THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH
(through web-based vide conferencing platform)

IA No.342 of 2021, IA No.456 of 2021, IA No.154 of 2022
In
CP(IB) No.391/Chd/Pb/2018
(Admitted)
Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016

<u>In the matter of</u>:-
Punjab National Bank …Financial Creditor

Versus

Vallabh Textiles Company Limited …Corporate Debtor

<u>And in the matter of</u>:- **<u>IA No.342/2021</u>**
Mr. Sumat Gupta
Resolution Professional, M/s Vallabh Textiles Company Limited
Registration No.IBBI/IPA-001/IP-P00167/2017-18/10336
Resident of C/o 2581/3, B-1, Near Zoom Hotel Building,
Industrial Area-A, Transport Nagar, Ludhiana- 141003,
…Applicant/Resolution Professional

Versus

1. M/s Aggarsain Spinners Limited, through Mr. Sunny Garg, 2nd Floor, SCO 404, Sector 20, Panchkula, Haryana- 134116
2. Mr. Ramesh Kumar, H.No.43, Sector 7, Panchkula, Haryana

…Respondents

<u>And in the matter of</u>:- **<u>IA No.456/2021</u>**
Punjab National Bank
(As authorized by Financial Creditors)
Being members of the Committee of Creditors
Having 99.91% voting share
Zonal sastra centre,
5, Ferozepur Road, Ludhiana, Punjab- 141012
…Applicant

Versus

Mr. Sumat Gupta
Resolution Professional,
For Vallabh Textiles Company Limited
B-1, Near Zoom Hotel Building,
Industrial Area-A, Transport Nagar, Ludhiana- 141003
…Respondent

And in the matter of:- **(IA No.154/2022)**

1. Aggarsain Spinners Limited,
   Village Barauli, G.T., Road, Panipat- 132103,
   Email: aggarsainspinners@gmail.com,
   Through Mr. Sunny Garg, Managing Director

2. Mr. Ramesh Garg, House No.43, Sector 7, Panchkula
   Email: aggarsainspinners@gmail.com

…Applicants

Versus

Mr. Sumat Gupta, C/o 2581,B-1, Near Zoom Hotel, Building,
Industrial Area-A, Transport Nagar, Ludhiana- 141003
Email:- sumatguptaca@gmail.com

…Respondent

Order delivered on 24.05.2022

Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing :-

IA No.342 of 2021, IA No.456 of 2021

For Applicant/Resolution Professional in IA No.342/2021 and Respondent in IA No.456/2021	:-	Dr. Rajansh Thukral, Advocate Dr. Surekha Thukral, Advocate
For Respondents in IA No.342/2021	:-	Mr. Atul Sood, Advocate
For Applicant in IA No.456/2021	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate

IA No.154 of 2022

For the Applicants	:-	Mr. Atul Sood, Advocate
For the Respondent	:-	Dr. Rajansh Thukral, Advocate Dr. Surekha Thukral, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

All the three applications bearing IA Nos.342/2021, IA No.456/2021 and 154/2022 are taken up together for disposal being interrelated and interconnected.

IA No.342/2021

The present application has been filed by the Resolution Professional of M/s Vallabh Textiles Company Limited (for short the '**corporate debtor**') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for short the '**Code**') read with Rule 11 of the National Company Law Tribunal Rules, 2016.

2. By virtue of the present application, the Resolution Professional has prayed for declaring the respondents as ineligible to submit resolution plan as on 03.03.2020; take appropriate action for filing false affidavit under Section 30(1) of the Code, stating compliance of Section 29A and forfeiture of performance security; forfeiture of EMD and direct respondents to deposit back EMD of Rs.15,00,000/- (Fifteen Lacs), imposing penalty of Rs.2.00 crores under Section 235A; direct prosecution of the respondents; and direct returning the Resolution Plan in IA No.458/2020 to the Committee of Creditors to consider next resolution applicant or to pass other or further orders as may be deemed fit in facts and circumstances of the case.

3. The applicant/Resolution Professional has filed application bearing IA No.458/2020 in CP(IB) No.391/Chd/Pb/2018 under Section 30(6) of the Code, for approval of the Resolution Plan and the same is pending adjudication before this Tribunal. At the outset, it is submitted by the Resolution Professional that all the facts and circumstances with respect to the approval of resolution plan are narrated

in IA No.458/2020 and it is requested that the instant application may kindly be heard with IA No.458/2020 as there are serious subsequent revelations which have come to the notice of the applicant and it would be essential to bring these revelations to the notice of this Tribunal and to seek appropriate directions in these changed circumstances, which would have bearing on the outcome of IA No.458/2020.

4. It is stated that on 15.06.2021, Resolution Professional received two identical complaints, one from Mr. Sanjay Garg on Whatsapp (Annexure A-1) and other from M/s Aayat Processors on email of the Resolution Professional (Annexure A-2), pointing out that the Resolution Applicants/respondents are not compliant of Section 29A of the Code and that due to non-compliance with SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated 10.10.2016 ('SEBI Circular'), M/s Aggarsain Spinners Limited, Resolution Applicant, and its directors are restricted/barred from accessing the securities marked w.e.f. 27.03.2018 till further orders, for a period of 10 years. The complaint is accompanied with certain documents which prima facie would show that the respondents are non-compliant of Section 29A of the Code.

5. According to the Resolution Professional, he was convinced that a prima facie case of ineligibility was made out. He also carried out research to be doubly sure on the portal of Securities Exchange Board of India (for short 'SEBI') as well as the stock exchanges as per the information provided by the complainant. The names of Respondents were appearing on the website of the Bombay Stock Exchange (Annexure A-5) as persons debarred from accessing the securities

marked for a period of 10 years, however, nothing could be traced on the website of SEBI.

6. It is stated that in pursuance to the e-mail, the respondents sent their reply by e-mail dated 27.06.2021 (Annexure A-7) admitting their ineligibility on the date of submission of the Resolution Plan.

7. It is alleged that Respondents were required to file an affidavit under Section 30(1) of the Code regarding compliance of Section 29A of the Code and they have wilfully and fraudulently submitted a false affidavit (Annexure A-8) declaring that the Respondents were compliant of Section 29A of the Code. According to the Resolution Professional, since an affidavit was submitted pursuant to statutory provision of Act of parliament and in the course of judicial proceedings, therefore, this act of submission of false affidavit amounts to perjury and the respondents are liable to be prosecuted under section 340 of Cr.P.C for submitting a false affidavit during the course of judicial proceedings.

8. It is further alleged that on receipt of memo dated 29.10.2020 from State Bank of India, the Resolution Professional came to know about this disqualification and despite that the respondents never informed the Resolution Professional and did not attempt to submit a revised affidavit, which clearly shows mala fide intention on the part of the Respondents that they have wilfully concealed the factum of disqualification under Section 29A(f) of the Code and have submitted a false affidavit in the course of judicial proceedings.

9. It is further submitted that in their reply, the respondents have also placed on record, the status as updated on 16.02.2021 by SEBI and that SEBI has revoked

the order barring the Respondents from accessing the securities market, but this fact was also not brought to the notice of the Resolution Professional.

10. According to the Resolution Professional, once the respondents have incurred ineligibility under Section 29A of the Code, on the date of submission of the Resolution Plan, respondents could not have participated in the CIRP Process and subsequent removal of disqualification cannot make the respondents eligible with retrospective effect, hence, it is prayed by the Resolution Professional that respondents may be declared as ineligible to file resolution plan as on 03.03.2020 and be directed to deposit back EMD of Rs.15,00,000/- with the Resolution Professional for being forfeited as the EMD was returned in good faith and performance security of Rs.4.15 Crores may be ordered to be forfeited with a fine of Rs.2 Crores each be imposed on both the Respondents under Section 235A of the Code. It is further prayed that appropriate directions may also be issued for prosecution of the respondents for the act of perjury for filing a deliberate and wilful false affidavit during the course of judicial proceedings and that this Tribunal may return the resolution plan in IA No.458 of 2020 to the Committee of Creditors to explore possibility of approving other Resolution Plan of another Resolution Applicant.

11. Notice of this application was issued to the respondents who in their reply filed vide Diary No.00798/1 dated 12.07.2021, have raised preliminary objection that complaints on the basis of which the present application has been filed are wrong and incorrect in law, thus, all the allegations made by applicant/Resolution Professional are denied.

12. On merits, it is submitted by the respondents that Section 29A(f) of the Code, contemplates that there shall be a prohibition by SEBI but no such order of prohibition has been passed by SEBI against the respondents. SEBI vide its Circular dated 10.10.2016 required that all those companies which are listed with de-recognized/non-operational stock exchanges and called as Exclusively Listed Companies ('ELC') to provide an exit to the shareholders either by way of listing on nationwide stock exchanges or to opt for voluntary delisting norms of SEBI.

13. According to respondents, SEBI Circular dated 10.10.2016 (Annexure C), the Bombay Stock Exchange and National Stock Exchange do not have the power to take action against the ELCs but can only 'recommend' the said action. In continuation of the said Circular dated 10.10.2016, another Circular i.e. SEBI/HO/MRD/CIR/P/2017/92 dated 01.08.2017 (Annexure D) extending the period of compliance by ELCs, was issued by the SEBI. Later on, notice dated 28.03.2018 issued by Bombay Stock Exchange is only a recommendation but no such order was passed by SEBI with respect to purported action contemplated in the said notice dated 28.03.2018.

14. It is further submitted by the respondents that in compliance with the abovesaid two circulars dated 10.10.2016 and 01.08.2017, Resolution Applicant took a decision to get the shares listed on Metropolitan Stock Exchange of India and submitted listing application on 26.12.2017 within the time lines and paid the listing fees on 22.12.2017 and also informed Bombay Stock Exchange of the same and also submitted plan of action to Bombay Stock Exchange in accordance with SEBI Circular.

15. It is averred by the respondents, they received information from State Bank of India on 29.10.2020 through e-mail (Annexure F) when Resolution Applicants submitted proposal for raising funds from State Bank of India that respondents are in debarred list of Bombay Stock Exchange for accessing the capital market for 10 years. However, no such information was furnished to the respondents and their demat accounts were also not frozen.

16. On the representation of the respondents, Bombay Stock Exchange revoked its recommendations regarding restraint status. Hence, Resolution Applicants were not aware of the restraint status on the date of filing of the Resolution Plan of the same and based on their representation, the recommendation of restraint status stands revoked (Annexure H).

17. It is alleged that the complainants i.e. Ayat Processors and Sanjay Garg are dubious entitles and they are conniving with each other in as much as the font and contents are exactly the same in both these complaints. Moreover, Sanjay Garg is the same person who is a Director of Longowalia Yarns Limited, who is accused of fraudulent transactions of Rs.10 Crores as per Forensic Audit Reports of GPI Textiles Ltd. and, is also running GPI Textiles Ltd. Hence, it is submitted that the application be dismissed with heavy costs.

18. In the additional reply filed by respondents, vide Diary No.00798/5 dated 06.09.2021, it is submitted that a perusal of debarred list of BSE clearly shows that the words ‘restraint’ and ‘prohibition’ have been distinctively used. The said list specifically mentions where orders have been passed by SEBI. However, regarding the Resolution Applicants there is no mention of any order passed by SEBI. Rather,

against the Resolution Applicants, the word ‘restraint’ has been used, in contradiction to ‘prohibition’. Thus, consequently, by no stretch of imagination, it can be claimed that there is a ‘prohibition by SEBI’ within the meaning of Section 29A(f) of the Code, even if, inadvertently, the Resolution Applicants in any communication would have mentioned ‘prohibited’.

19. In the rejoinder filed vide Diary No.00798/3 dated 15.07.2021, the applicant has contradicted the pleas taken by the Resolution Applicants in their reply and submitted that the applicant is an officer appointed by this Tribunal to act as Resolution Professional of the corporate debtor for the purpose of conducting CIRP of the corporate debtor and to secure the money of the financial creditors and other stakeholders and to maximize the wealth of the corporate debtor. He is an independent person and it is his utmost endeavour to ensure that CIRP is successful and the resolution plan is approved and implemented. It is total mischievous on the part of the respondents to allege any vendetta on part of the applicant and the respondents cannot get away and cover up wrong done by them by levelling false allegations against the applicant.

20. It is further stated in the rejoinder that stock exchange is a body regulated by SEBI and the rules/regulations/circulars regarding listing of securities/investor protection through exchanges is delegation of authority and any implementation of directions pursuant to such rules/regulations/circulars of SEBI is the action of SEBI and not of the stock exchange in its individual capacity. There is no representation on behalf of the Resolution Applicants, but a letter of compliance on the basis of which the debarring status is revoked w.e.f. 16.02.2021 and the same cannot make them compliant of Section 29A(f) with retrospective effect. Further, there is clear

direction of SEBI in terms of circular dated 01.08.2017 as is apparent from the notice of the stock exchange for implementing the directions (Annexure E). Thus, it is prayed that application deserves to be allowed in terms of prayer made in the application with all consequential reliefs.

21. During the course of arguments, learned counsel for the Resolution Professional/Applicant has contended in terms of reply filed by him. He submits that in accordance with Regulation 36A(8), the Resolution Professional conducted due diligence based on the documents submitted by the Resolution Applicant as per Section 30 and Regulation 36A and formed prima facie opinion that Resolution Applicant was non-compliant with Section 29A of the Code. In order to take further precautions in this regard, the Resolution Professional also obtained third party opinion from a competent Chartered Accountant whether Resolution Applicant was compliant with Section 29A of the Code. The Resolution Professional has relied upon judgment of Hon'ble Supreme Court in the case of ***Arcelormittal India (P) Ltd. versus Satish Kumar Gupta; (2019) 2 SCC 1***, wherein it is held that 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. Thus, it is submitted that the applicant has taken all reasonable precautions in conducting due diligence and there was no method for the Resolution Professional to determine that the affidavit and undertaking given by the Resolution Applicants was false.

22. Thereafter, on 15.06.2021, the Resolution Professional received two complaints one from Mr. Sanjay Garg on Whatsapp and another from M/s Aayat

Processors on email. The Resolution Professional carried out search on the websites of BSE as well as SEBI and the notice of debarment of the Resolution Applicant was there on the website (Annexure A-5). The Resolution Professional also came across the circulars of SEBI dated 10.10.2016 and 01.08.2017 and it prima facie appeared to the applicant that the Resolution Applicant was not eligible under Section 29A at the time of submission of the plan and if it had come to the notice of the Resolution Professional at that time, the Resolution Applicants would have been declared ineligible. It was later on revealed that the Resolution Applicants were disqualified from accessing securities market for a period of 10 years from 27.03.2018.

23. It is further contended that subsequently, the aforementioned complaints were forwarded to the Resolution Applicants for comments. In the reply received from the Resolution Applicants, it is submitted that they were never informed about it by SEBI though they admit knowledge of circulars dated 10.10.2016, 27.03.2017, 26.03.2017 and 01.08.2017. In the reply, it is alleged that the Resolution Applicants received information from SBI about their names appearing on the banned list of promoters on 29.10.2020. Resolution Applicants admitted that the debarring status was revoked on 16.02.2021, meaning thereby that admittedly, they were debarred on 03.03.2020, when resolution plan was submitted. However, this fact of revocation of debarring status was also not brought to the notice of the applicant. Thus, keeping in view their categorical admission, it emerged that they were not eligible under Section 29A and as per Regulation 39 of CIRP Regulations, the discovery of false information and record at any time will render the Resolution

Applicants ineligible to continue the CIRP and accordingly, the present application has been filed by the Resolution Professional.

24. The learned counsel for the Resolution Professional further argues that the circular dated 10.10.2016 is in the nature of laying down law for due compliance and in the nature of omnibus notice to all Exclusively Listed Companies giving two options. As per the circular, the action plan was required to be submitted within three months i.e. on or before 10.01.2017 and the circular also provided for non-compliance. SEBI being the regulatory authority for Stock Exchanges directed the stock exchanges under Section 11(2)(a) of the SEBI Act to implement the directions contained in the said circular in the nature of omnibus order and this was addressed to all the ELCs. The stock exchange carried out the direction of SEBI in terms of order dated 28.03.2018 wherein, SEBI Circular dated 01.08.2017 is conspicuously referred.

25. Learned counsel for the Resolution Professional submits that the Resolution Applicants never challenged the action of SEBI or the Stock Exchanges before the competent court and this adjudicating authority does not have the jurisdiction to review or set aside the direction issued by SEBI or the notice issued by Stock Exchanges. According to learned counsel for the Resolution Professional, the word 'prohibit' and 'restraint' as per legal glossary issued by Ministry of Law Justice and Company Affairs, available at link https://legislative.gov.in/legal-glossayry, prohibitory order: an order which operates in restraining a party from doing an act which if done will result in irreparable injury to the other side. Also the information memorandum submitted by Resolution Applicants to MSEI also contains a categorical admission that the Resolution Applicants were prohibited by SEBI and

the said information memorandum is available at the website of MSEI available at link https://www.msei.in/downloads/Circulars/default linked to Circular No.MSE/LIST/10036/2021 dated 27.01.2021.

26. Learned counsel for the Resolution Professional has relied upon judgment dated 15.11.2019 passed by the Hon'ble Supreme Court in ***Civil Appeal No.8766-67 of 2019; Committee of Creditors of Essar Steel India Limited through Authorized Signatory Versus Satish Kumar Gupta and others***; and judgment dated 18.01.2022, passed by the Hon'ble Supreme Court in ***Civil Appeal No.8411 of 2019; Bank of Baroda and Another Versus MBL Infrastructures Limited and Others***.

Thus, it is submitted by learned counsel for the Resolution Professional that the application be allowed and the Resolution Applicants be declared as ineligible for submitting the Resolution Plan under Section 29A(f) of the Code.

27. During the course of arguments, learned counsel for the respondents/Resolution Applicants argued in terms of their reply submitted by them. It is contended that the Resolution Professional's version is full of self-contradictions and misleading asserts contrary to facts, which demonstrates that he has embarked upon an 'adjudication' on eligibility issue for motivated reasons whereas he has no power of adjudication and if the information as alleged was in 'public domain' since 27.03.2018, why the Resolution Professional or 'whistle blowers' did not take action at that time.

28. It is argued that in IA No.458 of 2021, which has been filed for approval of Resolution Plan before this Bench, the Resolution Professional has stated on oath

that the eligibility of all the Resolution Applicants was got verified from independent Chartered Accountant as part of his due diligence exercise under Regulation 36A(5). As per the report dated 28.02.2020 of the Chartered Accountant, he had checked the eligibility under Section 29A(f) of the Code from SEBI and there was no prohibition from SEBI. Once, the Resolution Professional admittedly has got the eligibility verified as on 28.02.2020, it does not lie in his mouth to now adjudicate and declare the Successful Resolution Applicants as ineligible. On one hand, the Resolution Professional is saying on oath that the Successful Resolution Applicant was barred on 27.03.2018 by BSE in the application and that there is no bar by SEBI, but in the oral submission, he has said that the bar was by way of Administrative Circular dated 01.08.2017. This is contrary stand and the basis of his adjudication that Successful Resolution Applicant is ineligible is flawed and mala fide. Moreover, no document has been produced to show that SEBI has delegated any powers to BSE to 'prohibit'. Further, Section 19 of the SEBI Act, and SEBI Delegation of Powers order nowhere delegates any such quasi-judicial powers to BSE. It is also submitted that this Adjudicating Authority's jurisdiction is limited to examining whether an entity/person is 'prohibited by SEBI', as laid down in the Code and nothing beyond that. The legislature has consciously used the word 'prohibited' in the Code. The objectors cannot assert remote and vague inferences, probabilities and possibilities in a desperate attempt to drag a simple issue whether the Successful Resolution Applicants are 'prohibited' by SEBI.

29. It is further argued that the Administrative Circular does not even use the words 'prohibition'. Section 11(4) of the SEBI Act uses words 'prohibition' and 'restraint' distinctively, which shows the legislative intent of the Code to limit Section

29A(f) to 'prohibited by SEBI'. There are other provisions of SEBI Act/Rules which specifically use the word 'prohibition' and there is a quasi-judicial mechanism to pass such orders. In reply to IA No.356 of 2021, a part of the BSE list has been attached, wherefrom it is clear from the said list that persons who have been 'prohibited' or 'restrained' or both have been distinctly mentioned. Also, where such orders have been passed by SEBI, such reference has been made. As against the promoters/directors of Successful Resolution Applicant, BSE has only said 'action initiated', which has been reversed. If at all SEBI had even 'restrained' the Successful Resolution Applicant, the action would have been reversed by SEBI. There is no such restraint/prohibition by SEBI and hence, no party can produce any direction of SEBI, as it does not exist. The Resolution Professional cannot seek indulgence of this Adjudicating Authority to interpret 'prohibition'/'restraint' as used in SEBI Act as the same thing.

30. It is further contended that the administrative circular does not name any entity/person and in such an absence, circular cannot be related to any person/entity to its disadvantage as is being propagated. Also, there is no challenge before this Tribunal as to legality/validity of the Circular/SEBI Act/Rules. There is no assertion by the Successful Resolution Applicants whatsoever that the circular is wrong in law and the Successful Resolution Applicants are not seeking any orders to uphold or strike down the circular. The Resolution Professional has to stand on its own legs to show beyond doubt that there is an alleged 'prohibition by SEBI'. By making reference to typographical errors where the word 'SEBI' instead of 'BSE' has been used, which is also clarified by the Successful Resolution Applicants and no adverse inference can be drawn against the Successful Resolution Applicants.

31. It is alleged that the alleged 'whistle blower' as is being claimed by the Resolution Professional is the same entity. Mr. Sanjay Garg, has allegedly filed a complaint as also by 'Ayaat Processors' of whom Sanjay Garg is the partner. This fact has also been concealed by the Resolution Professional. Thus, the Resolution Professional is hand in glove with the 'whistle blower' which is amply clear from the hasty manner in which the Resolution Professional has adjudicated that Successful Resolution Applicants are ineligible, while admitting that there is no such information on SEBI website. Section 29A(f) of the Code deals with 'prohibition by SEBI' and hence, the scope of examination is limited to the provisions of the Code.

32. The alleged notice dated 28.03.2018 issued by the BSE was never invoked upon the Resolution Applicants. On a representation to BSE that Successful Resolution Applicant is compliant, BSE vide its internal communication dated 16.02.2021 revoked directions it had initiated. On account of a typographical error, it has been mentioned 'SEBI' instead of 'BSE'. This has been clarified in the reply at page 7 para 26. Also, the representation to BSE has been produced at page 39 to demonstrate that the representation was made to BSE and not SEBI. Hence, the Resolution Professional cannot take advantage of a typographical error to say that the Successful Resolution Applicant has 'admitted' being barred by SEBI.

33. Thus, the independent notice of BSE is immaterial to the present controversy inasmuch as admittedly, BSE did not have any delegation of powers by SEBI to pass any orders of 'prohibition'. Consequently, whether the notice/reversal by BSE was prospective or retrospective, is also irrelevant.

34. According to the learned counsel for the respondents/Resolution Applicants, there is a legal distinction between the administrative circulars and quasi-judicial power of SEBI. Under Section 11(1) of the SEBI Act, SEBI has both administrative as well as quasi-judicial orders. Under the SEBI Delegation Order 2015, powers of adjudication are vested in the Whole Time Member under Section 11 (1), power to issue show cause notice are with the DGM and administrative power to sign the circulars are with DGM. The circulars in question are also signed by DGM. SEBI has both administrative and quasi-judicial powers u/s 11(1). For prohibiting any entity, it follows quasi-judicial procedure against particular entities/persons, hence, it cannot be said that the circular was an omnibus order against unnamed entities.

35. In support of his arguments, learned counsel for the Resolution Applicants has placed reliance upon the judgment of the Hon'ble Apex Court in the matter of ***National Securities Depositories Ltd. Vs. Securities and Exchange Board of India; Civil Appeal No.5173 of 2006***, wherein it has been held that while holding that under Section 11(1) of the SEBI Act, the circulars are administrative in nature, has distinguished the administrative and quasi judicial power. In paragraph No.12 of the said judgment, the Hon'ble Supreme Court has relied upon its own judgment in ***Province of Bombay vs. Kushaldar S. Advani; (1950) SCR 621***, wherein it was held that (i) if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by any party under the statute which is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the ab-sence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the au-thority is a quas-judicial act; and (ii) that

if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the *statute to act judicially".*

Thus, according to the learned counsel for the Resolution Applicants, the only interpretation of the finding of the Hon'ble Apex Court is that when any order is to prejudicially affect a subject, the same can be done only way of exercise of quasi-judicial powers under Section 11(1) of the SEBI Act. Therefore, neither the Resolution Applicants are aggrieved by the administrative circular of SEBI nor they are challenging the legal validity of the same before this Tribunal and the only submission being made by the Resolution Applicant is that the interpretation of the administrative circular by the applicant to say that it 'prohibits' the Resolution Applicant is misleading for the reasons stated above. Thus, there is no occasion for filing a false declaration by the Successful Resolution Applicant under Section 29A of the Code inasmuch as the Successful Resolution Applicant was never prohibited by SEBI.

Accordingly, it is submitted by learned counsel for the applicant that the application deserves to be dismissed with exemplary costs.

<u>IA No.456 of 2021</u>

36. Present application bearing IA No.456 of 2021 has been filed on behalf of financial creditors, being members of the Committee of Creditors through Punjab National Bank seeking impleadment of Committee of Creditors as necessary and

proper party in the present application i.e. IA No.342 of 2021 and extend the period of corporate insolvency resolution process by 90 days in the event this adjudicating authority allows IA No.342 of 2021.

37. This application has been opposed by learned counsel for the respondent-Resolution Professional on the ground that there is no need or requirement to implead the Committee of Creditor in accordance with the provisions of Section 24 of the Code read with Regulation 24 of IBBI (CIRP) Regulations, 2016, as no relief has been sought against the Committee of Creditors in IA No.342 of 2021. Moreover, Resolution Professional being dominus litus has the right to choose the person to be impleaded in the application (IA No.342 of 2021) filed by him. Thus, Committee of Creditors is neither necessary nor proper party in the said IA. In support of his arguments, learned counsel for the Resolution Professional has placed reliance upon a case in the matter of ***Kasturi Versus Uyyamperumal and Others; (2005) 6 SCC 733***, wherein the Hon'ble Supreme Court has laid down two tests to be satisfied to see if a person seeking impleadment is a necessary party. The Hon'ble Apex Court held that from the above, it is now clear that two tests are to be satisfied for determining the question who is *a necessary party. Tests are :–*

> *(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings*
>
> *(2) no effective decree can be passed in the absence of such party.*

Thus, applying the above test to the facts and circumstances of IA No.456 of 2021, Punjab National Bank being a representative of consortium of banks is neither a necessary nor a proper party and the application may be disposed of.

38. While considering the arguments of both the sides, it is fairly conceded by learned counsel for the applicant during course of arguments in IA No.456 of 2021 that at this stage, he does not press the present IA but his request to extend the period of corporate insolvency resolution process by 90 days in the event, this Tribunal allows IA No.342 of 2021, be considered, so that efforts could be made for seeking resolution of corporate debtor instead of putting the corporate debtor to liquidation and committee of creditors be reinstated to make another attempt for fresh process for resolution plan for the corporate debtor.

IA 154/2022

39. This application has been preferred by the Aggarsain Spinners Limited and Mr. Ramesh Garg, successful resolution applicants and respondents in IA No.342 of 2020, under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016, (for short the '**Code**') to place on record information received from Securities and Exchange Board of India (for short the '**SEBI**'), under the Right to Information Act, 2006 (for short the '**RTI Act**'), on 09.03.2022.

40. The instant application has been filed on behalf of the applicant/successful resolution applicants after the arguments were heard and the judgment/orders were reserved in IA No.342 of 2020, IA No.456 of 2020 and IA No.458 of 2021 and other connected applications, vide order dated 03.03.2022.

41. It is averred that the applicant received the information which has a direct bearing on the issues raised in IA No.342 of 2020 i.e. about the eligibility of the successful resolution applicants. It is stated that one of the prospective investors, Ms. Priyanka Sharma in the applicant-company, sought information under the RTI Act from SEBI regarding administrative circulars dated 10.10.2016 and 01.08.2017

as to whether SEBI has prohibited/debarred any company/its promoters/directors under the same. It is stated that the said prospective investor has shared a response from SEBI dated 09.03.2022, whereby the SEBI has clarified that it has not passed any debarring/prohibiting any company/its promoters/directors under the said circulars. Copies of the e-mail dated 09.03.2022 alongwith letter dated 16.02.2022 seeking information under the RTI Act, the information received from SEBI under the RTI Act, vide its letter dated 09.03.2022 and PAN Card of prospective investor have been annexed as Annexure A-1 (Colly) with the application.

42. It is submitted on behalf of the applicants that the applicants that they were not in possession of the said information (Annexure A-1(Colly) on or before 03.03.2022, when this Tribunal had reserved the orders in the aforementioned applications. It is prayed by the applicants that Annexure A-1 (Colly) may be taken on record and appropriate orders may be passed, in the interest of justice.

43. Notice of this application was issued to the respondent, who has filed its reply.

44. Respondent/Resolution Professional has submitted that the present application is a total abuse of the process of law and is aimed at only delaying the CIRP of the corporate debtor, as the arguments have already been completed, the written submission have been filed and on 03.03.2022 the case was reserved by this Tribunal for orders. According to the respondent/Resolution Professional if the instant application is allowed, it will virtually put the case on re-hearing and the entire case will have to be looked into again, which will cause enormous delay in disposal of the matter.

45. In support of his contention, learned counsel for the respondent/Resolution Professional has placed reliance upon judgment dated 22.02.2013, passed by the Hon'ble Supreme Court in Civil Appeal No.1787 of 2013 (arising out of SLP(C) No.35268 of 2011); M/s Bagai Construction versus Gupta Building Material Store, wherein it has been held that recalling of witness and production of documents at conclusion of trial could not be allowed.

46. It is submitted by the respondent/Resolution Professional that the RTI information is neither sought by the applicants/respondents in IA No.342 of 2020, nor the reply of SEBI has been addressed to the applicants and it is totally mischievous as the RTI question is also not framed correctly. Also the e-mail dated 09.03.2022 sent by Ms. Priyanka Sharma to the applicants is silent on the objective of sending the RTI information to the company and it clearly shows the connivance. It is further alleged that the e-mail address of the sender also shows that the RTI applicant is a Company Secretary and being professional, there is a strong possibility of connivance and moreover, no affidavit of the said RTI querist has been filed.

47. It is further submitted that RTI question is totally silent on the SEBI circular dated 01.08.2017, as the entire case is based on the said circular. Such a silence in the query is totally mischievous and appears to be stage managed through procuring connivance of the RTI applicant Ms. Priyanka Sharma and the said circular is in the nature of omnibus order of SEBI and also contains directions to stock exchanges to implement the orders of SEBI against the errant ELCs and its directors. Thus, information has no bearing on IA No.342 of 2020 and does not support the case of the applicant. Accordingly, respondent/Resolution Professional

has prayed that the present application be dismissed and exemplary cost be imposed on the applicant.

48. All the parties have argued in terms of their respective applications and replies thereto.

49. After hearing the parties and careful perusal of the facts and circumstances as well as law relied upon and cited by learned counsel for the parties, we are of the considered view that there are mainly three points for determination, which are as under:-

i) Whether the Resolution Professional is competent to adjudicate upon the eligibility of Successful Resolution Applicant under Section 29A(f) of the Code on asking of whistle blower when the Resolution Professional has already submitted the resolution plan for approval of committee of creditors?

ii) Whether successful resolution applicants, namely, M/s Aggarsain Spinners Limited and Mr. Ramesh Garg are eligible under Section 29A(f) of the Code?

iii) Whether the information received from SEBI by a third party under the RTI Act, 2006, filed in IA No.154/2022 is having some bearing upon the eligibility part of the successful resolution applicant?

50. At the outset, it is contended by learned counsel for the Resolution Applicants that applicant/Resolution Professional is blowing hot and cold in the same breath when he stated that while submitting the Resolution Plan to committee of creditors, eligibility of all the Resolution Applicants were verified from independent Chartered

Accountants as part of his due diligence exercise under Regulation 30A (5) of the Regulations and on the other hand, he is alleging that Resolution Applicants have concealed the information about their ineligibility under Section 29A(f) of the Code as the said information was available on the website of BSE since 28.03.2018 when a notice was uploaded by BSE with names of the companies regarding action against the ELCs and its promoters/directors. The said information was in public domain, thus, according to the learned counsel for the Resolution Applicant, the applicant/Resolution Professional could have verified this fact from the website of BSE before forwarding the Resolution Plan to committee of creditors for approval. We find that this contention of learned counsel for the Resolution Applicant is not much convincing because if at all the said information was available on the website of BSE then being in public domain, it should have also been in the knowledge of Resolution Applicants but it is the stand of the Resolution Applicants that they came to know about the said information when it was pointed out by SBI that the name of the company and its promoters are in the banned list of promoters on 29.10.2020 and that they have been debarred from accessing the securities market for a period of 10 years. No doubt, the applicant/Resolution Professional has failed to perform his duty diligently as he has failed to verify this fact from the website of BSE at the time of submission of Resolution Plan, submitted by the Resolution Applicants. However, now the issue for consideration before this Bench is whether applicant/Resolution Professional is estopped by its own act and conduct from filing IA No.342 of 2022, challenging the eligibility of Resolution Applicants under Section 29A(f) of the Code. Chronologically, the Resolution Plan was submitted on 13.02.2020 by the Resolution Applicants to the Committee of Creditors and it was approved by the Committee of Creditors on 26.05.2020. However, according to learned counsel for the applicant/Resolution Professional, he received two identical complaints one from Mr. Sanjay Garg on whatsapp (Annexure A-1 to IA No.342 of 2021) and one from M/s Aayat Processors on his e-mail (Annexure A-2 to IA No.342 of 2021) pointing out that Resolution Applicants/respondents are ineligible under Section 29A(f) of the Code. Thereafter, he verified this fact from the website of BSE and found that the Resolution Applicants are restricted/barred from accessing the securities market with effect from 28.03.2022 for a period of 10 years.

51. In the circumstances, the applicant/Resolution Professional, being Officer appointed by this Bench for carrying out the resolution process, was duty bound to report this fact to this Bench as Resolution Plan which was duly approved by the Committee of Creditors under Section 30(4) had been filed by him before this Bench for approval under Section 31 of the Code. The Resolution Professional has not adjudicated upon the eligibility of the Resolution Applicants under Section 29A(f) of the Code, but has left this issue of eligibility of Resolution Applicants to be decided by this Bench. Thus, it cannot be said that the applicant/Resolution Professional has no locus standi or estoppel will operate against him or Resolution Professional was in connivance with the whistle blowers, for filing IA No.342 of 2021, questioning the eligibility of Resolution Applicants.

52. Now, coming to the second point of determination that whether the Successful Resolution Applicants, namely, M/s Aggarsain Spinners Limited and Mr. Ramesh Garg, are eligible under Section 29A(f) of the Code or not? It is contended by learned counsel for the applicant that Successful Resolution Applicants are debarred by SEBI from accessing the securities market at the time of submission

as well as approval of the resolution plan by the committee of creditors, thus, were ineligible under Section 29A(f) of the Code.

53. Whenever a plan is submitted under Section 30(6) of the Code for approval of the resolution plan before the Adjudicating Authority then under Section 31 of the Code, the Adjudicating Authority has to satisfy itself that it meets the requirement as referred to under sub-section (2) of Section 30 of the Code. The relevant provisions of Section 31 of the Code are reproduced hereinbelow:-

> ***"Approval of resolution plan.***
>
> *31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve3 the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed*,] guarantors and other stakeholders involved in the resolution plan.
>
> [Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]
>
> *(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan."*

54. Similarly, relevant provisions for submission of resolution plan under Section 30 of the Code are reproduced hereinbelow for ready reference:-

> ***"Section 30: Submission of resolution plan.***
> *30. (1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.*
>
> *(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*
>
> *(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;*

[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the

Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any

other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) 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).

[(4) The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

As per Section 30(1) of the Code in the case in hand an affidavit has been by the successful resolution applicants on 13.02.2020.

2. A perusal of the aforesaid provision reveals that proviso (1) to Section 30(4) requires that committee of creditors shall not approve a resolution plan where the Resolution Applicant is ineligible under Section 29A of the Code. Before submitting a plan before the committee of creditors, it is also incumbent upon the Resolution Plan to verify whether the Resolution Applicants are eligible under Section 29A of the Code. It has been held by the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in ***Canara Bank versus Ms. Mamta Binani and Others; (2022) ibclaw.in 01 NCLAT*** that before the resolution plan is submitted before the committee of creditors, it is the bound duty of the Resolution Professional to scrutinize that the resolution plan furnished by numerous applicants is complete in all aspects, before presenting it to the committee of creditors. A

'Resolution Professional' is not required to take any decision but he is to confirm that the Resolution Plan does not violate any of the provisions of Law for the time being in force (including Section 29A of the Code). Thus, suffice for this 'Tribunal' to pertinently point out that an ex-facie opinion is to be offered to the 'committee of creditors' by the 'Resolution Professional' that the law was violated. It is also the duty of the 'Resolution Professional' to determine as to whether the eligibility criteria of the Resolution Applicant prescribed in Section 29-A of the Code are satisfied. The Resolution Professional has to consider the objections brought to his notice prior to the submission of the Resolution Plan to the 'Committee of Creditors'. As per Section 30(2) of the Code, the Resolution Professional has to examine each resolution plan received by him to confirm that the resolution plan provides for payment of Insolvency Resolution Process Costs, Payment of Debts of the Operational Creditors, management of the affairs of corporate debtor, the fulfilment and supervision of resolution plan, other requirement as may be specified by the Board and that it does not violate any of the provisions of the law for the time being in force.

55. For ready reference, relevant provisions of Section 29A of the Code is reproduced as under:-

"Person not eligible to be resolution applicant.

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

(a)	*is an undischarged insolvent;*			
(b)	*xx*	*xx*	*xx*	*xx*
(c)	*xx*	*xx*	*xx*	*xx*
(d)	*xx*	*xx*	*xx*	*xx*
(e)	*xx*	*xx*	*xx*	*xx*

(f) *is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;*

(g) xx xx xx xx

A bare perusal of Section 29A(f) reveals that Resolution Applicant shall not be eligible to submit a resolution plan if it is prohibited by SEBI from trading in securities or accessing the securities markets. Now the next question that arises is whether an express order of prohibition is required to be passed by SEBI directly or otherwise. To answer this question, we have to go through Circulars dated 10.10.2016 and 01.08.2017 vis-à-vis Section 11 of the SEBI Act. Circular No.SEBI/HO/MRD/DSA/CIR/P/2017/92 dated 01.08.2017 includes the contents contained in Circular No.SEBI/HO/MRD/DSA/CIR/P/2016/110 dated 10.10.2016. For ready reference, relevant portion of circular dated 01.08.2017 is reproduced hereinunder:-

"*Sub: Action against Exclusively Listed Companies and its Promoters/Directors pending Exit Offer to the Shareholders*

1. *xx xx xx xx*
2. *The aforesaid circular dated October 10, 2016 stipulated the following action against such ELCs, which remain non-compliant with the above timelines:*
   - a. *The company, its directors, its promoters and he companies which are promoted by any of them shall not directly or indirectly associate with the securities market or seek listing for any equity shares for a period of ten years from the exit from the DB.*
   - b. *Freezing of shares of the promoters/directors.*
   - c. *List of the directors, promoters etc. of all non-compliant companies as available from the details of the company with NSE/BSE shall be disseminated on SEBI website and shall also be shared with other related agencies.*
   - d. *Attachment of bank accounts/other assets of promoters/directors of the companies so as to compensate the investors.*
3. *xx xx xx xx*
   - a. *xx xx xx*

b. The non-compliant Exclusively Listed Companies, its directors, its promoters and the companies which are promoted by any of them shall not be eligible to access the securities market for the purposes of raising capital till the promoters of such non-compliant Exclusively Listed Companies provide an exit option to the public shareholders in compliance with SEBI circular dated October 10, 2016, as certified by the concerned Designated Stock Exchanges.

c. xx xx xx

4. xx xx xx xx

5. The concerned Designated Stock Exchanges and Depositories shall co-ordinate with each other and ensure compliance of these requirements.

6. SEBI may also take any other appropriate action(s) against the promoters/directors of Exclusively Listed Companies for non-compliance with SEBI circular dated October 10, 2016

7. This circular is issued in exercise of powers conferred under Section 11(1) and 11(2)(j) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. This circular is available on SEBI website at www.sebi.gov.in.”

It is explicit from the contents of both these aforementioned circulars issued by SEBI that there was delegation of its regulatory functions to concerned designated stock exchanges and these circulars have been issued in exercise of powers conferred under Section 11(1) and 11(2) (j) of the SEBI Act to protect the interests of investors in securities and to promote the development of and to regulate the securities market.

3. Although, it is argued by learned counsel for the successful resolution applicants that no order/direction was passed by SEBI, so that the above said circulars are enforceable by BSE, yet this contention of learned counsel for the successful resolution applicants is not tenable because so far as the scope of Section 11 of SEBI Act is concerned, SEBI has got open ended terms having no limits to delegate its functions to protect the interest of investors of securities. It is clear from Clause 6 of Circular dated 01.08.2017 that SEBI may also take any other appropriate actions(s) against the promoters/directors of Exclusively Listed

Companies for non-compliance with SEBI circular dated 10.10.2016. It means that if any other action except mentioned in these circulars was to be taken by the SEBI then certainly a due procedure had to be followed by SEBI under its quasi-judicial function but this power of restraining the non-compliant ELC not to access the securities market for a period of 10 years, has already been delegated under Section 11 of the SEBI Act. For ready reference, Section 11 of the SEBI Act is reproduced hereinbelow:-

> ***Functions of Board.***
> ***11. (1)*** *Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.*
> ***(2)*** *Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—*
>
> *(a) regulating the business in stock exchanges and any other securities markets;*
> *(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;*
> *[(ba) registering and regulating the working of the depositories, [participants], custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;]*
> *(c) registering and regulating the working of 15[venture capital funds and collective investment schemes], including mutual funds;*
> *(d) promoting and regulating self-regulatory organisations;*
> *(e) prohibiting fraudulent and unfair trade practices relating to securities markets;*
> *(f) promoting investors' education and training of intermediaries of securities markets;*
> *(g) prohibiting insider trading in securities;*
> *(h) regulating substantial acquisition of shares and take over of companies;*
> *(i) calling for information from, undertaking inspection, conducting inquiries and audits of the [stock exchanges, mutual funds, other persons associated with the securities market],*

intermediaries and self-regulatory organisations in the securities market;

[(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;]

[(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;]

(j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purposes of this section;

(l) conducting research for the above purposes;

[(la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;]

(m) performing such other functions as may be prescribed.

[(2A) Without prejudice to the provisions contained in sub-section (2),the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.]

56. Learned counsel for the Resolution Professional has rightly placed reliance upon judgment dated 31.08.2012 passed by the Hon'ble Supreme Court in ***Sahara India Real Estate Corporation Limited*** (supra), wherein it is held as under:-

"The reason for the instant inference is, that sub-section (2) does not curtail the powers and functions vested with the SEBI under sub-section (1) of section 11 of the SEBI Act as subsection (2) aforementioned commences with the words "Without prejudice to the

generality of the foregoing provisions…". This expression obviously preserves, the power vested in the SEBI under sub-section (1) of section 11 of the SEBI Act, to protect the interest of investors in securities and to promote the development and to regulate the securities market "by such measures as it thinks fit". Furthermore, sub-section (2) of section 11 of the SEBI Act, after making a reference to the measures generally referred to in sub-section (1) empowers/authorizes that SEBI "may provide for" a series of measures, which are delineated in clauses (a) to (m) thereof (of sub-section (2) of section 11 of the SEBI Act). The use of the words "may provide for" besides indicating the discretion vested in the SEBI, demonstrates that, the measures depicted in clauses (a) to (m) are illustrative and not exhaustive, more so, because subclause (2) of section 11 of the SEBI Act does not dilute the power vested in the SEBI under sub-section (1) thereof. While interpreting sub-section (1) of section 11 of the SEBI Act, it has already been concluded hereinabove, that the measures to be adopted by the SEBI in carrying out its obligations are couched in open-ended terms having no pre-arranged limits, to the discretion of the SEBI. Likewise, sub-sections (2A) and (4) of section 11 of the SEBI Act, commence with the words "without prejudice to the provisions contained in sub-section (2)". This establishes the legislative intent i.e., that sub-section (2A) and (4) are subservient to sub-section (2) of section 11. But it has already been concluded above, that sub-section (2) is subservient to sub-section (1) of section 11. Therefore both sub-sections (2A) and (4) will inferentially be subservient to sub-section (1) of section 11 of the SEBI Act. Therefore, the obligation cast on SEBI, to protect the interest of investors in securities, to promote the development of the securities market, and to regulate the securities market " by such measure as it thinks fit", remains undiluted even by sub-sections (2A) and (4) of Section 11 of the SEBI Act."

Therefore, it can be safely said that notice dated 28.03.2018 issued by the BSE informing the action against ELCs, who are non-compliant of SEBI Circulars dated 10.10.2016 and 01.08.2017, is under the delegated powers of SEBI, under Section 11 of the SEBI Act.

57. In these circumstances, when SEBI having no restrictions in delegation of its power and functions under Section 11(1) of the SEBI Act, then certainly there was no need to pass any independent order directly by SEBI debarring the resolution applicant from accessing the securities market. More so Section 29A(f) of the Code

does not provide for an order to be passed by SEBI prohibiting the resolution applicant from trading in securities or accessing the securities market. Admittedly, no such order was passed by SEBI expressly and it was also not required to be passed directly by SEBI when it has got ample open-ended powers to delegate its regulatory function to any other authority including BSE.

58. It is worthwhile to note that there are admissions on the part of resolution applicants about the prohibition by SEBI in the information memorandum dated 04.11.2020 submitted to MSEI under the heading prescribed “prohibition by SEBI”, it is admitted by Resolution Applicants that there was prohibition by SEBI debarring the Resolution Applicants from accessing the capital market/securities for a period of 10 years. However, later on a reference has been made to BSE by the resolution applicants that it has been inadvertently mentioned but this reference on the part of the Resolution Applicants is of no consequence because firstly, the same was filed during the course of hearing the arguments in this case and, the same has been made to fill up the lacuna in the case of resolution applicant. Secondly, there is no provision under the law that the information memorandum dated 04.11.2020 submitted by the resolution applicants with MSEI, which has been uploaded, intimated and its benefits have also been taken by the resolution applicants then such clarification is tenable at this juncture stating that ‘Prohibition by SEBI’ is written inadvertently in the information memorandum. Similarly, when Resolution Applicants were debarred by the notification of BSE dated 28.03.2018 then on representation by the Resolution Applicants to BSE, it was mentioned that names of the Resolution Applicants have been shown in the debarred entity list of SEBI, Later on, vide its internal communication dated 16.02.2021, BSE reversed and

revoked the debarred status w.e.f. 16.02.2021 and not retrospectively. It means that Resolution Applicants were not eligible under Section 29A(f) of the Code on 13.02.2020, which was the last date of submission of the resolution plan. Consequently, it was debarred by BSE on the delegated power of SEBI to access the securities market. In view of the above admissions on behalf of the Resolution Applicants would attract the doctrine of estoppel against them to say that there was no prohibition by or on behalf of SEBI.

59. Although, it is argued by learned counsel for the resolution applicants that BSE did not have any delegation of power of SEBI to pass any order of prohibition but this contention of learned counsel for the Resolution Applicants does not hold the water because as already discussed hereinbefore that to carry out its obligations, SEBI has wide powers to delegate its function under Section 11(1) of the SEBI Act to protect the interest of investors in securities market and to regulate the securities market by such measures as it thinks fit. Although it is the contention of learned counsel for the Resolution applicants that prior show cause notice and due procedure could have been followed by SEBI before prohibiting the Resolution Applicants from accessing the securities market, yet this contention of learned counsel for the Resolution Applicants is again not plausible because it was not a case of adjudicatory or quasi-judicial powers of SEBI, but it was only a case of delegation of administrative power to the BSE to regulate the securities market. Thus, no individual or specific order was required to be passed in each and every case by SEBI. The authorities of ***National Depositories Ltd. Versus Securities and Exchange Board of India*** (supra) and ***Province of Bombay versus Kushaldar S. Advani*** (supra) relied upon by the learned counsel for the Resolution

Applicant are not applicable to the facts and circumstances of the case in hand. Thus, the circular vide which SEBI informed to the BSE to ensure the compliance of the directions passed by the SEBI, Resolution Applicants were non-compliant of the direction given by SEBI, therefore, it was rightly and legally barred by BSE from accessing the securities market.

60. It may be further noted that according to the applicant, it had come to know on 29.12.2020 from SBI when a proposal for raising fund was submitted that promoters and directors of the resolution applicants are in debarred list of BSE from accessing the capital market for 10 years. Then a representation dated 28.01.2021 was made to BSE, upon which BSE revoked its recommendation on 16.02.2021 regarding the restraint status of resolution applicant. Thus, the resolution applicants were not a non-compliant of the circular issued by BSE, however, this contention of the Resolution Applicants is devoid of any legal force because firstly its admission on their part that Resolution Applicants were in the debarred list of BSE from accessing the securities market for 10 years. Secondly, it is settled law that the eligibility of resolution applicants is to be seen on the date of submission of the resolution plan and not thereafter. In the case in hand, the last date for submission of the resolution plan was 13.02.2020 and admittedly, on that date resolution applicants were ineligible under Section 29A(f) of the Code. Thus, it can be safely concluded that under the SEBI Act, it enjoins two types of powers first is quasi-judicial power and second is regulatory power. So far as quasi-judicial powers of SEBI are concerned, a due process of law is to be adopted by SEBI before passing any order of punishment or penalty, but in the case in hand, it is the open-ended regulatory power of SEBI, which has been delegated to BSE, vide which Resolution

Applicants have been debarred to access the capital market for 10 years. Thus, it can be safely held in unequivocal terms that Resolution Applicants were ineligible under Section 29A(f) of the Code and deemed to be prohibited by SEBI from trading the securities or accessing the securities market.

61. Although, it is argued by learned counsel for the Resolution Applicants that impugned circular does not even use the word 'prohibition' and under Section 11(4) of the SEBI Act, used words 'prohibition' and 'restraint' distinctively yet this contention of learned counsel is not plausible because both these words can be used interchangeably being synonyms. The word 'prohibit' and 'restraint' as per legal glossary issued by Ministry of Law Justice and Company Affairs, available at link https://legislative.gov.in/legal-glossayry, prohibitory order is an order which operates in restraining a party from doing an act which if done will result in irreparable injury to the other side. Moreover, as per **Black's Law Dictionary** the words '***prohibition'*** and '***restrain'*** are being used interchangeably.

62. Now coming to the third point of determination, whether the information received from SEBI by the third party under the RTI Act, filed in IA No.154 of 2022 is having some bearing upon the eligibility part of successful resolution applicants. At the outset, it is pertinent to mention that the said information was never sought by resolution applicants for clarification under the RTI Act. Secondly, this information has come into picture after the arguments were completed and orders were reserved. In the present case, the said application has been moved by one of the prospective investors Ms. Priyanka Sharma under the RTI Act before SEBI regarding administrative circulars dated 10.10.2016, 01.08.2017 as to whether SEBI prohibited/debarred any company, its promoters or directors under the same. It has

been clarified by SEBI and shown correctly that it has not passed any order debarring or prohibiting any company or its promoters/directors under the said circulars. As discussed above, while taking into consideration the point of eligibility of Resolution Applicants at the time of submitting the resolution plan, it is evident that no such order was every passed by SEBI at any point of time on the basis of such circulars. The said order could have been passed under the quasi-judicial powers of the SEBI, but so far as regulatory functions of SEBI is concerned, the said power stands delegated to BSE as so clarified by SEBI in its reply to the application under the RTI Act that SEBI by circular dated 01.08.2017, *inter alia*, states that the concerned stock exchange and depositories shall coordinate with each other and ensure compliance with the circular requirement. Therefore, it can be said that under the quasi-judicial function of SEBI, no such order was passed but under the regulatory functions, this power was delegated to the stock exchange to pass the appropriate order debarring the defaulter/non-compliant of the said circular issued by SEBI.

63. In these circumstances, the said information shared by SEBI under the RTI Act has got no bearing on the eligibility criterion of the Resolution Applicants at the time of submission of resolution plan.

64. Before parting with this judgment, a pertinent question crops up whether the Resolution Professional has discharged his duty diligently about verifying the eligibility of resolution applicants before submission of resolution plan to committee of creditors for discussion and approval.

65. As already discussed hereinbefore, while referring to the decision of Hon'ble NCLAT, Principal Bench, New Delhi in ***Canara Bank's*** case (supra), it is the bounded duty of the Resolution Plan to scrutinize the resolution plan furnished by numerous applicants is complete in all aspects, before presenting it to the committee of creditors. A Resolution Professional is not required to take any decision, but he is to confirm that the Resolution Plan does not violate any of the provisions of Law for the time being in force (including Section 29A of the Code). Elaborating further the role of Resolution Professional, it is worthwhile to note that admittedly the restraint order of BSE debarring the resolution applicant from accessing the securities market for 10 years was in the public domain w.e.f. 28.03.2018 i.e. date of notification of BSE. It is stated by learned counsel for the Resolution Applicants that he came to know about the said notification on 29.12.2020 from SBI when proposal for raising funds was submitted that promoters and directors of the Resolution Applicant are in debarred list of BSE from accessing capital market for 10 years. It means that the said information was in public domain and it was incumbent upon the Resolution Professional before submitting the resolution plan to the committee of creditors that a Resolution Applicant was eligible under Section 29A(f) of the Code as per its affidavit filed with the resolution plan under Section 30(1) of the Code. Admittedly, the Resolution Applicant is an ELC and the data related to the said company was available on the website of BSE. There is no averment and evidence placed on record on behalf of the Resolution Professional that before submitting the resolution plan to committee of creditors for approval, he had verified the antecedents of the resolution applicants from the websites of SEBI and BSE. If SBI has accessed this information from the BSE website, then certainly Resolution Professional could have also done so, if acted

diligently. In these circumstances, it can be safely concluded that Resolution Professional has failed to discharge its duties diligently about verifying the eligibility of Resolution Applicant.

66. The last question for determination before this Bench is whether the matter be referred back to the committee of creditors for determining the question of eligibility or this Bench may decide the eligibility of the Resolution Applicant and reject the resolution plan submitted by the Resolution Applicant being ineligible under Section 29A(f) of the Code. This question has been dealt with by the Hon'ble NCLAT in ***JSW Steel Ltd. versus Mahender Kumar Khandelwal and Others; [2020] ibclaw.in 217 NCLAT,*** wherein the Hon'ble NCLAT has dealt with the issue as to who are the Competent Authorities to decide ineligibility of the Resolution Applicant under Section 29A? The Hon'ble NCLAT has held that:-

a. The Resolution Professional in terms of Section 30(1) is to find out whether such statement has been made or not;

b. The Committee of Creditors is empowered to decide whether the Resolution Applicant is ineligible in terms of Section 29A;

c. The Adjudicating Authority while passing order under Section 31 can find out whether the Resolution Applicant fulfils the conditions under Section 30(2) which includes Section 30(2) (e) and in terms of Section 29A and can decide.

Thus, from the careful perusal of the said finding of the Hon'ble NCLAT, this Bench is competent to decide issue of ineligibility of Resolution Applicants at the time of submitting the Resolution Plan under Section 29A(f) of the Code as it has not been decided by the Committee of Creditors when the Resolution Plan was put before it by the Resolution Professional for approval.

67. To sum up in the light of discussions foregoing and reasons assigned hereinbefore Resolution Applicants are declared ineligible under Section 29A(f) of the Code at the time of submission of the resolution plan and resolution plan submitted by the Resolution Applicants stands rejected, vide separate order of even date passed in IA No.458 of 2020. Consequently, to avoid the liquidation of the corporate debtor, period of Corporate Insolvency Resolution Process is extended by 90 days for exploring the possibility of resolution of the corporate debtor. Accordingly, matter is referred back to Committee of Creditors, which is ordered to be reinstated and revived to make another attempt for consideration of other resolution plans in accordance with law.

68. So far as the prayer of applicant/Resolution Professional to take action for filing false affidavit under Section 30(1) of the Code stating compliance of Section 29A and forfeiture of performance security; forfeiture of EMD and direction against respondents to deposit back EMD of Rs,15,00,000/-, imposing penalty of Rs.2 Crores under Section 235A, direction for prosecution against the respondents is concerned, it is the case of resolution applicants/respondents that they had received this information of debarring them from accessing the securities market from SBI on 29.02.2020, then it cannot be said that they had deliberately concealed this information while submitting the resolution plan and filing of affidavit under Section 30(1) of the Code. If this allegation is imputed upon the Resolution Applicants that the said information was available on the website of BSE and was in public domain then certainly this imputation would also be equally applicable to the

applicant/Resolution Professional as he could have also accessed the information from the website of BSE if SBI could have accessed it. Be that as it may, this prayer of applicant/Resolution Professional cannot be allowed and is hereby declined. Thus, IA No.342 of 2021 is allowed and disposed of accordingly.

IA No.456 of 2021 for impleadment as party in IA No.342/2021 is dismissed, however, alternative prayer of the applicant is allowed for extending the CIRP period by 90 days and reinstatement of committee of creditors as ordered above. Consequently, IA No.154 of 2022 stands dismissed.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

May 24, 2022
MK