



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

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**Mr. Manish Kumar, suspended director of Wearit Global Ltd. (under CIRP) Vs. Rachna Jhunjunwala, RP of the CD & Ors., I.A. (IB) No. 53/KB/2024 in Company Petition (IB) No. 100/KB/2019**  
Date of NCLT Judgement: June 05, 2024

### Facts of the Case: -

The present IA u/s 60(5) of the IBC application is filled by the suspended director, Mr. Manish Kumar (hereinafter referred as 'Applicant') against the RP and CoC (hereinafter referred as Respondent-1 and 2) of M/s Wearit Global Ltd ('CD') 2016.

The instant application arises from Company Petition (IB) No. 100/KB/2019, filed under Section 60(5) of the IBC 2016, read with Rule 11 of the NCLT Rules, 2016. The applicant contests the decisions of Respondent No. 1, and the Respondent No. 2. The core issue revolves around the Applicant's request for a relaxation in the eligibility criteria concerning the minimum tangible net worth requirement of ₹ 15 crores needed for submitting a resolution plan. Additionally, the applicant seeks exemption from the Earnest Money Deposit (EMD) requirement, arguing that the CD, being a registered MSME, should be subject to different standards under Section 240A of the IBC.

The Respondent no. 2 had rejected the applicant's request, prompting the current application. The contention is that such exemptions would allow the applicant, an MSME promoter, to effectively participate in the Corporate Insolvency Resolution Process (CIRP), thereby potentially ensuring the revival of the MSME without needing to compete with larger, more financially robust entities.

The applicant cited the Insolvency Law Commission Report of 2018, arguing that special relaxations are justified because MSME businesses typically draw interest mainly from other MSME promoters and might not appeal to larger resolution applicants. Additionally, the applicant argued that the Committee of Creditors' (CoC) refusal to consider the Expression of Interest (EOI) due to the failure to meet the net worth criteria contradicts both the provisions of the Code IBC and commercial prudence. This assertion was supported by referencing cases such as **R. Raghavendran vs. C. Raja John, 2023** and **K. Satheesh Babu Rajesh vs. Mr. George Varkey, 2021**, which have permitted exceptions to the strict enforcement of eligibility criteria.



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## NCLT Observations:

The AA held that the net worth criterion could be relaxed for the MSME promoter, the applicant in this case, but the requirement to submit the EMD and Security Deposit should remain enforced to maintain the integrity and seriousness of the resolution process.

The AA further noted that various exemptions and relaxations have already been provided under Section 240A of the Code for MSMEs. However, in ensuring a feasible and viable resolution plan to revive the business of the CD and to attain the objective of value maximization of the asset, an exemption from satisfying the Net worth is allowed, but waiving the Security Deposit at the time of submission of its Expression of Interest (EoI) and the EMD at the time of submission of its Resolution Plan is uncalled for.

The AA directed that the Respondent no. 1 should allow the applicant's EoI and plan pursuant to the publication of the "Form – G" upon furnishing and depositing the required Security Deposit and EMD. The AA emphasized that these financial commitments indicate the seriousness and sincerity of the Resolution Applicant, which are essential to ensuring an effective CIRP.

**Order/Judgement:** The AA allowed the relaxation to the eligibility criteria of Net Worth in respect of the Applicant and directs the Respondent No. 1 to allow its EOI and plan pursuant to the form G provided that the necessary financial stipulations are met.

**Case Review:** The IA application is *disposed of*.