

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

I.A. (IB) No. 68/KB/2024  
In  
C.P. (IB) No. 1518/KB/2020

***An Application under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016, read with Rule 11 of the National  
Company Law Tribunal Rules, 2016.***

**IN THE MATTER OF:**

**Aldous Commodities Private Ltd                      ... Operational Creditor.**

***Versus***

**Aanchal Ispat Limited    ... Corporate Debtor.**

***And***

**IN THE MATTER OF:**

**Mr. Mukesh Goel, Suspended Promoter of Aanchal Ispat Ltd  
(under CIR Process)**

**... Applicant.**

***Versus***

**CA Santanu Brahma, Resolution Professional of Aanchal Ispat  
Limited (under CIR Process)**

**... Respondent No. 1.**

***And***

**Committee of Creditors of Aanchal Ispat Ltd.**

**... Respondent No. 2.**

**Date of Pronouncement: February 29, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

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**Appearance:**

**For the Resolution Professional: Mr. Shaunak Mitra, Adv.  
Mr. Manas Das, Adv.**

**For the Applicant: Mr. Joy Saha, Sr. Adv.  
Mr. Dripto Majumdar, Adv.  
Mr. Chandan Mohata, Adv.**

**For the CoC: Ms. Darshana Mazumder.**

**ORDER**

**PER Bidisha Banerjee, Member (Judicial)**

1. This Court is congregated through hybrid mode.
2. Heard the Learned Counsels for both parties.

***Brief in nutshell:***

3. This instant application has been preferred by **Mr. Mukesh Goel**, Suspended Promoter of Aanchal Ispat Ltd (under CIR Process) against **CA Santanu Brahma, the Respondent Professional of the Corporate Debtor, Aanchal Ispat Ltd.** and the **Committee of Creditor of the Corporate Debtor, Aanchal Ispat Ltd.** under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" seeking the following direction from this Adjudicating Authority as under:

*a. An order be passed directing the Respondents to relax and/or dispense with the eligibility criteria in respect of the Applicant herein in submitting the EoI pursuant to the*

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*issuance of Form-G by the Respondent No. 1 on December 30, 2023, considering that the Applicant is a promoter of the Corporate Debtor which is an MSME Entity.*

- b.** The Applicant may be permitted to submit its EoI pursuant to publication of the FORM-G/ EoI dated 30.12.2023 considering that the Applicant is promoter of the Corporate Debtor which is an MSME Entity.*
- c.** Pending disposal of the present application, the Form G/ EoI published on 30.12.2023 by the Respondent No. 1*
- d.** Any order may deem fit and proper.*

***Brief Background***

- 4.** The Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") was initiated against the Corporate Debtor vide Order dated 12.09.2023 passed by this Adjudicating Authority. Mr. Sriram Mittal has appointed as the Interim Resolution Professional (hereinafter referred to as the "IRP") of the Corporate Debtor. Subsequently an application was preferred to replace the IRP and apropos the same, the Respondent No. 1 namely Mr. Santanu Braham herein was thereby appointed as the Resolution Professional ("hereinafter referred to as "RP") vide order dated 17.11.2023.

***Submissions by the Learned Senior Counsel, Shri Joy Saha for the Applicant:***

- 5.** In course of arguments the Learned Senior Counsel would submit that the Corporate Debtor herein is MSME registered under the MSMED Act, 2006, and the Applicant herein is the suspended

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promoter of the MSME Corporate Debtor. That pursuant to the provisions of the IBC, 2016, the Respondent No.1 has taken necessary steps for the CIRP of the Corporate Debtor herein and as such had published a Form "G" whereby Expression of Interest has been invited on 30.12.2023 along with corrigendum published on 01.01.2024.

- 6.** That the relaxation and/or exemptions apropos the submission of EOI has been rejected by the RP and CoC.
- 7.** That Section 29A of the Code attaches the ineligibility to the promoters to become a resolution applicant(s) and thus, the promoters are ineligible to submit a resolution plan.
- 8.** The Second Amendment introduced section 240A provides certain relaxations to the MSME promoters giving them immunity from the restriction enshrined in section 29A of the Code.
- 9.** That the intention behind the enactment of the provision was to grant exemptions to corporate debtors which are MSME(s), by permitting a promoter who is not a wilful defaulter or covered under any other specific disqualification as provided under section 29A, to bid for the resolution plan of an MSME.
- 10.** This Application has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking direction upon the Respondent to inter alia relax and/or exempt

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with the net worth eligibility criteria as set under the EOI  
Published.

- 11.** Per contra, the Learned Counsel Shri Shaunak Mitra, appearing on behalf of the RP, would vehemently oppose the prayer.

***Gist of submissions of the Learned Counsel for the RP:***

- 12.** The Learned Counsel would take us through the minutes of 4<sup>th</sup> CoC meeting, relevant portion annexed at Page 123 to the Application, where the exemption in respect of Net Worth criteria and waivers of EMD amount for the applicant has been discussed. The extract of the discussions is reproduced in verbatim as under:

*“8. In this context, the RP acknowledged the fact that there are judicial precedencies' where the MSME Promoters are given exemption in respect of Net Worth criteria and hence the same be considered by the CoC at its discretion.”*

*“9. On the question of extending waiver on EMD amount, the RP states that deposit of the EMD amount, somewhat, tests the extent of financial solvency possessed by the MSME Promoter which is very important for a viable resolution plan and to attain the objective of value maximization of the CD's asset especially where public money is involved - as the CD is a listed concern with 67.79% public holding (as per September 2023 reporting with BSE Ltd.). Such waiver shall set free the MSME Promoter thereby raising the probability of unwanted litigations which shall disrupt the timely resolution of the CD Citing such reasons, the RP recorded his dissentient on waiver of EMD amount and left it to CoC to take the final call on the matter.”*

- 13.** Further, the Learned Counsel, for the RP took us through the minutes of 5<sup>th</sup> CoC meeting, relevant portion whereof, annexed at Page 131 to the Application, is as under:

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*“7. In this respect, RP stated that exemption and relaxation may be granted with respect to Net Worth criteria. However, the RP expresses his disagreement in respect of providing exemption for EMD for reasons which have already been cited in the previous (40) CoC meeting. **The RP also added that granting such exemptions and relaxations are the prerogative of CoC members and hence the final decision of the CoC shall prevail.**”*

*“8. After detailed discussion and deliberation on the matter, the following resolution has been decided to put for e-voting of the CoC members.”*

**14.** The Learned Counsel would assert that in respect of exemption of Net Worth provisions, the CoC does not have any objection, however, waiver of the EMD criteria should not be allowed as furnishing the EMD amount is the key factor to testify the extent of financial solvency possessed by the MSME Promoter which is very important for a feasible and viable resolution plan and to attain the objective of value maximization of the asset of a corporate insolvent person especially where public money is involved.

**15.** We have considered the rival contentions and arguments made by the Learned Senior Counsel and Learned Counsel for both the parties and perused the documents and records placed before us.

***Issue that cropped up for determination:***

**16. Whether the eligibility criteria pursuant to the ‘Net Worth’ and ‘EMD amount’ can be relaxed/waived for a suspended promoter of an MSME Corporate Debtor, to bid for its**

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**Resolution Plan in terms of Section 29A read with Section  
240A of the I&B Code.**

***Analysis and Findings:***

**17.** It is evident that the Corporate Debtor herein has got the Udyam Registration as “Medium Enterprise” under MSME Act on 03.06.2021. Copy of the MSME Certificate is annexed at page 136-139 to the application.

**18.** It is further evident that in the 5<sup>th</sup> CoC meeting held on 12.12.2023, the CoC has unanimously decided and approved by **100%** of voting shares the Eligibility Criteria of a Resolution Applicant for submitting its Resolution Plan and the other terms for the purpose of issuing the ‘**Invitation for EoI**’, which are as follows: -

**a) Net Worth Eligibility Criteria:**

- (i)** The prospective resolution applicant being an individual/firm/body Corporate/Joint Venture/Consortium should have a minimum net worth, at individual or group level, of [INR 55 Crores] Only or more as per the latest audited financial statement and for individuals - 'net worth certificate issued by a practicing Chartered Accountant;
- (ii)** The applicant being PE funds/Financial institutions/NBFCs/Other Financial Investors / Alternate Investment Funds should have a minimum asset under management (at individual or group level) of [INR 55 Crores] Only or more as per the latest audited Financial Statement;
- (iii)** In the case of a joint venture or consortium or an SPV representing or including any of the participants from (i) or (ii) above, then either of

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the participants and/or jointly needs to qualify any one of the criteria i.e., either the minimum net-worth or minimum Assets under Management.

**b) Non-Interest bearing Refundable 'Earnest Money Deposit' (EMD):**

Non-Interest bearing Refundable EMD for an amount of [INR 2 Crores] Only to be paid by prospective Resolution Applicant at the time of submission of the Expression of Interest in accordance with the timeline specified in the Form G. In the event where the resolution plan submitted by the Resolution Applicant is approved by the Hon'ble Tribunal, then the said EMD amount shall get adjusted against the payment due as per the approved Resolution Plan.

**c) There shall be no Process Participation Fees.**

- 19.** It would be evident that the resolution was placed for deliberation of the CoC for exemption/ relaxation in respect of Rs. 55 Crore Net Worth Criteria as well as furnishing of EMD amount for submission of EoI/ Resolution Plan in case of an MSME Promoter of the Corporate Debtor sought for. We have noted that that resolution has been unanimously rejected by the CoC by **100%** Voting shares. Copy of the Minutes of the 5<sup>th</sup> CoC meeting convened on 12.12.2023 is annexe at Page 127-133 and the Copy of the Voting result is annexed at Page 150-155 to the application.
- 20.** Before proceeding to consider the present issue, it would be appropriate to go through the statutory provisions contained in Section 29A and Section 240A of the I&B Code, which are reproduced in verbatim herein below:

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**Section 29A of the I&B Code debars a category of persons to be a Resolution Applicant and the following as:**

*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) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*

*(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a **promoter**, classified as nonperforming asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:*

*Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan; Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.*

**xxx**

**xxx**

**xxx**

**Section 240A: Application of this Code to micro, small and medium enterprises.**

*(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process [or pre-packaged insolvency resolution process] of any micro, small and medium enterprises.*

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(2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

**(a) not apply to micro, small and medium enterprises; or**

**(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.**

(3) A draft of every notification proposed to be issued under sub-section (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.

(5) The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.

(6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

*Explanation.* — For the purposes of this section, **the expression “micro, small and medium enterprises” means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).**

21. Further, we would refer the judicial precedents to consider the present issue:

a. **Swiss Ribbons Pvt. Ltd. vs. Union of India** reported in (2019)

**4 SCC 17: MANU/SC/0079/2019:**

“79. *The ILC Report of 2018* exempted these industries from Section 29A(c) and 29A(h) of the Code, their rationale for

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*doing so being contained in paragraph 27.4 of the Report, which reads as follows:*

*27.4 Regarding the first issue, the Code is clear that default of INR one lakh or above triggers the right of a financial creditor or an operational creditor to file for insolvency. Thus, the financial creditor or operational creditors of MSMEs may take it to insolvency under the Code. However, given that MSMEs are the bedrock of the Indian economy, and the intent is not to push them into liquidation and affect the livelihood of employees and workers of MSMEs, the Committee sought it fit to explicitly grant exemptions to corporate debtors which are MSMEs by permitting a promoter who is not a wilful defaulter, to bid for the MSME in insolvency. **The rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants.***

*80. Thus, the rationale for excluding such industries from the eligibility criteria laid down in Section 29A(c) and 29A(h) is because qua such industries, other resolution applicants may not be forthcoming, which then will inevitably lead not to resolution, but to liquidation.”*

**(Emphasis Added)**

In arguably, exemption has already been accorded to the MSME promoter to participate in the bid to acquire the MSME to save it from insolvency as well as from liquidation. Now, whether such promotion would be entitled to a further exemption of EMD or Net worth, in addition to an exemption granted already in terms of Section 240 of the I&B Code, requires determination.

- b.** Further, we rely upon the judgment passed by the Hon'ble NCLAT, New Delhi in the case of **Saravana Global Holdings**

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**Ltd. v. Bafna Pharmaceuticals Ltd.**, being **Company Appeal (AT) (Insolvency) No. 203 of 2019**, reported in **MANU/NL/0280/2019** at Para 21 and 22 that:

*“21. The Parliament with specific intention amended the provisions of the ‘I&B Code’ by allowing the Promoters of ‘MSME’ to file ‘Resolution Plan’. The intention of the legislature shows that the Promoters of ‘MSME’ should be encouraged to pay back the amount with the satisfaction of the ‘Committee of Creditors’ to regain the control of the ‘Corporate Debtor’ and entrepreneurship by filing ‘Resolution Plan’ which is viable, feasible and fulfils other criteria as laid down by the ‘Insolvency and Bankruptcy Board of India.’”*

*“22. Therefore, we hold that in exceptional circumstances, if the ‘Corporate Debtor’ is MSME, it is not necessary for the Promoters to compete with other ‘Resolution Applicants’ to regain the control of the ‘Corporate Debtor’.”*

**(Emphasis Added)**

c. In **R. Raghavendran vs. C. Raja John** in **Civil Appeal No.2552/2022** reported in **(2023) ibclaw.in 107 SC**, the Hon’ble Apex Court has held that:

*“8. We, thus, turn to the relevant portion of the judgment in Bafna’s case passed by the Tribunal as to really appreciate the context in which the observations were made in paragraph 22 of that judgment, it is necessary to see how that judgment proceeded from paragraph 18 to 22;*

*“18. Therefore, it is clear that ‘I&B Code’ envisages maximization of value of the assets of the ‘Corporate Debtor’ so that they are efficiently run as going concerns and in turn, will promote entrepreneurship. The preamble*

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does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no 'Resolution Plan' or the 'Resolution Plan's submitted are not up to the mark.

19. Admittedly, the 'Corporate Debtor' is a 'MSME' and the promoters are not ineligible in terms of Section 29A of the 'I&B Code'. Therefore, it is not necessary for the 'Committee of Creditors' to find out whether the 'Resolution Applicant' is ineligible in terms of Section 29A or not.

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

**21. The Parliament with specific intention amended the provisions of the 'I&B Code' by allowing the Promoters of 'MSME' to file 'Resolution Plan'. The intention of the legislature shows that the Promoters of 'MSME' should be encouraged to pay back the amount with the satisfaction of the 'Committee of Creditors' to regain the control of the 'Corporate Debtor' and entrepreneurship by filing 'Resolution Plan' which is viable, feasible and**

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**fulfils other criteria as laid down by the ‘Insolvency and Bankruptcy Board of India’.**

22. *Therefore, we hold that in exceptional circumstances, if the ‘Corporate Debtor’ is MSME, it is not necessary for the Promoters to compete with other ‘Resolution Applicants’ to regain the control of the ‘Corporate Debtor’.*”

9. A reading of the aforesaid shows that it begins with the fundamental principle that the Court envisages maximization of value of assets of the corporate debtor. Thereafter, it proceeds to discuss the scenario of a corporate debtor, which is an MSME, qua the ineligibility in terms of the inapplicability of Section 29A (c) & (h) of the Code to a promoter.

10. *The discussion proceeds to the aspect of Committee of Creditors (for short ‘CoCs’) considering the feasibility, viability and such other requirements as have been specified by the Code and observes that if it proposes maximization of assets as feasible, viable and fulfills all requirements as specified by the Code, it is not necessary for the CoCs to follow all the procedures under the Corporate Insolvency Resolution process. The example given thereafter is, if a case has been settled before the Constitution of a CoCs or in terms of Section 12A of the Code on the basis of an offer given by the promoter, in such a case, the procedure for calling of applications of the resolution applicants etc. are not followed and they would be in a position to keep the concern as a going concern and the CoCs would accept the terms of settlement and approve it by 90%. This, as one may say, is a special privilege for MSMEs. It is, thereafter, in paragraph 22, penned down, that in “exceptional circumstances” if a corporate debtor is an MSME, it is not necessary for promoters to compete with other resolution applicants to retain control of the corporate debtor.*

11. *In the impugned judgment, it can hardly be disputed that there is no discussion on the special circumstances other than the reference to judgment in Bafna’s case. The impugned judgment is predicated on a broad reasoning as if ipso facto there is no need to call other proposals if it is an MSME. In view of the larger context it would have, we clearly observe and hold that this is not the correct position of law.*

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*12. This is more so as in the factual scenario of Bafna's case, the observations were made in the context of (a) before the constitution of CoCs or (b) in terms of Section 12A of the Code on the basis of an offer given by the promoter in such a case.*

*13. This is to clarify the legal principles so that there is no confusion in future in appreciating the context of the observations made in Bafna's Case.*

*14. We are, thus, clearly of the view that the appellant cannot be faulted for calling for other proposals in which the proposal given by respondent No.1 was also to be examined, put them to voting before the CoCs and declare the results.”*

**(Emphasis Added)**

- d.** Further, we would refer the decision rendered by this Adjudicating Authority in **Mr. Rajesh Kumar Damani Vs. Mr. Jitendra Lohia (M/s Pami Metals Pvt. Ltd. – Corporate Debtor)** in **IA(IBC) No. 900 /KB/2022 In C.P.(IB) No. 64/KB/2019** reported in **(2022) ibclaw.in 792 NCLT** that:

*“18. We have gone through the pleadings and heard the Ld. Counsel for the RP and the Ld. Senior Counsel for the applicant. The present situation has arisen mainly because of the plan being submitted without the requisite EMD. Even though the plan has been submitted and even considered by the CoC but was termed as non-compliant primarily due to lack of deposition of the EMD as required. Noting the fact that after initial contentions of exemption, the applicant had offered to deposit the necessary EMD, the present case essentially can be seen as the one seeking for condoning of delay in depositing the Earnest Money. Today when the matter was heard, the Ld. Senior Counsel appearing for the applicant stated that he was prepared to deposit the required amount of EMD provided he gets an assurance that his plan would be considered by the CoC afresh.*

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21. [...] We also note the submissions of the applicant that even though the CoC did not consider the EMD exemption available to the MSME, however considering the various exemptions and relaxations given to the MSME including the exemption provided in Section 240A of the code to MSME sector and relying on the ratio of the **Swiss Ribbons(supra)**, we are inclined to grant the relief sought as set out herein.

22. Thus keeping in mind the main objective of the Code which is the maximization of the value of the Corporate Debtor vis-à-vis the facts and circumstances of the case as brought out herein above. We hereby revert the matter back to CoC and RP to consider the resolution plan submitted by the applicant subject to depositing of required EMD of Rs. One Crore within two days from the date of order.”

**(Emphasis Added)**

- 22.** It is a case where no exemption even to depositing EMD was given covering to the case at hand, the resolution for exemption/relaxation in respect of Rs. 55 Crore Net Worth Criteria as well as furnishing EMD amount for submission of EoI/ Resolution Plan of the Promoter of the Corporate Debtor, being a MSME entity has been unanimously rejected by the CoC by **100%** Voting shares.
- 23.** We are sentient of the objectives the I&B Code as enshrined in the Preamble of the Code is to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

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- 24.** We have noted the Report of Insolvency Law Committee, 2018, for brevity “ILC Report” that the rationale for the exempting MSME entity from competing with other Resolution Applicants as the MSMEs are the bedrock of the Indian economy. The intent is not to push them into Insolvency or liquidation and affect the livelihood of employees and workers of MSMEs rather promote their entrepreneurship by granting exemptions to corporate debtors which are MSMEs by permitting a promoter who is not a wilful defaulter, to bid for the MSME in insolvency. The rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants.
- 25.** Hence, we are of the considered view, keeping the objective of the Code as well as the ILC Report and the decisions cited above, that as various relaxations have already been provided under Section 240A of the Code, further, relaxation to satisfy the financial solvency possessed by the MSME Promoter will not serve the object of the code. To ensure a feasible and viable resolution plan to revive the business of the Corporate Debtor and to attain the objective of value maximization of the asset of a corporate insolvent person especially where public money is involved, an exemption of from satisfying the Net worth is uncalled for.
- 26.** Hence, we allow the relaxation and dispensation with the eligibility criteria of “Net Worth” in respect of the Applicant but, allow the Applicant to submit its “EoI” pursuant to the publication of the

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**“Form – G” dated 30.12.2023 upon furnishing and depositing  
the required non-Interest bearing Refundable EMD.**

- 27.** In terms directions supra, the instant Interlocutory Application being **I.A. (IB) No. 68/KB/2024** is **disposed of** accordingly.
- 28.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on the 29th Day of February, 2024.**

Bose, R. K. [LRA]/ Tiwari, V. [LRA]