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

IA No.348 of 2021 & IA No.155/2022
In
CP(IB) No.35/Chd/HP/2018
(Admitted)

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

<u>In the matter of</u>:-
Phoenix ARC Private Limited …Financial Creditor

Versus

GPI Textiles Limited …Corporate Debtor

<u>And in the matter of</u>:- **<u>(IA No.348/2021)</u>**
M/s Shreeji Cotfab Limited
Through its Director, Pankaj Bhatia,
5/4, Ground Floor, Singh Sabha Road,
Block No.41, Shakti Nagar, New Delhi- 110007

…Applicant

Versus

1. GPI Textiles Limited,
   through Resolution Professional, Jalesh Kumar Grover,
   First Floor (above Yes Bank) SCO 818, NAC Manimajra,
   Chandigarh- 160101

2. Aggarsain Spinners Limited
   Through its Director, Ramesh Kumar,
   2nd Floor, SCO No.404, Sector 20, Panchkula, Haryana

…Respondents

<u>And in the matter of</u>:- **<u>(IA No.155 of 2022)</u>**
Aggarsain Spinners Limited,
Villate Barauli, G.T., Road, Panipat- 132103,
Email: aggarsainspinners@gmail.com,
Through Mr. Sunny Garg, Managing Director

…Applicant

Versus

1. GPI Textiles Limited,
   Bharatgarh Road, Nalagarh, District Solan, Himachal Pradesh- 174101
   Through Mr. Jalesh Kumar Grover, Resolution Professional,
   Email: jkgrover27@gmail.com

2. M/s Sreeji Cotfab Limited,

Through its Director, Pankaj Bhatia, 5/4, Ground Floor,
Singh Sabha Road, Block No.41, Shakti Nagar, New Delhi- 110007
Email: accts.shreeji@gmail.com

…Respondents

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.348 of 2021

For the Applicant	:-	Mr. Aalok Jagga, Advocate Ms. Pallavi Singh, Advocate Mr. A.P.S Madaan, Advocate
For Respondent No.1	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate
For Respondent No.2	:-	Mr. Atul Sood, Advocate

IA No.155 of 2022

For the Applicant	:-	Mr. Atul Sood, Advocate
For Respondent No.1	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate
For Respondent No.2	:-	Mr. Aalok Jagga, Advocate Mr. A.P.S. Madaan, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

Both these applications i.e. IA No.348 of 2021 and IA No.155 of 2022 are taken up together for discussion, being interrelated and interconnected.

IA 348/2021

This application has been filed on behalf of the Unsuccessful Resolution Applicant, namely, M/s Shreeji Cotfab Ltd. (hereinafter referred to as the '**applicant**') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the '**Code**') against the approval of plan being barred under Section 29A(f) of the Code, seeking, *inter* alia, the following reliefs:-

a) *Pass any order, direction for rejecting the Resolution Plan in view of the disqualification provided under Section 29-A (f) of the Insolvency and Bankruptcy Code, 2016;*
b) *Direct the Resolution Professional to place the present Applicant's Resolution Plan for consideration before the Committee of Creditors;*

2. Brief facts necessary for adjudication of the present application are that M/s Phoenix Arc Private Limited ('**financial creditor**') had filed an application under Section 7 of the Code before this Tribunal for initiation of Corporation Insolvency Resolution Process ('**CIRP**') against M/s GPI Textiles Limited '**corporate debtor**'). This Tribunal vide its judgment dated 06.07.2018 admitted the petition filed by the financial creditor and kept the matter for 12.07.2018 for appointment of Interim Resolution Professional. Vide order dated 12.07.2018, Mr. Jalesh Kumar Grover was appointed as Interim Resolution Professional ('**IRP**'). Pursuant to the majority decision of the Committee of Creditors Mr. Jalesh Kumar Grover, IRP was confirmed as Resolution Professional.

3. Through the instant application, the applicant seeks to challenge the approval of the Resolution Plan filed by the Successful Resolution Applicant (M/s Aggarsain Spinners Limited and Ramesh Kumar, Promoter of M/s Aggarsain Spinners Limited) (hereinafter referred to as 'Resolution Applicant') in pursuance to Form G inviting Expression of Interest published on 22.12.2018 on the ground of disqualification as provided under Section 29 A (f) of the Code.

4. It is stated by the applicant that as per the information available on public domain, resolution applicant, namely, Aggarsain Spinners Ltd., was an Exclusively Listed Company ('ELC') and had been de-barred by Securities Exchange Board of

India ('SEBI') from accessing the securities market w.e.f. 27.03.2018 till further orders, for a period of 10 years, due to non-compliance of SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated 10.10.2016 and as such, the resolution applicant was ineligible under Section 29 A (f) of the Code.

5. It is alleged by applicant that resolution applicant was aware of the dissemination in the year 2017 itself, as is evident from the closing balance sheet for the month of March, 2017 in which it is mentioned that '*consequent to the closure of regional stock exchanges, name of your company has been moved to the Dissemination board of the Bombay Stock Exchange*'. The SEBI has given an option to such companies whose name has moved to Dissemination board either to give an exit option to the shareholders or to get the Company listed at exchange having national wide trading. Since, Resolution Applicant was aware of the dissemination in the year 2017 itself. Thus, it is submitted that he had further deliberately concealed the true facts from the Resolution Professional and Committee of Creditors as well as this Tribunal.

6. It is further alleged by the applicant that the Resolution Applicant at the time of filing/presenting the Resolution Plan has filed a false affidavit stating his compliance to Section 29 A of the Code even though at the time of filing the said affidavit he was aware that the facts were to the contrary.

7. It is stated by the applicant/unsuccessful resolution applicant that as per the information available in public domain on the website of www.bse.com and www.nseindia.com, it is clarified that due to non-compliance of SEBI circular dated SEBI/HO/MRD/DSA/CIR/P/2016/110 dated 10.10.2016, M/s Aggarsain Spinners Ltd. and it's Directors were restricted/barred from accessing the securities market with

effect from 27.03.2018 till further orders, for a period of 10 years and the said information being available on public domain was overlooked by the Resolution Professional. Copies of relevant extract of the information available on www.bseindia.com and www.nseindia.com have been annexed as Annexure A-4 and A-5 respectively, to the instant application.

8. It is further stated that as per the Notice No. 20180328-44 dated 28.03.2018 of BSE, the Exchange had shared the details of the non-compliant Exclusively Listed Companies and its Promoters/Directors with the Depositories on 22.03.2018, 23.03.2018, 26.03.2018, 27.03.2018 and 28.03.2018, for initiating the action against such Exclusively Listed Companies including Resolution Applicant and its Promoters/Directors in accordance with the above referred circular issued by SEBI. The particulars shared with the Depositories are based on the extent of the data made available by De-recognized/Non-operational/exited Stock Exchanges / ROC, to BSE. As per the notice, the promoters and directors of non-compliant ELCs shall not be eligible to remain or become director of any listed company till the promoters of such non-complaint ELCs provide exit option to public shareholders. in compliance with SEBI circular dated 10.10.2016, name of Aggarsain Spinners Limited is prominently mentioned at Sr.No.2, in notice dated 28.03.2018 of BSE (Annexure A-6) to the application.

9. It is further alleged that the Resolution Applicant despite having all the necessary information and having knowledge of the abovementioned disqualification has made a deliberate attempt to conceal the information, abuse the Corporate Insolvency Resolution Process and misrepresentation before the Resolution Professional, Committee of Creditors and this Tribunal alone merits rejection of the

Resolution Plan submitted by Resolution Applicant. However, the information with respect to the de-barring of the successful Resolution Applicant was brought to the notice of the Resolution Professional by one Operational Creditor namely, M/s Aayat Processors, vide email dated 15.06.2021, wherein all relevant information was attached. Copy of the said e-mail has been annexed as (Annexure A-7) to the application.

10. It is submitted by the applicant that a Resolution Plan must meet the conditions of Section 30 of the Code for approval and as per Section 30(1), a resolution applicant at the time of submission of plan must provide an affidavit showing his compliance to Section 29A of the Code. A false affidavit dated 01.01.2019 has been filed by the Resolution Applicant concealing the real fact of its ineligibility under Section 29A(f) of the Code.

11. It is pointed out by the applicant/unsuccessful resolution applicant that the Resolution Applicant, who otherwise was not eligible, has also participated in the Corporate Insolvency Resolution Process of another Corporate Debtor, namely, Vallabh Textiles, wherein he was a successful Resolution Applicant and the Resolution Plan in the said matter is also pending approval of this Tribunal.

12. It is submitted by the applicant that the disqualification under Section 29- A of the Code is sacrosanct for the eligibility of the Resolution Applicant to file a Resolution Plan and therefore no discretion can be exercised to overlook its disqualification.

13. Notice of this application has been given to the respondents. Reply on behalf of respondent No.1/Resolution Professional was filed vide Diary No.00842/01 dated 22.07.2021, wherein he has denied all the averments/submissions made in the

application and has stated that the applicant being unsuccessful resolution applicant has no locus standi to file the present application.

14. In the reply, while detailing the facts of CIRP chronologically, respondent No.1/Resolution Professional (hereinafter referred to as 'Resolution Professional') stated that the CIRP proceedings were duly conducted by him as per the provisions of the Code and underlying Regulations. The 6th Meeting of the CoC was convened on 17.12.2018, wherein Resolution Professional informed the members of CoC that pursuant to publication of Form G dated 15.09.2018, Resolution Professional received one resolution plan and further informed the members that he had received interest from two more parties to submit the resolution plan after the last date of submission of expression of interest as stipulated in Form G. Upon discussions and deliberations, the members of the CoC decided to extend the CIRP period in term of Section 12(2) of the Code by a period of 90 days and approved the resolution for republishing of Form G in the matter of the corporate debtor.

15. After republishing of Form G on 22.12.2018, expression of interests were invited in the matter of the corporate debtor. Pursuant to this, various resolution plans were put before the CoC for consideration. Resolution Professional convened the 10th Meeting of the CoC on 21.02.2019, wherein he apprised the members of the CoC about the amount proposed by the prospective resolution applicants in the matter of the corporate debtor. Upon discussion and deliberations, the members of CoC requested Resolution Professional to call all the prospective resolution applicants in the matter of the corporate debtor in the next meeting. The ranks of the prospective resolution applicants as per the evaluation matrix at the end of the 10th Meeting was as under:-

S.No.	Resolution Applicant	Rank as per Evaluation Matrix
1.	Aggarsain Spinners Limited	1
2.	Shivani Trendz Pvt. Ltd.	2
3.	Navraj Mittal and Ors.	3
4.	Pankaj Bhatia & Shreeji Cotfab	4

16. After completion of the negotiation process, Resolution Professional convened the 12th CoC Meeting on 27.03.2019, wherein the members of the CoC declared the resolution plan submitted by M/s Aggarsain Spinners Limited as H1 and requested the respondent No.1/Resolution Professional to place the resolution plan submitted by M/s Aggarsain Spinners Limited for vote. Accordingly, the resolution plan submitted by M/s Aggarsain Spinners Limited was approved by the CoC with 92.55% voting share and pursuant to above, Resolution Professional filed an application bearing CA No.287 of 2019, under Section 31 of the Code for approval of the Resolution Plan, which is pending adjudication before this Tribunal.

17. According to Resolution Professional, he received an e-mail dated 15.06.2021 from Ayat Processors with some documents stating that M/s Aggarsain Spinners was ineligible under Section 29A(f) of the Code at the time of submission of the resolution plan and approval of the resolution plan by the CoC is illegal as Resolution Applicant was debarred by the SEBI from accessing the securities market. Thus, he filed an additional affidavit vide Diary No.00977/6 dated 05.07.2021 apprising this Tribunal regarding the information/documents brought on record by Ayat Processors in the matter of corporate debtor.

18. It is alleged by Resolution Professional that the applicant has filed this application with the intention to derail and cause hindrance in the approval of the resolution plan, which has already been approved by the CoC. According to Resolution Professional, he being an officer of the Court does not have any power or jurisdiction

to adjudicate upon the question of eligibility of the successful resolution applicant and he has left this issue for adjudication on this Tribunal.

19. Reply on behalf of Resolution Applicant was filed vide Diary No.00842/2 dated 22.07.2021, wherein it is stated that the present application is false, frivolous and motivated by applicant for stalling the proceedings for consideration of the resolution plan. It is further stated that Resolution Professional has already placed the alleged complaint of Ayat Processors by way of an affidavit, to which Resolution Applicant has already filed a counter affidavit and the said issue of eligibility is still pending consideration before this Tribunal and the applicant has no locus standi to file the present application, as his resolution plan has already been rejected by the CoC more than 2 years back. It is alleged by Resolution Applicant that the present application has been filed by the applicant in connivance with Ayat Processors and Longowalia Yarns Ltd. abusing the process of law. It is further alleged that Longowalia Yarns Ltd. had defrauded the corporate debtor for a sum of Rs.10 Crores as per the forensic audit carried out by EY on the instructions of the Resolution Professional and is also running the corporate debtor on “job work” basis. According to Resolution Applicant, the applicant and Ayat Processors are of the same group, who have vested interest to stall the proceedings before this Tribunal. According to Resolution Applicant, it was eligible to submit the resolution plan and it was not debarred by SEBI, under Section 29A(f) by any order from trading in securities or accessing the securities market.

20. It is stated that SEBI, vide its Circular, SEBI/HO/MRD/DSA/CIR/P/2016/110 dated 10.10.2016 required that all those companies which are listed on de-recognized/non-operational stock exchanges [which were called exclusively listed companies (ELCs)], to provide an exit to the shareholders either by way of listing on

nationwide stock exchanges or to opt for voluntary delisting by following delisting norms of SEBI.

21. According to Resolution Applicant, under the SEBI Circular, BSE/NSE does not have power to take action against the ELCs but can only recommend the said action. In continuation of the SEBI Circular dated 10.10.2016, another Circular SEBI/HO/MRD/DSA/CIR/P/2017/92 dated 01.08.2017, extending the period of compliance by ELCs was issued. Later on, a notice dated 28.03.2018 was issued by the BSE, whereby the Resolution Applicant was stated to be ineligible to access the securities market for the purpose of raising capital till the promoters comply with the SEBI Circular dated 10.10.2016. According to Resolution Applicant, it was not aware of this notice. Moreover, under the said SEBI Circular, BSE/NSE can only recommend the action and not take action implying that only SEBI could pass the order contemplated in the notice dated 28.03.2018. Even there could be no delegation of such power to BSE/NSE by SEBI.

22. It is submitted by Resolution Applicant that in compliance of these circulars, Resolution Applicant took a decision to get the shares listed on Metropolitan Stock Exchange of India (MSEI) and submitted listing application on 26.12.2017, within the timelines and paid the listing fees on 22.12.2017 and also informed BSE of the same and also submitted Plan of Action to BSE. According to Resolution Applicant, the said notice of BSE dated 28.03.2018 was a communication between the Stock Exchange and SEBI, and Resolution Applicant was not a party to it and no order of prohibiting Resolution Applicant from accessing the capital market was ever passed by SEBI, which at the most could be said to be a recommendation.

23. It is further submitted by Resolution Applicant that on 29.10.2020, it received information from SBI where it had submitted proposal for raising the funds. It was informed through e-mail that they have found Resolution Applicant's promoters/directors are in the debarred list of BSE for accessing the capital market for 10 years. Consequent upon this information, Resolution Applicant made a representation to the BSE informing that it was never informed about the said prohibition and that it had already filed an application for listing with MSEI within given time and have been compliant on SEBI Circulars. Ultimately, BSE revoked the said recommendation on 16.02.2021. Thus, it is submitted by Resolution Applicant that it has never suffered any ineligibility under Section 29A(f) of the Code either before or at the time of submitting the resolution plan or giving undertaking of eligibility under Section 29A of the Code and therefore, there was no occasion for any misrepresentation or concealment of any fact and accordingly the Resolution Applicant has prayed for dismissal of the instant application with exemplary costs.

24. Although, Phoenix ARC Private Limited (CoC Member) is not a party, but reply has been filed through Mr. Manish Jain, learned counsel on behalf of Phoenix ARC Private Limited, vide Diary No.00842/03 dated 26.07.2021, wherein the stand taken by Resolution Applicant in its reply has been appreciated, stating that applicant has no locus standi to challenge the resolution plan duly approved by the CoC, exercising its commercial wisdom. The issue of eligibility of Resolution Applicant is pending before this Tribunal, the applicant has no right to intervene in the same. It is alleged that the present application is only a ploy to delay and derail the process of CIRP and approval of resolution plan and thus, it is liable to be dismissed with exemplary costs.

25. During the course of arguments, it is contended by learned counsel for the applicant that the applicant has locus standi to file the present application in the instant matter, as the applicant is not only an unsuccessful resolution applicant but also an operational creditor of the corporate debtor and the rights of the applicant as well as of the creditors have been prejudiced by the approval of the resolution plan. It is submitted that the material concealment by the Resolution Applicant of his disqualification under Section 29A of the Code had raised the present grievance and the present application is neither mala fide nor motivated but essential in view of the deliberate concealment of fact and the lack of due diligence as required under law and the Resolution Professional has also not acted diligently besides the Resolution Applicant having concealed the factum of his disqualification under Section 29A(f).

26. In support of his arguments, the learned counsel for the applicant has placed reliance upon a decision given by the 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:-

> "*80. However, it must not be forgotten that a Resolution Professional is only to "examine" and "confirm" that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors, This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval such resolution plans which confirm the conditions referred to in sub-section (2).This provision has to be read in conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29-A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 290A(c)".*

27. It is further submitted by the learned counsel for the applicant that commercial wisdom of the CoC would not come into the fray when a Resolution Applicant is

disqualified under Section 29A as the same is a question of law and not a question of viability of plan and the statutory embargo as provided under Section 29A cannot be reconciled by way of "consent" of the CoC as the intention behind the ineligibility is to sustainably revive the corporate debtor. In this regard, reliance has been placed upon a judgment dated 15.03.2021 passed by the Hon'ble Supreme Court in ***Civil Appeal No.9664/2019***; ***Arun Kumar Jagatramka versus Jindal Steel and Power Ltd. & Ors.,*** wherein it is held that:-

> *"53. The purpose of the ineligibility Under Section 29A is to achieve a sustainable revival and to ensure that a person who is the cause of the problem either by a design or a default cannot be a part of the process of solution. Section 29A, it must be noted, encompasses not only conduct in relation to the corporate debtor but in relation to other companies as well. This is evident from Clause (c) ("an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as a non-performing asset"), and Clauses (e), (f), (g), (h) and (i) which have widened the net beyond the conduct in relation to the corporate debtor."*

28. It is further contended by learned counsel for the applicant that in the event Resolution Applicant is found to be disqualified under Section 29A by this Tribunal, the Resolution Professional may be directed to place before the CoC the remaining resolution plans so as to not further burden this Tribunal by setting back the clock to an earlier position.

29. According to the learned counsel for the applicant that the Resolution Applicant is prohibited by SEBI for non-compliance of circular dated 10.10.2016 which provides for ELC of De-recognized/Non-operational/exited stock exchanges placed in the Dissemination Board, whereby clarification on raising of capital and process of exit of ELC from Dissemination Board was given. As per the said circular ELCs hosted by nationwide stock exchange on its Dissemination Board ('DB') would be referred to as "designated stock exchange" and these ELC's were required to exercise one of the

two options as mentioned in para 4.c (Raising Capital for listing on Nationwide Stock Exchange) or 4.d (Procedure to provide exit to investors) of the circular. In furtherance of exercise of the options, the actions contemplated for non-compliance was specified under Para 6 of the Circular which provides as under:-

> "*6. Action against companies remaining on the DB.*
> a. *Any promoter or director whose company is on the DB and has failed to demonstrate adequacy of effort for providing exit to their shareholders in conformity with the exit mechanism as provided in the circular shall be for liable for the, inter alia, action:-*
>   - *The company, its directors, its promoters and the 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*."

In furtherance, to this circular, vide another circular SEBI/HO/MRD/DSA/CIR/P/2017/92 dated 01.08.2017, the SEBI has extended the time period upto 30.06.2017 for compliance of pending exit offer to shareholders as per the earlier timelines. Under para 4 of the circular, it was further clarified that ELCs refer to those companies whose equity shares were exclusively listed at a recognized stock exchange at the time of exit of such exchange and were subsequently moved to the dissemination board of NSE and BSE and whose shares are available for buying and selling on Dissemination Board. It is further alleged that as per the closing balance sheet of the Resolution Applicant for the month of March 2017 (Annexure A-2), Resolution Applicant has disclosed as under:-

> "*Material Changes*
>
> *Consequent to the closure of regional stock exchanges, name of your company has been moved to the Dissemination board of the Bombay Stock Exchange. The SEBI has given an option to such companies whose name has moved to Dissemination board either to give an exit option to the shareholders or to get the Company listed at exchange having national wide trading."*

Thus, it is submitted that the action of BSE in issuing public notice was under the authority of SEBI as clarified from the circulars.

30. In furtherance, BSE vide notice dated 28.03.2018 informed regarding action against ELCs in pursuance of Circulars dated 01.08.2017 and 10.10.2016 issued by SEBI and the Resolution Applicant was accordingly put to notice vide publication on the website of the said action.

31. Learned counsel for the applicant submits that it is well settled principle of law that notice by way of publication would be deemed knowledge and the Resolution Applicant cannot take the plea of ignorance to rebut the same and accordingly in the instant case, the Resolution Applicant was well aware of his ELC having been shifted to Dissemination Board hosted by BSE (duly acknowledged by Resolution Applicant in its Balance Sheet for the year ended 2017) and had failed to comply with SEBI Circulars.

32. Learned counsel for the applicant further submits that the Resolution Applicant admittedly by complying with the SEBI Circular dated 10.10.2016 has removed its disqualification in February 2021, meaning thereby that the Resolution Applicant admitted the validity of the circular and raised no whisper about not having knowledge of debarment and this plea of the Resolution Applicant is an afterthought when a complaint is made to the Resolution Professional. Thus, as per the principles of acquiescence, Resolution Applicant accepted the correctness of the debarment order dated 01.08.2017 and 28.03.2018.

33. It is further submitted by learned counsel for the applicant that if according to the Resolution Applicant, the aforementioned circulars issued by the SEBI are unenforceable and no direction was passed to the Resolution Applicant by SEBI, then

validity of the circulars could have been challenged, but the same has not been done. Hence, the Resolution Applicant cannot now dispute the validity of the said circular. It is also added by learned counsel for the applicant that even a wrong order needs to be challenged and if not challenged, allowed to attain finality is binding.

34. In support of his arguments, learned counsel for the applicant has placed reliance on the following decisions: -

i. ***Authorized Officer (Land Reforms) V/s MM Krishanmurthy Chetty 1998 (9) SCC 138***
ii. ***Lal Bahadur Gautam V/s State of UP; 2009 (6) SCC 41***
iii. ***PS Gopinath V/s State of Kerala; 2008(7) SCC 70***
iv. ***Malthesh Gudda Pooma V/s State of Karnataka; 2011 (15) SCC 330***

35. It is further contended by learned counsel for the applicant that words '***prohibition'*** and '***restrain'*** are interchangeable. He has referred to **Black's Law Dictionary** explaining the word '***prohibition'*** and '***restrain'***. It is argued that when an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In this regard, learned counsel for the applicant has placed reliance upon judgment passed by the Hon'ble Supreme Court in ***Kichha Sugar Company Limited, through General Manager Versus Tarai Chini Mill Majdoor union, Uttrakhand; 2014 (4) SCC 37****.*

36. According to the learned counsel for the applicant, SEBI was not required to pass any exclusive order against the Resolution Applicant before debarring for accessing the capital market for 10 years and it is also not provided in Section 29A(f) of the Code that prohibition should be by an order of SEBI. Under the Securities and Exchange Board of India, Act 1992, (for short the '**SEBI Act**'), wide regulatory powers have been vested in SEBI for adopting the procedure to regulate the securities capital

markets and save and protect the interests of the investors. In support of his arguments, learned counsel for the applicant has placed reliance upon the judgment dated 23.07.2021 passed by the Hon'ble Supreme Court in ***Criminal Appeal No.569 of 2021 (arising out of SLP (Crl) No.4728 of 2019; Prakash Gupta Versus Securities and Exchange Board of India***, wherein it held as under:-

> *"86. The provisions of SEBI Act, as analyzed earlier in this judgment would indicate the importance of the role which has been ascribed to it as a regulatory, adjudicatory and prosecuting agency. SEBI has vital functions to discharge in the context of maintaining an orderly and stable securities' market so as to protect the interests of investors. SEBI was established in 1988 by a government resolution, to urgently respond to the rapid growth of capital markets. In Sahara India Real Estate Corporation Ltd. vs SEBI a two judge bench of this Court, considered this history in order to guide its interpretative exercise over the statutory provisions. Justice J S Khehar (as the learned Chief justice then was) noted in his concurring opinion that:*
>
> > *298. The Securities and Exchange Board of India (SEBI) was established in 1988 by way of a government resolution to promote orderly and healthy growth of the securities market and for investors' protection. On account of tremendous growth of the capital market characterized particularly by increasing participation of the public, to sustain confidence in the capital market it was considered essential to ensure investors' protection. Accordingly, it was decided to vest SEBI with statutory powers, so as to enable it to deal effectively with all matters relating to the capital market."*

37. Learned counsel for the applicant has further relied upon judgment dated 31.08.2012 passed by the Hon'ble Supreme Court in ***Civil Appeal No.9813 of 2011; Sahara India Real Estate Corporation Limited and Ors. Versus Securities and Exchange Board of India and Anr.***, wherein it is held as under:-

> "*103. The first step would be to venture an understanding of section 11 of the SEBI Act, so as to grasp the effect and reach thereof. Sub-section (1) of section 11 of the SEBI Act casts an obligation on the 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 measures as it thinks fit". It is, therefore, apparent 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. In other words the extent of the nature and the manner of measures which can be adopted by the SEBI for giving effect to the functions assigned to the SEBI, have been left to the discretion and wisdom of the SEBI. It is necessary to record here, that the aforesaid power to adopt "such measures as it thinks fit" to promote investors' interest, to promote the development of the securities market and to regulate the securities market, has not been curtailed or whittled down in any manner by any other provisions under the SEBI Act, as no provision has been given overriding effect over sub-section (1) of Section 11 of the SEBI Act.

xx xx xx xx xx xx xx xx xx xx

Accordingly, it is clear, that the limitation expressed in sub-sections (2A) and (4) of section 11 of the SEBI Act, would extend to the area/field of authority referred to above. Therefore, but for the aforesaid limited area/expanse, referred to above, SEBI's power would extend to all kinds of companies dealing with securities. The said power, as already noticed above, clearly emerges from the words "by such measures as it thinks fit" expressed in sub-section (1) of section 11 of the SEBI Act. For the reasons recorded above, the SAT was fully justified in concluding, that the functions and the powers under section 11 of the SEBI Act, in so far as protecting the interest of the investors in securities market, as also, for promotion, development and regulation of the securities market, would be applicable to "listed" as well as "unlisted" companies. The said conclusion is expressed endorsed."

38. It is submitted by learned counsel for the applicant that additional affidavit filed by the Resolution Applicant vide Diary No.00884/4 dated 02.02.2022 in IA No.356/2021, is illegal and against the facts. There is no provision of law to submit clarification to information memorandum dated 04.11.2020 submitted by the Resolution Applicant with MSEI. The above information memorandum was submitted pursuant to the requirement of MSEI for listing of equity shares as per the by-laws and regulations as regulated under the SEBI Act, 1992. Under no provision of law, any member/Resolution Applicant can submit any such clarification after complete information memorandum has been submitted, uploaded, implemented and the benefit has already been derived by the Resolution Applicant. It is submitted that

clarification is a species of amendment which can only be of pleading as per well settled proposition of law. It is further submitted that it is unheard of in legal parlance that a party wished to clarify, rather amend the evidence and not even a single judgment, provision of law or principle has been cited by the Resolution Applicant either in the affidavit or during the course of arguments, whereby evidence can be altered, amended or clarified. Pleadings only can be clarified. Information memorandum is not a pleading but is an evidence, therefore no clarification is permissible and moreover, the additional affidavit has been filed without taking any permission from this Tribunal and at best it can be treated to be a request for clarification to MSEI and till today such request has not been accepted. It is well settled that a relief claimed, not granted is deemed to be declined. Even though CPC is not applicable, but general proposition and principles of law are applicable. Hence, it is prayed that additional affidavit filed by the Resolution Applicant may be taken off the record as it is an afterthought, beyond any legal sanctity and contains unsustainable arguments.

39. During the course of arguments, it is submitted by learned counsel for Resolution Applicant that the Applicant has no vested right to get his plan considered but it is an abuse of process of law. It is alleged that the applicant, Longowalia Yarna Ltd. and Ayaat Processors are a syndicate and related entities and are trying to create hurdles in consideration of application for approval of Plan in gross abuse of process of law. Longowalia Yarns Ltd. and Sri Vinayak (associate of Srijee Cotfab) are running the corporate debtor on job work basis and by filing various frivolous applications, they are delaying the proceedings so that they can continue running the corporate debtor on job work basis. It is also alleged that Sri Vinayak is a related entity of Srijee Cotfab as Mr. Pankaj Bhatia is a partner of Sri Vinayak and has also signed IA No.348 of

2021. The other applications filed in connivance are CA No.553/2019, CA No.865/2019, CA No.866/2019, IA No.356/2019, IA No.352/2019. This conduct of the applicant shows that the present and other applications have been filed to delay the entire process and to defeat the object of the Code.

40. It is further submitted that on representation to BSE that the Resolution Applicant is compliant, BSE vide its internal communication dated 16.02.2021 reversed the action it had initiated. In the response dated 27.06.2021 to the query raised by the Resolution Professional, on account of a typographical error, it has been mentioned "SEBI" instead of "BSE" and this has been clarified by the Resolution Applicant in its reply to the instant application. Hence, the objector cannot take advantage of a typographical error to say that the Resolution Applicant has "admitted" being barred by SEBI and mere inadvertent use of word "prohibited" by the Resolution Applicant cannot be used against the Resolution Applicant and the applicant has miserably failed to show as to how the Resolution Applicant has been prohibited by SEBI.

41. Similarly, it is argued that in the information memorandum, which has been placed on record through IA No.356/2021 under the heading prescribed "prohibition by SEBI", reference has been made to SEBI and that is inadvertently mentioned and has been clarified to MSEI vide e-mail dated 01.02.2022 and the same has been placed on record vide additional affidavit filed vide Diary No.844/04 dated 02.02.2022.

42. It is further argued that the independent notice of BSE is immaterial to the present controversy in as much 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.

43. It is further alleged that the applicant is blowing hot and cold in the same breath. On one hand, the applicant is saying that the Resolution Applicant has been debarred w.e.f. 28.03.2018, date of BSE notice and that BSE has not declared the Resolution Applicant debarred as there is no delegation of such power from SEBI, while on the other hand the Applicant is saying that the Resolution Applicant has been debarred by way of Administrative Circular dated 01.08.2017 and moreover, the circulars do not relate to "prohibition" and no such word is used in the circular. Hence, both the circulars issued by SEBI are administrative circulars and there is no occasion to either question the legality of the administrative circulars or to challenge the same on the part of the Resolution Applicant.

44. In support of his arguments, learned counsel for the Resolution Applicant 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 absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi -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 Applicant, 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 Applicant is aggrieved by the administrative circular of SEBI nor it is 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. Learned counsel for the Resolution Applicant has placed on record additional affidavit filed vide Diary No.00884/4 dated 02.02.2022 in IA No.356/2021, clarifying that Resolution Applicant has issued a clarification to Metropolitan Stock Exchange on information memorandum vide e-mail dated 01.02.2022 (Annexure A to additional affidavit) regarding response in information memorandum under the prescribed heading "Prohibition by SEBI". According to learned counsel for the Resolution Applicant, the information memorandum on 04.11.2020 has been submitted as per prescribed proforma and under the heading "PROHIBITION BY SEBI", which is also prescribed heading, it was responded that as an inadvertent error with an unintended ignorance the word SEBI has been used. It is hereby clarified that SEBI has never restrained/prohibited the Directors/Promoters of our company to either access or trade in the capital market. BSE and not SEBI had initiated an action for 'restraint', which do not attain any finality and further has been reversed by BSE.

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

45. Learned counsel for the Resolution Professional has argued in terms of his reply. According to learned counsel for the Resolution Professional, an unsuccessful resolution applicant is neither a stakeholder nor a creditor of the corporate debtor and thus, the applicant being an unsuccessful resolution applicant has no vested right in the CIRP process of the corporate debtor. In support of his arguments, he has placed reliance on the order passed in ***Company Appeal (AT) (Insolvency) No.272/2020; IMR Metallurgical Resources AG Versus Ferro Alloys Corporation Limited and Others***, wherein it was held that the Resolution Applicant has no vested right that his resolution plan must be considered. It is further submitted that the aforementioned judgment passed by the Hon'ble National Company Law Appellate Tribunal, was assailed before the Hon'ble Supreme Court, but the Hon'ble Supreme Court dismissed the appeal in limine and judgment passed by the Hon'ble NCLAT in IMR Metallurgical AG (supra) was upheld by the Hon'ble Supreme Court.

46. Learned counsel for the Resolution Professional submits that he has brought on record the documents/information necessary for this Adjudicating Authority to adjudicate and decide if the Resolution Applicant is barred under Section 29A of the Code to submit a resolution plan in the matter of the corporate debtor and the application filed by unsuccessful resolution applicant is liable to be dismissed.

47. Learned counsel for the Resolution Professional has also referred to the duty of the Resolution Professional as mandated under Regulation 36A(7) of the CIRP Regulations, 2016, read with Regulation 36A(8).

48. Thus, learned counsel for the Resolution Professional submitted that the applicant has failed to avail the remedy provided in the Code to oppose the inclusion of Respondent Applicant as a prospective resolution applicant in the matter of the corporate debtor and it is only after a delay of 2 years from the date of approval of the resolution plan in the matter of corporate debtor that the applicant has raised such an objection which cannot be allowed as the same shall result in defeating the objective of the Code i.e. timely resolution of the corporate debtor.

49. Mr. Manish Jain, learned counsel has argued in terms of reply filed on behalf of Phoenix Arc Pvt. Ltd. (CoC Member). It is submitted that the applicant does not have any locus standi to file the application and the same deserves to be dismissed in limine on that ground itself. In this respect, he has invited attention to a judgment dated 17.11.2020 passed by the Hon'ble National Company Law Appellate Tribunal in the ***Company Appeal (AT) (Insolvency) No.969 of 2020; Hindustan Oil Exploration Company Versus Erstwhile Committee of Creditors JEKPL (P) Ltd.***, wherein it was held that unsuccessful resolution applicant has no locus standi to challenge the implementation of the Resolution Plan and while dismissing the appeal, the Hon'ble NCLAT observed as under:-

> "*If the terms of the approved Resolution Plan of Successful Resolution Applicant have been varied or time extended to facilitate its implementation and the creditors have not claimed any prejudice on that count and the Committee of Creditors comprising of the creditors as stakeholders has not objected to same rather been privy to it on account of hardship due to prevailing circumstances, the Appellate cannot be permitted to cry foul."*

It is submitted that Civil Appeal No.2 of 2021 against the aforesaid order was filed before the Hon'ble Supreme Court and the Hon'ble Supreme, vide order dated 28.01.2021, dismissed the said appeal.

50. Learned counsel appearing for Phoenix Arc Pvt. Ltd. (Member of Committee of Creditors) has also placed reliance on order dated 15.03.2021 in ***Company Appeal (AT) (Insolvency) No.1079 of 2020; Interups Inc. Versus Kuldeep Kumar Bassi (Resolution Professional of Asian Colour Coated Ispat Limited)***, wherein the Hon'ble NCLAT held that an unsuccessful resolution applicant has no locus to challenge the successful resolution plan. Further, reliance has been placed on a latest judgment dated 18.01.2022 passed by the Hon'ble Supreme Court in ***Civil Appeal No.8411/2019; Bank of Baroda Versus MBL Infrastructures Ltd. and Others***, wherein the Hon'ble Supreme Court has gone into the very objective/purpose of introduction of Section 29A of the Code and it has been held that Section 29A has a laudable object of protecting and balancing the interest of the Committee of Creditors and corporate debtor. Further, the Hon'ble Supreme Court in Bank of Baroda (supra) has held that in case that though the plan submitted was not maintainable due to ineligibility of applicant under Section 29A (f) and ought not to have been entertained, yet since much water has flown under the bridge and the fact that plan was approved by the required majority by the CoC and was put into implementation and keeping in mind the interest of the stakeholders, employees etc., the Hon'ble Supreme Court did not disturb the approved plan. Learned counsel for Phoenix Arc Private Limited submits that similarly, in the present case also, the plan has been approved by more than 92.5% of the CoC and the resolution applicant has not been able to get delivery of the unit for more than 3 years after the plan has been approved. Thus, the present application is nothing but a mala fide and belated attempt by the applicant to stall the proceedings and is done with vested interest and is not maintainable and is liable to be rejected in limine.

51. In response to the judgment of the Hon'ble Supreme Court in Bank of Baroda (supra) relied upon by Mr. Manish Jain, appearing for CoC Member, Mr. Aalok Jagga, learned counsel has contended that this judgment completely supports the applicant in CA No.348 of 2021 as it has been reiterated that the eligibility of the Resolution Applicant has to be seen on the date of submission of the Resolution Plan, which legal position is not clear from reading of Section 29A. Not even a single judgment has been shown by the respondents to support the submissions that if Resolution Applicant is ineligible on the date of submission of Resolution Plan and subsequently become eligible, he can be considered. The argument of the Resolution Applicant regarding para 63 and 64 of the judgment that in the case, resolution plan was permitted to continue inspite of being ineligible, is not applicable to the facts of this case because of the following reasons:-

i. In the cited case, Resolution Plan had already been approved and implemented and proceeded quite far of leading to investment of Rs.63 Crores. Contrary to the same, in the case in hand, neither resolution plan has been approved, nor implemented, and not even a penny has been infused.

ii. Secondly, in the cited case, public importance projects (para 63) were already undergoing by the resolution applicant pursuant to approval of resolution plan, which could have been disrupted. On the contrary, in the case in hand there is no such public importance projects are being continued.

iii. Thirdly, the Hon'ble Supreme Court in para 64 itself had that this finding of permitting resolution applicant to continue is only in the present case on peculiar facts and never intended to be laid down or quoted as precedent. Hon'ble Supreme Court clarified that it does not have any precedential value because this was in peculiar set of facts in that case alone and therefore, cannot be applied keeping in view the above caution words.

Thus, it is argued that Hon'ble Supreme Court relied upon *Arcelor Mittal* Case, which clearly laid down in Para 46 that eligibility has to be seen on the date of submission of resolution plan which is mentioned in Section 29A. In para 56 and 58, the Hon'ble Supreme Court has clearly held that if on the date of submission of resolution plan, the applicant is debarred, such plan obviously is not maintainable.

IA 155/2022

This application has been preferred by the Aggarsain Spinners Limited, successful resolution applicant, respondent No.2 in IA No.348 of 2021, under Section 60(5)(c) of 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.

52. The instant application has been filed on behalf of the applicant/successful resolution applicant after the arguments were heard and the judgment/orders were reserved in IA No.348 of 2021, CA No.287/2019 and other connected applications, vide order dated 24.02.2022.

53. It is averred that the applicant received the information which has a direct bearing on the issues raised in IA No.348 of 2021 i.e. about the eligibility of the successful resolution applicant. 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 order 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.

54. It is submitted on behalf of the applicant that it was not in possession of the said information (Annexure A-1(Colly) on or before 24.02.2022, when this Tribunal had reserved the orders in the aforementioned applications. It is prayed by the applicant that Annexure A-1 (Colly) may be taken on record and appropriate orders may be passed, in the interest of justice.

55. Notice of this application was issued to the respondents, who have filed the replies.

56. Respondent No.1/Resolution Professional has not filed his reply, however, short reply has been filed on behalf of Phoenix ARC Private Limited, Member of the committee of creditors, wherein it is stated that the information, Annexure A-1(Colly) filed by the applicant/successful resolution applicant may be taken on record and no other issue/arguments is required at this stage as it would tantamount to re-hearing of the applicant as the matter is considerably delayed and appropriate orders may be passed on merits.

57. On the other hand, in its reply, it is submitted by Shreeji Cotfab Limited, respondent No.2/unsuccessful resolution applicant that the applicant has filed the instant application to the detriment of all parties as the same has been filed after much delay and after the arguments have been completed and the judgment has been reserved vide order dated 24.02.2022 by this Tribunal in CA No.287 of 2019, IA No.348 of 2021 and other connected applications.

58. In support of his contention, learned counsel for respondent No.2 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.

59. It is further submitted that a bare perusal of the application filed on behalf of the applicant shows that the reply to the RTI application was filed on 16.02.2022 (after the written submissions were complete on 08.02.2022), RTI reply was received from the alleged investor on 09.03.2022 at 05:15 p.m. and the present application was prepared, notarized and advance copy was served on the same day at 7:40 p.m., which clearly establishes that everything was pre-planned and there is no such investor and entire application is an afterthought and this so called information was made to be applied by the applicant itself from its own person. Thus, entire exercise has been managed by the applicant.

60. It is further alleged that RTI applicant is 22 years old and is an employee in a company namely, 'Brawn Biotech Limited' since January 2019 and by no stretch of imagination can be an '*investor',* who wants to invest in the shares of the applicant

and took so much pain and botheration to apply RTI and sought information from SEBI. It is submitted that the term '*investor'* is generally used for the persons/entities who want to acquire substantial shares in a accompany and the alleged RTI applicant, purportedly does not fit into that role thus, the submissions by the alleged RTI applicant and the applicant in the present application are malicious, totally untrue and made with a sole intention to hide their vested interest. Further, there is no evidentiary value of this reply under the RTI Act, as Public Information Officer is supposed to give the information available on the record of the file. He is not supposed to give an independent opinion or suggestion under the RTI Act. Therefore, no case can be decided on the basis of opinion of the Public Information Officer.

61. It is further submitted that SEBI has categorically informed that the stock exchanges and depositories were to ensure compliance with the circular requirements. The applicant had earlier argued that directions of stock exchanges are only recommendatory, whereas the reply of the SEBI makes it clear in no uncertain terms that the stock exchanges and depositories were to ensure compliance and accordingly, respondent No.2 had prayed for dismissal of the application with imposition of exemplary costs.

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

63. 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 Unsuccessful Resolution Applicant is having any locus standi to file the application challenging the eligibility of successful resolution applicant for presenting and approval of the resolution plan?

ii) Whether successful resolution applicant, namely, M/s Aggarsain Spinners Limited, is eligible under Section 29A(f) of the Code as per IA No.348/2021?

iii) Whether the information received from SEBI by a third party under the RTI Act, 2006, filed in IA No.155/2022 is having some bearing upon the eligibility part of the successful resolution applicant?

64. At the outset, it is contended by learned counsel for the Resolution Applicant as well as learned counsel for the Resolution Professional in IA No.348 of 2021 that applicant being an unsuccessful resolution applicant is neither a stakeholder nor a creditor of the corporate debtor and thus, he has no vested right to get his plan re-considered before the committee of creditors and no locus standi to intervene and interfere in the resolution plan which has already been approved by the committee of creditors and is pending consideration before this Tribunal. However, this contention on part of the unsuccessful resolution applicant and Resolution Professional is devoid of legal force because the applicant is not interfering on the merits as well as implementation of resolution plan submitted by successful resolution applicant through the Resolution Professional as approved by the committee of creditors but he is only challenging the eligibility of successful resolution applicant under Section 29A of the Code. It is alleged by the applicant that the resolution applicant, namely, M/s Aggarsain Spinners Limited is not eligible under Section 29A(f) of the Code at the time submission of the resolution plan as Successful Resolution Applicant was debarred by SEBI from accessing the securities market. However, the consequential relief which

has been sought by the applicant is that in case resolution applicant is found ineligible under Section 29A(f) of the Code then resolution plan submitted by the applicant may be sent back to committee of creditors for consideration. In these circumstances, the authorities i.e. ***Company Appeal (AT) (Insolvency) No.272/2020; IMR Metallurgical Resources AG Versus Ferro Alloys Corporation Limited and Others*** and ***Company Appeal (AT) (Insolvency) No.969 of 2020; Hindustan Oil Exploration Company Versus Erstwhile Committee of Creditors JEKPL (P) Ltd***. (supra) relied upon by the learned counsel for the Resolution Professional and Successful Resolution Applicant are not applicable to the facts of the case in hand. Thus, it cannot be said that the applicant has no locus standi to challenge the eligibility of the Successful Resolution Applicant for submitting the resolution plan, much less can it be said to be an abuse of the process of law with some vested interest. The fact whether the Successful Resolution Applicant was eligible under Section 29A of the Code or not will be discussed in detail hereinafter, while dealing with second point of determination.

65. Now coming to the second point of determination that whether the Successful Resolution Applicant, namely, M/s Aggarsain Spinners Limited is eligible under Section 29A(f) of the Code or not? It is contended by learned counsel for the applicant that Successful Resolution Applicant is 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, was ineligible under Section 29A(f) of the Code.

66. 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."

67. 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 the affidavit has been by the successful resolution applicant on 01.01.2019.

68. 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 Applicant is 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.

69. 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.

70. Although, it is argued by learned counsel for the successful resolution applicant 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 applicant 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.]

71. Learned counsel for the applicant 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.

72. 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.

73. It is worthwhile to note that there are admissions on the part of resolution applicant about the prohibition by SEBI in the information memorandum dated 04.11.2020 which has been placed on record through IA No.356/2021 under the heading prescribed "prohibition by SEBI", it is admitted by Resolution Applicant that there was prohibition by SEBI debarring the Resolution Applicant from accessing the capital market/securities for a period of 10 years. However, a reference has been made to BSE by the resolution applicant that it has been inadvertently mentioned and has been clarified vide e-mail dated 01.02.2022, which has been placed on record vide additional affidavit filed vide Diary No.844/04 dated 02.02.2022, but this additional affidavit filed by the Resolution Applicant is of no consequence because firstly, the same was filed during the course of hearing the arguments in this case and purposedly the same has been filed 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 applicant with MSEI, which has been uploaded, intimated and its benefits have also been taken by the resolution applicant then such clarification is tenable at this juncture stating that 'Prohibition by SEBI' is written inadvertently in the information memorandum. Similarly, when Resolution Applicant was debarred by the notification of BSE dated 28.03.2018 then on representation by the Resolution Applicant to BSE, it was mentioned that name of

resolution applicant has 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 Applicant was not eligible under Section 29A(f) of the Code on 28.01.2019, 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 Applicant would attract the doctrine of estoppel against him to say that there was no prohibition by or on behalf of SEBI.

74. Although it is argued by learned counsel for the resolution applicant 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 Applicant does not hold the water because as already discussed above 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. Thus, the contention of learned counsel for the Resolution applicant is that prior show cause notice and due procedure could have been followed by SEBI before prohibiting the Resolution Applicant from accessing the securities market. But this contention of learned counsel for the Resolution Applicant was again not plausible because it was not a case of adjudicatory powers of SEBI, but it was only a case of delegation of 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. 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 Applicant was non-compliant of the direction given by SEBI, therefore, it was rightly and legally barred by BSE from accessing the securities market.

75. 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 applicant 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 applicant was not a non-compliant of the circular issued by BSE, however, this contention of the Resolution Applicant is devoid of any legal force because firstly its admission on its part that Resolution Applicant was in the debarred list of BSE from accessing the securities market for 10 years. Secondly, it is settled law that the eligibility of resolution applicant 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 28.01.2019 and admittedly, on that date resolution applicant was 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 Applicant has been debarred to access the capital market for 10 years. Thus, it can be held in unequivocal terms that Resolution Applicant was ineligible under Section 29A(f) of the Code and deemed to be prohibited by SEBI from trading the securities or accessing the securities market.

76. Although it is argued by learned counsel for the Resolution Applicant 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: 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.

77. 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.155 of 2022 is having some bearing upon the eligibility part of successful resolution applicant. At the outset, it is pertinent to mention that the said information was never sought by resolution applicant 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 Applicant 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.

78. In these circumstances, the said information shared by SEBI under the RTI Act has got no bearing on the eligibility criterion of the Resolution Applicant at the time of submission of resolution plan. It is the contention of learned counsel appearing for Phoenix Arc Pvt. Limited (Member of the Committee of Creditors) that in view of judgment dated 18.01.2022 passed by the Hon'ble Supreme Court in ***Bank of Baroda versus MBL Infrastructures Ltd. and Others*** (supra) though in the case in hand, Resolution Plan may not be maintainable due to the ineligibility of Resolution Application under Section 29A(f) and ought not to have been entertained but the resolution plan has been approved by the committee of creditors on 27.03.2019 and thereafter, much water has flown under the time bridge for last more than three years, and that Resolution Applicant is no more ineligible as restraint order has been revoked by BSE on 16.02.2021, therefore, in the interest of justice and to avoid future delay in implementation of resolution plan, it should be approved by the Bench immediately. However, this contention of learned counsel does not hold water because debarring order has been revoked by BSE w.e.f. 16.02.2021 which is not retrospective and the Resolution Applicant was ineligible under Section 29(A)(f) of the Code at the time of

filing of resolution plan by Resolution Applicant in January 2019, otherwise the authority of ***Bank of Baroda versus MBL Infrastructures Ltd. and Others*** (supra) is not applicable to the case in hand because as already pointed out by learned counsel for the applicant that in the said case resolution plan was already approved by adjudicating authority and had been implemented and proceeded quite far to investment of Rs.63 Crores but in the case in hand, the resolution plan is neither approved by this Tribunal nor implemented, and not even a single penny has been infused. Moreover, in ***Bank of Baroda versus MBL Infrastructures Ltd. and Others*** (supra) public importance projects were already undergoing by the Resolution applicant pursuant to the approval of the resolution plan which is not the case in hand and lastly, the Hon'ble Supreme Court in the authority (supra) has made clear in paragraph 64 that these finding of permitting the Resolution Applicant to continue is not having any precedential value because it was rendered in the peculiar set of facts in that case alone. Thus, the authority (supra) is distinguishable to the facts and circumstances of the case in hand.

79. 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 applicant before submission of resolution plan to committee of creditors for discussion and approval.

80. 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 Applicant 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 applicant 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.

81. 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:-

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

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

iii. 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 Applicant 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.

82. To sum up in the light of discussions foregoing and reasons assigned hereinbefore Resolution Applicant is declared ineligible under Section 29A(f) of the Code at the time of submission of the resolution plan and resolution plan submitted by Resolution Applicant stands rejected vide separate order of even date passed in CA No.287 of 2019. 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

the 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.

Thus, IA No.348 of 2021 is allowed and disposed of whereas IA No.155 of 2022 stands dismissed.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

May 24, 2022
MK