



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

Volume 04 | Number 25

(June 25, 2021)

C. RAJA JOHN VS. R. RAGHAVENDRAN

IA/33/CHE/2021 and IA/500/CHE/2021 In CP/158/IB/ 2018 (NCLT-DIVISION BENCH I, CHENNAI)

DATE OF JUDGMENT: JUNE 18<sup>TH</sup> 2021

**"SECTION 240A OF THE IBC, 2016 EXEMPTS APPLICABILITY OF ONLY SECTION 29A(C) AND 29A(H) IN TERMS OF ELIGIBILITY TO BE A RESOLUTION APPLICANT AS A MEDIUM LEVEL ENTERPRISE UNDER MSME DEVELOPMENT ACT, 2006."**

### Facts of the Case: -

This Interlocutory Appeal 'IA' was filed by Applicant (Promoter / suspended Director of the Corporate Debtor 'CD') seeking for early listing of IA/33/CHE/2021 which is an application filed by the Applicant, aggrieved against the rejection of the Resolution Plan by the Resolution Professional 'RP' and seeking direction against the RP to consider the same. The Applicant has moved the present IA seeking relief to fix the date of hearing and to take up this matter on priority basis and allow applicant to participate in EOI process, to issue necessary direction to RP to consider the Applicant as an eligible "resolution applicant" and also issue necessary directions that until a decision is taken by the Hon'ble NCLT on this matter, the resolution process followed by the Respondent shall be kept in abeyance or stayed and to issue necessary order as the Hon'ble NCLT may deem fit.

### NCLT's Observations

The Tribunal stated that as far as hearing of present IA before earlier IA is concerned, since it came up for this Tribunal only on 17.06.2021 and the is posted for hearing on 02.07.2021, hence the prayer sought become infructuous.

As far as second prayer is concerned, it was seen that in relation to this CIRP the CoC fixed the minimum eligibility criteria in relation to the submission of the Resolution Plan by the prospective Resolution Applicant and in pursuance of the same, the RP issued EOI, to which the Applicant also submitted the Resolution Plan to the RP which was rejected by RP stating that the applicant does not meet the eligibility norm of RS. 2 crore net worth and the DIN of applicant is under default category of Directors list and hence is disqualified to act as a Director under the Companies Act, 2013 and accordingly



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he is not eligible as per Section 29A(e) of the IBC, 2016.

Further, the applicant in present IA had submitted that the CD is an MSME and as such they are not disqualified to submit a Resolution Plan. The Tribunal stated that on perusal of the MSME Certificate it showed that the said certificate was obtained after initiation of CIRP. Hence, the Applicant was trying to play a fraud upon Tribunal, to gain backdoor entry to the assets of the CD in the guise of projecting themselves as MSME. Further, section 240A of the IBC, 2016 exempts applicability of only section 29A(c) and 29A(h) in terms of eligibility to be a resolution applicant as a medium level enterprise under MSME Development Act, 2006. In the present case, the Applicant suffers disqualification under Section 29A(e) and such a protection is not granted to the Applicant/ CD, under Section 240A of IBC, 2016 who claims itself to be an MSME.

The Respondent stated that they have issued a Fresh Expression of Interest and the last date for the submission of the Resolution Plan was fixed as 03.07.2021 (i.e. the next day of hearing earlier IA was scheduled). Thus, the Applicant, being the Promoter / suspended Director of the CD is trying to stall the process of CIRP on the guise of projecting themselves as MSME and thereby trying to gain a backdoor entry to the assets of the CD.

### **Order: -**

The Tribunal stated that in view of the reasoning and legal positions discussed, it was of the considered view that the Respondent was right in rejecting the Application of the Applicant for the Resolution Plan and as such the order passed by the RP was free from any legal infirmities and does not warrant any interference by this tribunal. As a result thereof IA's stands dismissed.

**Case Review: -** *Interlocutory Appeals Dismissed.*