this case is whether Appellant was lacking any *locus standi* to pursue before the Adjudicating Authority and whether any error has been committed by the AA on this ground.

91. The Appellant/Myotic has raised primarily the contention in the first Appeal 859/2025 that inspite of Myotic's consortium partner withdrawing from the Consortium, Myotic still being the lead member based on the power of attorney by Fortune continues to be eligible as a PRA and it is claimed that inter-se dispute between Fortune and Myotic was not relevant as it was an inter-se dispute between the two consortium partners and both of them were obligated to fulfil the obligations under the Resolution Plan and even otherwise, Myotic vide its Email dated 21.04.2025 to the RP, Myotic itself had agreed to substitute the consortium member with other two members. Myotic also relied upon subsequent Provisional Attachment Order date 24.03.2025 under PMLA to raise allegation of impropriety in the CIR Process. It is claimed by the appellant that the Appellant is the lead member of a consortium, having

submitted its Expression of Interest (EOI) along with Fortune Global Solutions PTE Ltd. as a Prospective Resolution Applicant (PRA). Appellant, being the sole point of contact as per RFRP, had done all communications, negotiations, paid EMD and submitted the resolution plan. After the plan was submitted, the Appellant's complaint against Cosmic CRF-R3 for ineligibility under Section 29A of the IBC was accepted, and it is a matter of record that the CoC had declared Cosmic CRF – R3 as ineligible and the Appellant's consortium as the “winner” of the process. Appellant claims that the withdrawal of Fortune, a consortium partner, does not invalidate the Appellant's locus in light of the irrevocable PoA and CoC's own affirmation of Appellant's eligibility on 22.03.2025. The Appellant asserts six errors in the said order. Firstly, Appellant had furnished detailed documentary evidence of ineligibility of Cosmic CRF. It also claims that Section 29A ineligibility must be examined suo motu by the CoC and Adjudicating Authority. Further Section 60 of IBC allows wide jurisdiction to entertain any CIRP matter. Also, the order was solely based on locus and failed to address the real issues. Furthermore, the Authority ignored the irrevocable PoA and binding consortium agreement. Furthermore, decision contradicted the CoC's 57th meeting holding Appellant eligible, which remains unchallenged.

92. All respondents have vehemently repelled the arguments of the Appellant. Respondent No. 3 – Cosmic CRF Limited contends that the Expression of Interest (EOI) and Resolution Plan were submitted not by Myotic individually but by a consortium of Myotic and Fortune, which is reflected as per the published Form-G dated 20.04.2024. As per the shortlisted list of PRAs, it is the 'Consortium' of Myotic and Fortune, who were shown as the Prospective Resolution Applicant.

On 06.03.2025, thereafter Fortune revoked the Power of Attorney in favour of Myotic and explicitly communicated its withdrawal from the consortium. Letter/Email was also sent by Fortune to RP categorically stating that Fortune had withdrawn themselves as the member of the consortium and their participation in the CIRP shall be deemed as withdrawn. Therefore, Myotic no longer formed part of the PRA. It also contends that Section 5(25)¹ and Section 25(2)² of the IBC, read with Regulations 36A(4), (5), and (7)(e) of the CIRP Regulations, makes it clear that eligibility must be assessed with respect to the qualified 'consortium', not its 'individual' members. Furthermore, Appellant alone doesn't have the minimum tangible net worth required to qualify as a PRA which was ₹100 crores. Myotic's net worth, as submitted to the CoC, is only ₹43.21 crores, while Fortune's was ₹140.69 crores. Thus, on account of withdrawal of Fortune, Myotic individually will not be able to meet the eligibility criteria of minimum tangible net worth of Rs. 100 crores. Therefore, Myotic is not a valid PRA individually, and its application to challenge the eligibility of another PRA (Cosmic CRF) is not maintainable in law.

93. Respondent No 4 - Prudent ARC Ltd., acting through Prudent Trust 83/23, is a financial creditor holding a 41.12% voting share in the Committee of Creditors (CoC) of Amzen Transportation Private Limited ("Corporate Debtor") and they also have contended on the similar lines that the Myotic-Fortune

¹ Section 5(25) - resolution applicant means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25 or pursuant to section 54K, as the case may be.

² Section 25(2)(h) – invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.

consortium, formed via agreement dated 09.05.2024, ceased to exist after Fortune's categorical withdrawal on 07.03.2025. Fortune by letter dated 07.03.2025, withdrew from the Myotic Fortune Consortium. Thus, the Myotic Fortune Consortium ceased to exist w.e.f. 07.03.2025. Thereafter, Myotic no longer had standing to continue in the CIRP process, let alone file IA 1240 of 2025 in its individual capacity. Further Myotic in its individual capacity, does not qualify as its individual tangible net worth of approx. INR 43 crores is less than the required net worth of INR 100 crores. Myotic cannot claim to be a standalone PRA, nor does the RFRP permit a unilateral continuation or substitution without CoC approval.

94. UCO Bank is a member of the Committee of Creditors (CoC) and holds a majority voting share of 53.31%. UCO Bank filed its reply and adopted the same stand as the Resolution Professional.

95. Fortune, who was a consortium partner with the Appellant, in his submission is limited to affirming that it has irrevocably withdrawn from the consortium with Myotic Trading Pvt. Ltd., revoked the Power of Attorney granted in its favour, and has no further role in the CIRP of Amzen Transportation Industries Pvt. Ltd. Fortune and Myotic had initially submitted a joint Expression of Interest (EOI) to participate in the CIRP of the Corporate Debtor. Myotic was nominated as the lead member under the RFRP. However, Fortune claims to have discovered that it had been completely excluded from key communications between Myotic and the Resolution Professional (RP), including the final Resolution Plan. Fortune-Respondent No.7 claims that it had not been kept in loop regarding communications held

between Team Myotic and the Respondent No.1. Respondent No.7 had categorically expressed their concern to Myotic by email dated 4th March, 2025. Further, Myotic unilaterally submitted the Resolution Plan without Fortune's knowledge, consent, or access to the latest version. Additionally, the bid amount escalated substantially, and given the uncertainty, commercial impracticality, and emerging litigation, Fortune chose to exit the consortium. On account of these reasons, Fortune irrevocably withdrew from the consortium and CIRP process on 06.03.2025 and on 07.03.2025, Fortune issued a letter to the RP. This withdrawal was further reiterated by Fortune on 18.03.2025.

96. In the facts and circumstances of the case, we find that the one of the partners of consortium namely M/s Fortune Global Solutions Ptd. Ltd had withdrawn from the consortium agreement and the Appellant is an entity which is different than the consortium, which was a PRA. Consortium was having the net worth of more than Rs. 100 crores and was meeting the eligibility criteria. Appellant alone i.e. Myotic does not meet the eligibility criteria as its net worth is much less than Rs. 100 crores. In such a situation, the eligibility of the Appellant goes away. Therefore, Myotic alone who is an Appellant cannot be a PRA. We further note that Appellant has been seeking to replace consortium partner but has not been able to provide any provision in the RFRP relating to replacement of the consortium partner. Without any provision in RFRP, the appellant cannot claim to replace the earlier partner with a new partner. On the basis of facts noted by us herein above, we may safely conclude that the Adjudicating Authority has not committed any error

in dismissing the appeal as it was dismissed solely on the ground of locus, i.e., that the Appellant alone could not have challenged its ineligibility as the consortium no longer subsisted and its net worth alone was below Rs. 100 crores, which was the eligibility criteria in the RFRP.

97. Appellant has also raised some other grounds on the issue of maintainability. It claims that the NCLT ignored the consortium provisions of RFRP and the consortium agreement between consortium members and irrevocable Power of attorney (PoA) signed by consortium partner, as well as the CoC decision dated 22.03.2025 in its 57th meeting. It is pertinent to note that pursuant to the hearing dated 17.03.2025, the meeting of CoC was called and in 57th meeting of CoC dated 22.03.2025 it was discussed as under:

“E8. The Legal Retainer Counsel of the RP stated that the eligibility of Myotic Trading is not sub judice before the Hon’ble NCLT and it is Cosmic CRF Limited whose eligibility has been challenged by Myotic by way of an IA filed before Hon’ble NCLT and he further added that a reply would be filed on behalf of the RP in such IA stating that in view of the order dated 09th January, 2025, an opinion from Sr. Advocate was taken by the RP basis which the CoC has decided that Cosmic CRF Limited is eligible to submit a resolution plan.

Further, as far as the grievance of Myotic vis-a-vis Cosmic is concerned, Cosmic is eligible to submit the resolution plan. As per the provisions of the RFRP & the Consortium agreement of Myotic & Fortune, the same is irrevocable as per power of attorney and therefore, whether the said consortium is alive or not should not come on the RP or CoC as the existence of consortium is the internal dispute between Myotic & Fortune and not between Myotic & RP/CoC. Therefore, our stand should be that both Myotic & Cosmic’s plan should be considered and that stay on challenge process should be vacated and whatever their internal dispute should not be seen as the same has not been challenged anywhere. He further added that before Hon’ble NCLT, Myotic has challenged the eligibility of Cosmic. However, eligibility of Myotic is nowhere challenged by any party before the Hon’ble NCLT. The Counsel further added that as Myotic should be considered and the challenge mechanism must be resumed after vacation of stay.”

98. Appellant claims that the question before the COC was with respect to the eligibility of Cosmic and the eligibility of Myotic was not under challenge. Therefore, by taking into account new developments by which the consortium partner had exited, the Adjudicating Authority has wrongly declared the appellant as ineligible. The sole defense of the Appellant is that the Power of Attorney executed by the Fortune Global Solutions PTE Ltd. is irrevocable and the consortium partner cannot withdraw from the consortium. In this regard, Respondent No 5-UCO Bank places its reliance on the judgment of the Hon'ble Supreme Court in the matter of ***M.S. Ananthamurthy & Anr. vs J. Manjula Etc. 2025 SCC Online SC 448*** wherein it is held that merely using the word 'irrevocable' will not make the POA irrevocable until the POA is coupled with interest, no extraneous expression can make the POA irrevocable. The relevant extract of this judgment is produced as follows:

“....

45. Further, a mere use of the word 'irrevocable' in a POA does not make the POA irrevocable. If the POA is not coupled with interest, no extraneous expression can make it irrevocable. At the same time, even if there is no expression to the effect that the POA is irrevocable but the reading of the document indicates that it is a POA coupled with interest, it would be irrevocable. The principles of construction of a POA termed as 'irrevocable' was explained in *Manubhai Prabhudas Patel v. Jayantilal Vadilal Shah*, reported in 2011 SCC OnLine Guj 7028. The relevant observations are reproduced below:-

“12. I am of the view that while construing a document, it is necessary to determine the real intention of the parties. The mere form in which document is couched is immaterial. The intention of the parties has to be gathered from the terms of the documents themselves and from such of the surrounding circumstances, as later required to show in what manner the language of the document is related to the existing fact. It is very difficult task to know the intention of the parties on the basis of the recital of the document. But, the Court can rely safely on the language of the document, the language, which has been used by the parties to manifest the intention of the parties. If the Court goes on extraneous evidence, that may lead to more difficulty and confusion.

But, there are certain principles to be borne in mind. The first principle is, the mere saying that the power of attorney is an irrevocable power of attorney coupled with interest is not the end of the matter. The Court, can clearly say that the document, though, is styled as an irrevocable power of attorney is not in substance a power coupled with interest so as to make it an irrevocable power of attorney. At the same time, even if there is no title to show that the power is an irrevocable power, but, the substance of the entire document would suggest that the same is an irrevocable power coupled with interest. Therefore, a document has to be construed as a whole. A stray sentence here and there cannot be picked out to construe a document. To understand the tenor of the document and the intention of the parties, it has to be read as a whole. The real intention of the parties has to be covered not merely from what ex-facie is stated in the document, but, from the totality of the recitals in the document. At this stage, I may quote with profit a very lucid judgment rendered by learned Single Judge of Madras High Court explaining the general principles regarding the construction of power of attorney. In case of Anantha Pillai v. Ratiinasabapatiiy Mudaliar, reported in 1968 (2) MLJ 574, Ismail, J. (as he then was), held thus:

“The general principles regarding the construction of power of attorney are well settled. Powers of attorney must be strictly construed as giving only such authority as they confer expressly or by necessary implication. Where an act purporting to be done under the power of attorney is challenged as being in excess of the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument either by express terms or by necessary implication. Some of the principles governing the construction of a power of attorney are: (1) the operative part of the deed is controlled by the recitals, (2) where an authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the performance of the particular acts, (3) the general words do not confer general powers but are limited to the purpose for which the authority is given and are construed as enlarging the special powers only when necessary for that purpose; (4) a power of attorney is construed so as to include all medium powers necessary for its effective execution. Bearing these general principles in mind the question for consideration is whether the power of attorney in this case authorised the first defendant to enter into an agreement to sell or authorised him to execute a sale-deed....”

(Emphasis supplied)

99. Relying on above judgment we are inclined to agree with the Respondent that Appellant cannot take a ground that power of attorney was irrevocable. Further there is no provision for a replacement of consortium partner as per RFRP. Moreover, the last date for shortlisting of the PRAs was long over and only the consortium's name appears in the short list and not that of Myotic. In the absence of any clause allowing for replacement of consortium partner, it becomes difficult for us to concur with the submissions of Learned Counsel for Appellant in order to allow the appeal of the consortium partner. We therefore, reject this argument of the Appellant.

100. Respondent No.3 relies upon the judgment by Hon'ble High Court of Andhra Pradesh in ***GVPREL-MEE (J.V.), Hyderabad vs Government of Andhra Pradesh 2005 SCC OnLine AP 531***. The relevant extracts of the judgment is reproduced below: -

“

33. In the present case, the JV agreement is silent as to inter se rights of the JV partners in the event of withdrawal of one of them. The agreement is also silent as to how long the venture would continue. Indeed, if one reads Clause 15 and the preamble portion, the agreement shall be confined and applied to the matters concerning with the works of tender notice No. 2 dated 13.08.2004. In one way, the moment offers for pre-qualification submitted by the petitioner JV, it became non-existent. Therefore, the submission of the learned Senior counsel for the petitioner that the petitioner JV must be deemed to be continued till the actual works are executed by the petitioner, having regard to the submission of bank guarantees by GVPREL, authorization being in favour of Mr. G.S.S. Reddy and GVPREL being a lead partner, cannot be accepted. Even otherwise the moment MEE gave letter withdrawing from JV, it became non-existent.

34. The issue may be looked at from different angle as well. What would have been the position if MEE had withdrawn before empanelment of the petitioner JV? What would have been the status of petitioner JV vis-a-vis the employer if MEE had withdrawn after award of work to petitioner JV by the Government? If MEE had withdrawn even before pre-qualification of petitioner JV to tender, admittedly GVPREL was not eligible by reason of not having

required annual turnover and therefore would have suffered disqualification. If MEE had withdrawn from JV after award of contract, two things would have been possible. First, as per instruction 2.3(v) of tender schedule, the Government may have agreed for the change of MOU/JV and allowed the petitioner JV to continue the contract. Second option was that the employer could have refused the change of MOU/JV and compelled the remaining JV partner to complete the work accepting the liability. As the things stand the respondents rejected the tender of the petitioner on the ground that petitioner JV is not existent due to withdrawal of MEE. This situation is no different from the first situation. Indeed as noticed above in their letter dated 05-05-2005, the petitioner JV represented by Mr. G.S.S. Reddy admits that without the participation of MEE as the partner either petitioner JV or GVPREL would not have been qualified to offer for pre-qualification. In that view of the matter, the decision of the respondent cannot be held illegal.”

[Emphasis supplied”

101. Appellant has sought help from the judgment of the Hon’ble Supreme Court in ***Ebix Singapore (P) Ltd. Vs Educomp Solutions Ltd. reported in (2022) 2 SCC 401***, where it was held that a Resolution Applicant is bound by its commitments made under the Resolution Plan. Though the said judgment was in the context of a Successful Resolution Applicant (SRA), at the stage of acceptance of its Resolution Plan, however, it claims that by analogy the same principle can be said to be applicable to a Prospective Resolution Applicant (PRA) which has submitted its bid in accordance with the provisions of RFRP issued by the CoC/RP during the course of a CIRP under the IBC. In our considered view, this judgement may not be of any assistance to Appellant as it relates to successful resolution applicant.

102. The appellant has also relied upon judgment of Hon’ble Supreme Court in ***Kalyani Transco v. Bhushan Power & Steel Ltd., 2025 SCC Online SC 1010***, wherein the Hon’ble Supreme Court has affirmed the principle that provisions of the IBC and regulations framed thereunder (including Section 29A are mandatory), and any departure or violation would make the

resolution process and resolution plan as illegal. The Hon'ble Supreme Court also expanded the principle of locus, as it heard all stakeholders including erstwhile promoters, operational creditors, etc., despite objections from the SRA and CoC members. The aforesaid judgment inter-alia states:

"10. The use of the phrase "any person aggrieved" indicates that there is no rigid locus requirement to institute an appeal... Once the Corporate Insolvency Resolution Process is initiated, the proceedings are no longer restricted to any individual Applicant Creditor or to the Corporate Debtor, but rather they become collective proceedings in rem, where all the Creditors and the Ex-Directors would be necessary stakeholders.

23. Since, the eligibility/ineligibility of the Resolution Applicant to submit the Resolution Plan goes to the root of the matter, it was incumbent on part of the Resolution Professional to verify and certify that the contents of the mandatory affidavit, filed by the Resolution Applicant- JSW in respect of Section 29A were in order.

....

83.....we arrive at the following irresistible conclusions:

(i) The Resolution Professional had utterly failed to discharge his statutory duties contemplated under the IBC and the CIRP Regulations during the entire CIR Proceedings of the Corporate Debtor-BPSL.

....

(iv) The Resolution Plan of JSW as approved by the CoC did not confirm the requirements referred to in subsection (2) of Section 30, the same being in flagrant violation and contravention of the expressed provisions of the IBC and the CIRP Regulations. The said Resolution Plan therefore was liable to be rejected by the NCLT under sub-section (2) of Section 31, at the very first instance.

84. In that view of the matter, the following order is passed:

(ii) The Resolution Plan of JSW as approved by the CoC stands rejected...

(iii) ... the Adjudicating Authority, i.e. the NCLT is directed to initiate the Liquidation Proceedings against the Corporate Debtor..."

[Emphasis supplied]

103. We will now look into the issue whether as per the law laid by Hon'ble Supreme Court in above judgment the appellant has a locus to question the eligibility of the other PRA or otherwise. We note in appeal number 859 of 2025, the appeal challenges dismissal of the IA, which was dismissed on the

grounds of its maintainability alone. We find that the adjudicating authority did not commit any error in concluding that the appellant did not have any locus to file the IA as a consortium, as its partner had exited from the consortium. Therefore, we are inclined to dismiss CA(AT) (No. 859 of 2025 to this extent.

104. On the other hand, in Company Appeal (AT) (Insolvency) No. 877 of 2025 Appellant had challenged IA 2548/2025, which was an IA seeking replacement of RP and reconstitution of CoC, which was dismissed by NCLT on the ground of lack of locus - without hearing on merits. We find that the issue of eligibility of the other PRA namely Cosmic was very much discussed in various meetings of CoC.

105. We find that CoC had taken legal opinion from various law firms and found Cosmic to be ineligible on various grounds. The reports on the issue of eligibility of Cosmic CRF Limited – Respondent No.3, were discussed in detail in various meetings of the CoC and the resolution applicant was intimated vide letter dated 04.11.2024 which contained in detailed manner as to how it is not found eligible under various clauses of Sections 29A(a), (c), (h) and (j) of IBC, 2016 (pages 359-366 of Appeal Paper Book). It is to be noted that both AHSK and PSA earlier entrusted by the CoC have given detailed findings and reasons with respect to their conclusions as to how Cosmic CRF Limited – Respondent No.3 was not found eligible under Section 29A. Cosmic CRF Limited approached NCLT on 05.11.2024 and NCLT vide order dated 05.11.2024 remanded the matter back to the CoC for reconsideration on the issue ineligibility of Cosmic CRF Limited under Section 29A after providing it

an opportunity of being heard. Later on, RP/CoC called for the response of Cosmic CRF Limited and also asked PSA to give it final report/opinion based on all the previous reports and Cosmic CRF Limited response dated 20.01.2025 and it was also decided to send the final report of PSA to a Senior Advocate for his opinion. The final report dated 18.02.2025 of PSA again declared Cosmic CRF Limited to be in eligible under Section 29A of IBC. But Senior Advocate in his opinion dated 03.03.2025 declared it to be eligible under Section 29A.

106. We have noted various reports of Experts which are placed on record in the pleadings. Without going into the details of these reports, we find that the report of PSA and also the earlier report submitted by AHSK & Co. are detailed reports and are similar and they both had come to the same conclusion that Cosmic CRF Limited is not eligible under Section 29A. We also note that despite multiple initial reports and despite Cosmic CRF Limited – Respondent No.3 having been given opportunity of being heard, all reports suggest non-eligibility of Cosmic CRF Limited – Respondent No.3 except the view of senior advocate, which was obtained on the final report of PSA. Even if we don't rely on these reports of law firms we find that the respondents have not satisfactorily replied to the real issues raised by the appellant from pages 66-72 and 88-100 of Appeal Paper Book.

107. It is sufficient to note by us that it is the duty of RP and CoC to ensure that the Resolution Applicant satisfies all conditions which do not make them ineligible under Section 29A. At the initial stages detailed discussions have

taken place in the CoC meetings regarding the reports of eligibility under Section 29A of the Code pertaining to Cosmic CRF Ltd. and a detailed letter was also issued by RP on 04.11.2024. But in the 55th CoC meetings, the report of PSA alongwith opinion of a Senior Advocate has been given precedence to hold it eligible. Relevant minutes of the meeting of the CoC are as follows:

E5(1). Deliberations on eligibility of RA Cosmic CRF Limited: RP initiated the discussion by presenting on the screen both (i) Report dated 18th February, 2025 of Priyanka Sharma & Associates (PSA) and (ii) Opinion dated 03.03.2025 of Mr. Krishnendu Datta (Senior Advocate). The RP explained in detail the contents, observations and findings of both these professionals to the CoC. He added that the report of PSA has given finding that RA Cosmic CRF Limited is ineligible under sub-sections (a), (c), (h), (j) of Section 29A of IBC, 2016. However, after thorough examination of the report dated 18.02.2025 of PSA, Mr. Krishnendu Datta (Senior Advocate) was of the opinion that RA Cosmic CRF Limited is eligible under sub-sections (a), (c), (h), (j) of Section 29A of IBC, 2016. The opinion of Mr. Datta is supported by justification under each head.

At this stage, RP invited views of each CoC member present in the meeting to give their views/opinion on the eligibility of RA Cosmic CRF Limited on the basis of the two above report/opinion. Upon query of the CoC, the Retainer Legal Counsel Mr. Abhishek Anand opined that on the basis of opinion of Senior Advocate, RA Cosmic CRF Limited is eligible under Section 29A of IBC, 2016. The RP also gave his preliminary views that RA Cosmic CRF Limited is eligible.

The Representatives from UCO Bank, Prudent ARC Limited & WLD Investments Private Limited gave a unanimous view that on the basis of the opinion of Mr. Krishnendu Datta (Senior Advocate) & in view of the Retainer Legal Counsel Mr. Abhishek Anand, RA Cosmic CRF Limited be considered as eligible. It was further decided to withdraw the earlier declaration of RA Consortium of Myotic Trading Private Limited & Fortune Global Solutions Pte Ltd as Winner of Challenge Mechanism Process as CoC wanted to resume the Challenge Mechanism Process.

Accordingly, the RP presented the following resolution for voting of the CoC member in present and voting format as per Regulation 25(3) of CIRP Regulations.

***"RESOLVED THAT,** pursuant to Section 29A (a), (c), (h) & (j) of the Insolvency & Bankruptcy Code, 2016 and on the basis of opinion of Mr. Krishnendu Datta (Senior Advocate), the proposal to declare Resolution Applicant Cosmic CRF limited as eligible under section 29A, be and is hereby approved by the members of the Committee of Creditors.*

***RESOLVED FURTHER** to withdraw the earlier declaration of RA Consortium of Myotic Trading Private Limited & Fortune Global Solutions Pte Ltd as Winner of Challenge Mechanism Process as CoC wanted to resume the Challenge Mechanism Process.*

***RESOLVED FURTHER THAT,** RP may communicate the said decision of CoC to RA Cosmic CRF Limited and Consortium of Myotic Trading Private Limited & Fortune Global Solutions Pte Ltd to take necessary steps as may be deemed necessary."*

108. We note that it is the duty of RP/CoC to decide about the eligibility under Section 29A and RP/CoC could have obtained expert advice but should

also have applied their own wisdom particularly so when it is a question of legal requirement under Section 29A of the Code, and when earlier multiple expert opinions were available against Cosmic CRF Ltd. and were not on records in the relevant meeting a contrary view should not have been taken by CoC.

109. Resolution professional, while defending his role, contends that it can only facilitate and it is ultimately the COC who has to take a final decision. Resolution Professional places reliance on ***Arcelormittal India Private Limited v. Satish Kumar Gupta, [(2019) 2 SCC 1]***, wherein, the Hon'ble Supreme Court held that the role of the Resolution Professional is merely to facilitate and the final decision regarding the Resolution Plan is left within the domain of the members of the CoC. Relevant extract of the judgment is reproduced hereinbelow: -

“....
80. However, it must not be forgotten that a Resolution Professional is only to “examine” and “confirm” that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). This provision has to be read in conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not

contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to “decide” whether the resolution plan does or does not contravene the provisions of law.”

[Emphasis supplied]

110. Furthermore, RP relies on the judgements of this Appellate Tribunal in the matter of ***Sharavan Kumar Vishnoi v. Upma Jaiswal & Ors, [Company Appeal (AT)(Ins) No. No. 371 of 2022]*** wherein while relying upon the decision of the Hon’ble Supreme Court in ***Arcelormittal (supra)*** has held as follows: -

“7. The ratio of the judgment of the Hon’ble Supreme Court as is culled out from paras 80 & 81 is that the Resolution Professional is not to take a decision regarding the ineligibility of the Resolution Applicant. It has only to form its opinion because it is the duty of the Resolution Professional to find out as to whether the Resolution Plan is in compliance of the provisions of the Code or not the Resolution Professional can give his opinion with regard to each plan before the CoC and it is for the CoC to take a decision as to whether the plan is to be approved or not. In para 5 of the impugned order, we have noticed that the direction has been issued to the Resolution Professional to place all the Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law. The aforesaid direction clearly indicates that the Resolution Professional is free to submit his opinion with regard to contravention or otherwise of the various provisions of law. The aforesaid observations take care of the duties and responsibilities of the Resolution Professional. The Resolution Professional can give his opinion with regard to each Resolution Applicants and further steps are to be taken for the CoC as per the direction issued by the Adjudicating Authority.

8. At this stage, we are of the view that, various issues regarding ineligibility or eligibility need not be gone into in this Appeal. It is only after the CoC’s decision if any question arise regarding eligibility that can be gone into before the Adjudicating Authority in accordance with the law.

[Emphasis supplied]

111. The above two judgments may not be of any assistance to the resolution professional as in the facts and circumstances referred herein earlier, we find that RP/CoC has not complied with the provisions of section 29A and thus an erroneous conclusion has been arrived at, that Cosmic CRF Limited meets

requirements under Section 29A and is eligible as a resolution applicant. We are of the considered view that RP and CoC have manifestly erred in declaring Cosmic CRF Limited as eligible.

112. Resolution professional further claims that COC had taken its decision in its commercial wisdom only on the basis of a Legal Opinion received from the Senior Advocate and decided that the Cosmic CRF is eligible to submit the Resolution Plan and hence, the challenge mechanism process was re-opened. The requirements of Section 29 A are legal requirements and it is necessary for an PRA to meet it before presenting its resolution plan and proper justification should have been recorded of the eligibility of PRA.

113. In his case we find that grave allegations have also been raised against the CD as noted below, which is extracted from the provisional attachment order dated 25.03.2025 of the Enforcement Directorate (ED):

“9.1.7 Amzen Transportation Industries Pvt Ltd.: This Amtek group company is under CIRP proceedings. During investigation conducted under PMLA, it has been noted that there were significant lapses on part of the Resolution Professional and one of the major creditors, Prudent ARC, an asset reconstruction company. It was noted that Prudent ARC took over the loans of IDBI Bank at a significant haircut for which funds were arranged from companies linked to Amtek group. Further to the above, the Resolution Professional Mr. Deepak Maini in a grave error of judgment has also included and admitted the claim of an Amtek group company, WLD Investments Pvt. Ltd., which is also a shareholder of the corporate debtor as a creditor in the Committee of Creditors thereby discrediting the entire resolution process and possible violation of IBC Act, 2016.”

114. Both RP (who is also a RP in the instant matter) as well as the Corporate Debtor have been seriously indicted in this report. It is claimed that these are subsequent findings and were not pleaded before NCLT. It is to be noted that many of these issues had been raised earlier also in the complaint dated

27.08.2024 by an NGO Energy watchdog which is on record at page 159-163 of Appeal Paper Book. Furthermore, we note that in the orders of Hon'ble Supreme Court in Writ Petition (Crl.) No. 246/2022 - Jaskaran Singh Chawla Vs. Union of India & Ors. the issue relating to a humongous fraud committed by M/s. Amtek Auto Limited and its associated companies was considered. In that case, apart from other issues Hon'ble Supreme Court on 27.02.2024 had ordered that:

“....

14. In this view of the matter, we hereby direct that an exhaustive investigation of the issues raised by the petitioner in this writ petition pertaining to huge banking fraud which may run into Rs. 27,000 crores of public money shall be conducted by the ED. We request the learned ASG to issue necessary directions to the ED for compliance of this order.

15. However, the investigation/enquiry being carried out by the SFIO and the CBI shall continue and will not be prejudiced by this order. Both the agencies shall fully cooperate with and complement the ED in the process of collection of evidence. Copies of the enquiry reports submitted on behalf of the SFIO and the CBI shall be provided to learned Amicus Curiae as well as learned counsel for the petitioner.”

115. It is submitted that on the basis of the collection of material by the Enforcement Directorate (ED) during the course of investigation the provisional attachment order dated 25.03.2025 was passed wherein the findings noted herein before were recorded. The allegations which have been highlighted by the ED appears to be quite serious. We are not going into the details of these allegations as the matter is still sub-judice before the PMLA Court, however, suffice it to say that in the present case there is sufficient material on record which indicates that the Cosmic CRF Ltd. is also ineligible under Section 29A of the Code and thus we do not find sufficient grounds on record to negate the non-eligibility of Cosmic CRF Ltd. that too only on the basis of an opinion given by a Senior Advocate, completely ignoring the earlier

reports submitted by two expert firms. The RP/CoC in the attending facts and circumstances of the case were obliged to obtain other independent reports, for the purpose of deciding the issue of eligibility of the Cosmic CRF under Section 29A on merits and should have recorded valid reasons of its eligibility, which according to us is apparently lacking in this case. Thus, we hold Cosmic CRF as ineligible to be a PRA and consequently the CA (AT) (Ins) No. 859 of 2025 appears to be fit to be partly allowed to this extent only.

116. It is argued by the Resolution Professional that the proceedings of ED and the provisional attachment order were not part of the pleadings and of IA No. 1240 of 2025. The Adjudicating Authority had issued notice only with respect to the maintainability of IA No. 1240 of 2025 and also that the Corporate Debtor, namely, Amzen Transportation Industries Ltd. was not a party in the proceedings before the Hon'ble Supreme Court and that order was not relating to the Corporate Debtor of this case and therefore, it was not his duty to bring all these facts pertaining to this litigation in the Information Memorandum. It is also claimed that the provisional attachment order is yet to be confirmed by the Adjudicating Authority and also that the provisional attachment order mentions that WLD investment holds only 5.12% shares in the CD and is a related party which apparently is an incorrect conclusion as minimum shareholding required to become related party is 20%. We have considered these submissions and consciously not going into the merits of the material collected during the investigation by the ED and at the cost of repetition we put on record that the material collected by the ED is to be seen by the special court who is seized of the matter and therefore it will not be

appropriate for us to comment anything on the said material or on the reasons given in the provisional attachment order. We are of the considered view that sufficient material exists on record which makes Cosmic CRF as not eligible under Section 29A of the Code.

117. Therefore, on the basis of existing record and reasons given herein before we find that the instant PRA viz Cosmic CRF (Respondent No. 3) also does not meet the requirement of Section 29A. We also note that the Adjudicating Authority has passed impugned order in Comp. App. (AT) (Ins) No. 877 of 2025 only in few lines without giving any reasons and without considering the submissions of applicant in detail. The impugned order therein appears to be a non-speaking order without deliberating on serious issues which have been raised therein with regard to the RP and CIRP proceedings.

Conclusions and Orders

118. We thus conclude that though appellant in CA (AT) (Ins) No. 859 of 2025 i.e. Myotic Trading Pvt. Ltd. has been correctly not found eligible as PRA as other partner of Consortium Fortune Global Solutions Pvt. Ltd. had withdrawn himself from the Consortium and the net worth of Myotic thus had fallen below the threshold limit provided in RFRP of Rs. one hundred crore and that even Cosmic CRF was not eligible to be considered as a PRA and also that the conduct of the RP also appears to be not in accordance with law and thus the whole process of CIRP appears to have been vitiated and in these circumstances the CIRP proceedings cannot be permitted to go on any further. In these facts and circumstances of the case we order as under:

- a) CA (AT) (Ins) No. 859 of 2025 is partly allowed and it is held that appellant Myotic has been correctly held ineligible to be considered as PRA and was not having any locus and to this extent the impugned order is confirmed. It is also held that Cosmic CRF Ltd. is/was also ineligible under Section 29A of the IBC to be a PRA and the impugned order passed in CA (AT) (Ins) No. 859 of 2025 is set aside to this extent. Since Cosmic CRF (PRA) is also held ineligible by us, it is provided that proceedings of CIRP shall now proceed from the stage of issuance of a fresh form 'G', strictly in accordance with law.
- b) CA (AT) (Ins) No. 877 of 2025 is partly allowed to the extent that the Adjudicating Authority after providing opportunity of being heard to the parties shall now dispose of IA No. 2548 of 2025 afresh, on merits, taking into account all the materials available on record without being guided by any observation of this Appellate Tribunal and to this extent only the impugned order passed in CA (AT) (Ins) No. 877 of 2025 is set aside and matter is remanded back to the Adjudicating Authority/Tribunal for decision, afresh. No order as to costs. Pending IA's if any, are disposed of accordingly.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
July 25, 2025.

Pawan