

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

I.A. No. 4810, 5965 of 2025

In
Company Appeal (AT) (Insolvency) No. 859 of 2025

**[Arising out of Judgement and Order dated 25.07.2025,
passed by this Hon'ble Tribunal in Company Appeal
(AT)(Insolvency) No. 859 of 2025]**

IN THE MATTER OF:

Cosmic CRF Limited

Through its CFO, Mr. Rama Pada Mandal
Having its office at:
19, Monoharpukur Road, Kolkata – 700029.

...Appellant

Versus

1. Myotic Trading Private Limited

Through its Director
Having its office at: Room No. 320,
3rd Floor, 7 Grant Lane, Kolkata-700012

...Respondent No.1

**2. Deepak Maini, Resolution Professional
of Amzen Transportation Industries
Limited**

Having its office at C-100, Sector 2
Noida, Uttar Pradesh - 201301

...Respondent No.2

**3. Committee of Creditors of Amzen
Transportation Industries Limited**

Through its Resolution Professional
Having its office at:
C-100, Sector 2, Noida
Uttar Pradesh - 201301

...Respondent No.3

4. Prudent ARC Limited

Through its Director
Having its office at: Unit No. 611
6th Floor, D Mall, Plot A-1
Netaji Subhash Place
Pitampura, New Delhi -110034

...Respondent No.4

5. UCO Bank

Through its Director
Having its Office at: 10, BTM Sarani
Kolkata, West Bengal - 700 001

...Respondent No.5

6. **WLD Investments Private Limited**

Through its Director
Having its office at: D-15 Pamposh Enclave,
Greater Kailash-1, New Delhi, 110048

...Respondent No.6

7. **Fortune Global Solutions PTE Ltd**

Through its Authorised Signatory
Having its office at: 11, Collyer Quay,
#10-05, The Arcade, Singapore – 049317

...Respondent No.7

Present:

For Appellant(s) : Mr. Abhinav Vasisth Sr. Advocate alongwith Mr. Anand Verma, Mr. Ashish Choudhary, Ms. Akshita Sachdeva, Mr. Akash Agarwal, Mr. Abhishek Arora & Ms. Prachi Grover, Advocates
Mr. Brijesh Kumar Tamber, Mr. Prateek Khushwaha & Mr. Aryan Data, Advocates for UCO Bank.

For Respondent(s) : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Mr. Rajat Gupta, Ms. Ridhima Mehrotra & Ms. Vanshika Dhoota Advocates for RP.

Mr. Deepak Maini, Advocate for RP in Person

Mr. Sumesh Dhawan, Mr. Ankit Singhal, Mr. Shaurya Shyam, Ms. Kavya Tekriwal, Ms. Purna Prajapati & Ms. Kirti Bhatia, Advocates for R-4.

Mr. Pranav Sachdeva, Mr. Sanyam Jain, Mr. P. Rohit Ram, Ms. Khushboo Singhal & Ms. Mishra Divya Santosh, Advocates for R-1.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Application I.A. No. 4810 of 2025 in Company Appeal (AT)(Ins.) No. 859 of 2025 has been filed by the applicant- Cosmic CRF Limited under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 seeking recall of the judgment and order dated 25.07.2025 passed by this Hon'ble Tribunal in Company Appeal (AT)(Insolvency) No. 859 of 2025 to the extent that the

Applicant has been declared to be ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016 and also to the extent that this Hon'ble Tribunal has directed for continuation of proceedings of Corporate Insolvency Resolution Process of the Corporate Debtor i.e. Amzen Transportation Industries Ltd. from the stage of issuance of a fresh 'Form- G'.

Brief facts of the case

2. Amzen Transportation Pvt. Ltd. ("Corporate Debtor") was incorporated on July 07, 2008. The Corporate Debtor is engaged in business of manufacturing of specialized railway wagons to transport specialized products.

3. IDBI Bank Ltd. had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") being Company Petition No. (IB)-3 (ND) /2020 against the Corporate Debtor before the Hon'ble National Company Law Tribunal, New Delhi Bench ("**NCLT**") seeking commencement of Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor.

4. The Hon'ble NCLT vide order dated May 04, 2022 admitted the Company Petition No. (IB)-3 (ND) /2020 and directed commencement of CIRP of the Corporate Debtor. Mr. Deepak Maini was appointed as the Interim Resolution Professional, who was later confirmed as the Resolution Professional ("**RP**").

5. The RP had published the Form G in respect of the Corporate Debtor on April 20, 2024. In response to Form G, RP received Expression of Interest

("EOI") from 19 Prospective Resolution Applicants ("**PRA**") including that of Cosmic CRF Ltd. ("**Cosmic**").

6. RP issued a Request for Resolution Plan ("**RFRP**") on May 20, 2024, following which Cosmic submitted its Section 29A Affidavit on June 21, 2024, and its Resolution Plan on June 28, 2024, along with an Earnest Money Deposit of ₹1.50 crores.

7. The Committee of Creditors of the Corporate Debtor ("**CoC**") decided to conduct the challenge mechanism process with the Resolution Applicants in the ongoing round of submission of resolution plan.

8. The RP in consultation with CoC had conducted the due diligence and the eligibility verification of the resolution applicants who had submitted the resolution plans through an external agency namely, AHSK & Co. Ltd. ("**AHSK**"). AHSK had submitted its report dated August 19, 2024 holding Cosmic to be compliant to take part in the CIRP of the Corporate Debtor.

9. While the challenge mechanism process was ongoing, RP received a complaint letter dated August 20, 2024 from Energy Watchdog inter alia, alleging that Cosmic was ineligible under Section 29A of IBC to take part in the CIRP of the Corporate Debtor on account of connection of Mr. Aditya Vikram Birla (Managing Director of RA-Cosmic CRF) with another entity namely, Cosmic Ferro Alloy Ltd. ("**CFAL**").

10. The RP on August 27, 2024 also received an email from another resolution applicant namely Myotic Trading Pvt. Ltd. (“**Myotic**”) annexing a copy of the complaint letter addressed by Energy Watchdog. The RP upon receipt of the email addressed an email dated August 27, 2024 to Myotic seeking its response on how the complaint of Energy Watchdog against Cosmic came to its knowledge and where did it receive the information that there is another PRA by the name of Cosmic whose plan is being considered by the CoC as the same is confidential in nature.

11. However, instead of addressing the query raised by the RP, Myotic addressed an email dated August 28, 2024 to the RP, whereby the legal opinion dated August 28, 2024 given by Sr. Adv. Gopal Jain was attached. The said legal opinion stated that Cosmic was ineligible to participate under Section 29A(c) and (h) of IBC.

12. The RP addressed an email dated August 31, 2024 to Cosmic seeking its response to the allegations raised by Energy Watchdog. Cosmic vide letter dated September 2, 2024 denied the allegations raised by Energy Watchdog.

13. The RP on September 1, 2024 received an email from Prudent ARC (a member of the CoC) wherein the following documents all dated September 1, 2024 were attached:

- a) Legal opinion of Sr. Adv. Mr. Amit Sibal,
- b) Letter addressed by IP Mahender Kumar Khandewal, and
- c) Section 29A report of CLA Indus Value Consulting Pvt Ltd.

The aforesaid documents stated that Cosmic is ineligible under Section 29A of IBC.

14. In light of the aforesaid the CoC decided to refer the allegations in the letter/email of Energy Watchdog dated August 27, 2024 to AHSK to reverify the eligibility of Cosmic under Section 29A of IBC.

15. AHSK provided the report on September 20, 2024, wherein AHSK declared Cosmic to be ineligible under Section 29A of IBC.

16. Thereafter, RP in consultation with the CoC issued a Show Cause Notice dated September 27, 2024 to Cosmic asking as to why Cosmic should not be declared ineligible to submit resolution plan under Section 29A(c) of IBC.

17. Cosmic replied to the Show Cause Notice on September 30, 2024 stating that AHSK had relied upon the provision of Section 29A (c) which has been amended on June 06, 2018 and thus AHSK had based its report on the provisions of law which was no longer good. It was also stated that the CIRP of CFAL was commenced on January 16, 2018 and the consortium of United Tradeco FZC and QVC Exports Private Limited had submitted the resolution plan in respect of CFAL which was approved by the Hon'ble NCLT way back on October 11, 2018. Thus, in terms of Section 29A(c) of IBC, as on the plan submission date, neither Cosmic nor its connected persons held any account which has been classified as NPA nor were in management of Corporate Debtor whose account have been classified as NPA and were also not a promoter of a Corporate debtor whose account has been classified as

NPA. Mr. Aditya Vikram Birla merely held 9540 shares i.e., 0.09% of CFAL as on March 31, 2018, which got subsequently extinguished with the approval of NPA. It was also stated that Ravi Birla is not even a connected person to Cosmic.

18. After receipt of the reply, CoC in its meeting of October 03, 2024 decided to forward the response of Cosmic to AHSK to give the final report and appoint a second independent agency, viz. Priyanka Sharma & Associates (“**PSA**”) to assess the eligibility of Cosmic under Section 29A of IBC. On October 8, 2024 PSA was appointed for examining the eligibility of Cosmic.

19. AHSK submitted its final report on October 18, 2024 wherein it clarified that the earlier report had been prepared taking into account the resolution plan submission date as the threshold date and the unamended provision of Section 29A (c) was quoted inadvertently. AHSK further stated that the first proviso to sub-clause (c) of Section 29A makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan.

20. PSA submitted its report on October 18, 2024 holding Cosmic to be ineligible under Section 29A (a), (c), (h) and (j) of IBC. As per the Report, Cosmic per se was not ineligible under Section 29A, however, its connected persons were undischarged insolvent hence Cosmic became ineligible under Section 29A (a). The report also observes that the Company is

ineligible under Section 29A(h) of the IBC as one entity being Archana Impex Private Limited [connected party of Cosmic] had executed a corporate guarantee for the loans of CFAL and CFAL was admitted to CIRP on petition made by Citibank NA and hence the Cosmic was ineligible under Section 29A(h).

21. Both the reports of AHSK dated October 18, 2024 and PSA dated October 18, 2024 were placed before the CoC and the CoC in its meeting decided to declare Cosmic as ineligible under Section 29A (a), (c), (h) and (j) of IBC.

22. Cosmic was intimated of the decision of CoC on November 04, 2024 which was basis the two reports being AHSK report dated October 18, 2024 and PSA report dated October 18, 2024 were provided along with the letter dated November 04, 2024.

23. Cosmic addressed a letter dated November 5, 2024 wherein it denied that it was ineligible under Section 29A (a), (c), (h) and (j) of IBC and stated that they were declared ineligible without being given an opportunity of being heard.

24. Cosmic preferred an application being I.A. No. 5392 of 2024 in Company Petition No. (IB)-3 (ND) /2020 before the Hon'ble NCLT inter alia, challenging the decision of the CoC dated October 19, 2024.

25. The Hon'ble NCLT vide its order dated January 09, 2025 inter alia set aside the decision of CoC dated October 19, 2024 and remanded the matter

back to CoC for fresh adjudication after giving a reasonable opportunity to Cosmic to rebut the allegations made in the AHSK report dated October 18, 2024 and PSA report October 18, 2024. The direction of the Hon'ble NCLT in its order dated January 09, 2025 is as follows:

“20. In view of the aforesaid discussion and without delving into the merits of the present case, we hereby direct the Resolution Professional (RP) and the Committee of Creditors (CoC) to afford the Applicant/Resolution Applicant a fair opportunity to appear before them and furnish a reply in response to the reports dated 18.10.2024 wherein the Resolution Applicant has been held to be ineligible as per Section 29A (a), (c), (h), and (j) of the Code. This direction is issued in the interest of upholding the principles of natural justice.

21. Accordingly, we are inclined to allow Prayer (a) and Prayer (b) of the Applicant and remand the matter to the Committee of Creditors (CoC) for reconsideration, ensuring adherence to the principles of natural justice and equity. The Applicant shall be afforded an opportunity to provide its justification in light of the latest report on the eligibility criteria.”

26. In compliance of the direction of the aforesaid order, the RP sent a letter to Cosmic asking it to appear before the CoC in meeting to be held at 5 PM on January 15, 2025 via virtual mode. In terms of the order of the NCLT, Cosmic made a detailed written representation to the allegations in the reports of AHSK and PSA by its letter dated January 20, 2025 denying all the allegations.

27. The CoC in its 54th meeting held on January 22, 2025 decided to get Cosmic re-verified by PSA.

28. PSA submitted the final report on February 18, 2025 whereby PSA arrived at the conclusion that Cosmic was ineligible under Section 29A (c), (h) and (j) of IBC.

29. At the 55th meeting of the CoC on 06.03.2025, the Applicant was declared to be eligible to submit a resolution plan under Section 29A of the IBC.

30. Myotic challenged this decision of the CoC on 10.03.2025, taken on March 6, 2025 before the Ld. NCLT by filing an application being IA No. 1240/ND/2025.

31. On 02.04.2025, the Ld. NCLT, heard the parties only on the issue of maintainability of the Application being IA No. 1240/ND/2025 and directed parties to file written submission.

32. In the meanwhile, on 28.05.2025, the Respondent No.1 had also filed an application being I.A. No. 2548 of 2025 seeking replacement of the RP and reconstitution of the CoC. The said application was dismissed by the Ld. NCLT by order dated May 28, 2025.

33. The Ld. NCLT on 29.05.2025 passed the order holding that the Myotic acting alone cannot be considered a PRA and therefore, lacks the legal capacity to maintain the Application and further held that it has no locus to challenge.

34. Being aggrieved by the order dated May 29, 2025 passed by the Ld. NCLT, the Myotic in June 2025 filed the Appeal being Company Appeal (AT)(Ins) No. 859 of 2025 before the Hon'ble NCLAT.

35. On 25.07.2025, the final judgment and order was passed by the NCLAT in Company Appeal (AT) (Ins.) No. 859 of 2025 whereby this Tribunal had partly allowed the Appeal filed by the Respondent No.1 and held that the Appellant has been correctly held ineligible to be considered as PRA as it did not have any locus. However, the Applicant is/was also ineligible under Section 29A of the IBC to be a PRA.

36. The applicants filed an appeal being Civil Appeal No. 9900 of 2025 against the judgment and order dated July 25, 2025 wherein the Hon'ble Supreme Court on 04.08.2025 permitted the Applicant to approach this Hon'ble Tribunal to point out the errors in the judgment and order dated 25.07.2025 passed by this Hon'ble Tribunal.

Applicant's- Case

37. IA No. 4810 of 2025 was filed by the Applicant - Cosmic CRF Limited in pursuance to the orders of Hon'ble Supreme Court in Civil Appeal No. 9900 of 2025 against the judgment and order of this Appellate Tribunal dated 25.07.2025 in Company Appeal (AT)(Ins.) No. 859 of 2025. Hon'ble Supreme Court, on 04.08.2025, had passed the following orders, which is extracted as below for convenience:

“a) The National Company Law Appellate Tribunal (for short “the NCLAT”) in its order has recorded the following findings in paragraphs 105 and 106 respectively as under:

“105. We find that COC had taken legal opinion from various law firms and found Cosmic to be ineligible on

various grounds. The reports on the issue of eligibility of Cosmic CRF Limited - Respondent No.3, were discussed in detail in various meetings of the CoC and the resolution applicant was intimated vide letter dated 04.11.2024 which contained in detailed manner as to how it is not found eligible under various clauses of Sections 29A(a), (c), (h) and (j) of IBC, 2016 (pages 359-366 of Appeal Paper Book). It is to be noted that both AHSK and PSA earlier entrusted by the CoC have given detailed findings and reasons with respect to their conclusions as to how Cosmic CRF Limited - Respondent No.3 was not found eligible under Section 29A. Cosmic CRF Limited approached NCLT on 05.11.2024 and NCLT vide order dated 05.11.2024 remanded the matter back to the CoC for reconsideration on the issue ineligibility of Cosmic CRF Limited under Section 29A after providing it an opportunity of being heard. Later on, RP/CoC called for the response of Cosmic CRF Limited and also asked PSA to give it final 1 report/opinion based on all the previous reports and Cosmic CRF Limited response dated 20.01.2025 and it was also decided to send the final report of PSA to a Senior Advocate for his opinion. The final report dated 18.02.2025 of PSA again declared Cosmic CRF Limited to be in eligible under Section 29A of IBC. But Senior Advocate in his opinion dated 03.03.2025 declared it to be eligible under Section 29A.

106. We have noted various reports of Experts which are placed on record in the pleadings. Without going into the details of these reports, we find that the report of PSA and also the earlier report submitted by AHSK & Co. are detailed reports and are similar and they both had come to the same conclusion that Cosmic CRF Limited is not eligible under Section 29A. We also note that despite multiple initial reports and despite Cosmic CRF Limited – Respondent No.3 having been given opportunity of being heard, all reports suggest non-eligibility of Cosmic CRF Limited - Respondent No. 3 except the view of senior advocate, which was obtained on the final report of PSA. Even if we don't rely on these reports of law firms we find that the respondents have not satisfactorily replied to the real issues raised by the appellant from pages 66-72 and 88-100 of Appeal Paper Book.”

- b) Today, the entire debate before us was on Section 29A of the Insolvency and Bankruptcy Code, 2016 (for short “the IBC, 2016”).

- c) According to the learned counsel appearing for the appellant, the findings recorded in paragraphs 105 and 106 respectively are incorrect and contrary to the records available.
- d) If that be so, the appellant should go before the NCLAT and point out the factual errors to the Appellate Tribunal.
- e) Since, this has something to do with factual errors, the bar of review should not come in the way of the NCLAT.
- f) At this stage, Mr. Mukul Rohtagi and Mr. C.A. Sundaram, the learned counsel appearing for the respondents vehemently submitted that in no manner the findings recorded in the two paragraphs, referred to above, could be termed as perverse or contrary to the record.
- g) In view of the aforesaid, this appeal stands disposed of.
- h) Pending application(s), if any, stands disposed of.”

38. The Applicant - Cosmic CRF Limited contends that appeal in CA (AT) (Ins.) No. 859 of 2025 was filed against the order of National Company Law Tribunal passed in I.A. No. 1240 of 2025, New Delhi. Applicant claims that IA 1240 was listed before National Company Law Tribunal and the NCLT had heard all the parties and had directed the Respondents therein to file their reply, which was limited to the issue of the maintainability of this Interlocutory Application. And the order in this IA was never challenged and had attained finality. Accordingly, the Applicant as well as Respondent No.4 (Prudent, ARC Limited), Respondent No.5 (UCO Bank Limited) had filed their replies limited to the issue of the maintainability. Respondent No.1 had also filed the common rejoinder to all the replies, only limited to the issue of maintainability of I.A. No. 1240 of 2025. Applicant further contends that the National Company Law Appellate Tribunal also heard the

parties only on the issue of maintainability of I.A. No. 1240 of 2025 on 02.04.2025 and reserved orders on 23.04.2025.

39. It is further contended that National Company Law Tribunal had held that R1-Myotic, acting alone cannot be considered Prospective Resolution Applicant and therefore doesn't have the locus to maintain the I.A. No. 1240 of 2025. The Applicant claims that National Company Law Tribunal never adjudicated on the eligibility of Applicant under Section 29A of Insolvency and Bankruptcy Code, 2016 as the application of R1-Myotic was dismissed on the threshold issue of not having any locus. R1-Myotic filed appeal in CA (AT) (Ins.) No. 859 of 2025 before this Tribunal and had prayed as follows: -

- “(a) To allow the present appeal;
- (b) To set aside the impugned final order dated 29.05.2025 passed by the Hon'ble National Company Law Tribunal, New Delhi in IA/1240/ND/2025 in CP(IB)/3/ND/2020;
- (c) To refer IA/1240/ND/2025 in CP(IB)/3/ND/2020 back to the Hon'ble NCLT in light of the glaring illegalities which are prevalent in the CIR Process;
- (d) Such other and further reliefs that this Hon'ble Appellate Tribunal may deem appropriate.”

40. Applicant-Cosmic CRF Ltd contends that the only issue before this Appellate Tribunal was whether the R1-Myotic had locus to maintain IA No. 1240/ND/2025 before the NCLT and this Hon'ble Tribunal in paragraph 90 of its judgment also framed the issue as:

“Whether Applicant was lacking any locus standi to pursue before the Adjudicating Authority and whether any error has been committed by the AA on this ground.”

41. Further Applicant-Cosmic CRF contends that after framing the

aforesaid issue, this Hon'ble Tribunal in para 103 of its judgment held that R1-Myotic is not eligible to be PRA on account of withdrawal by its consortium partner and had no locus to maintain the application and noted that 'we are inclined to dismiss CA (AT) No. 859 of 2025'. Having concluded that the application of Respondent No.1 was rightly dismissed as being non-maintainable, this Hon'ble Tribunal ought not have travelled in an appeal which itself stood dismissed and should not adjudicate upon the eligibility of the applicant under Section 29A of IBC, which was never the issue before the Adjudicating Authority and also this Appellate Tribunal and not even the prayer of the Appellant was with regard to the same.

42. Applicant claims that the prayer of Respondent No.1 was only for remand of I.A. No.1240(ND)/2025 back to the NCLT for its consideration on merits since the NCLT had dismissed it only on the ground of being non-maintainable. Applicant claims that the observations and findings contained in 105 – 108 and 111- 118 of the judgment and order dated 25.07.2025 in so far they relate to the ineligibility of the applicant i.e. Cosmic CRF Ltd. under Section 29A of the Insolvency and Bankruptcy Code, 2016 apart from being factually erroneous is rendered beyond the jurisdiction and beyond the prayers of the Appeal itself and further no opportunity was available to the applicant to defend itself with regard to its eligibility of Section 29A of the IBC.

43. Applicant contends that no opportunity of being heard was given to the applicant before declaring the applicant to be ineligible under Section 29A. It is further claimed that no opportunity was also given to the

applicant to file reply in relation to the allegations of applicant's ineligibility under Section 29A. Applicant contends that the judgment and order dated 25.07.2025, to the extent that it holds the applicant to be ineligible under Section 29A, is in violation of principles of natural justice and there are glaring factual errors in the judgment and order dated 25.07.2025 which have been pointed in the application. Even otherwise, the applicant does not suffer from any of the ineligibility under Section 29A which have been dealt in detail in the present application.

44. The Applicant in this IA 4810 has sought the following reliefs:

- a) Recall the judgment and order dated 25.07.2025 passed in Company Appeal (AT) (Ins.) No. 859 of 2025 to the extent it holds the Applicant i.e. Cosmic CRF Ltd. to be ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016,
- b) Recall the judgment and order dated 25.07.2025 passed in Company Appeal (AT) (Ins.) No. 859 of 2025 to the extent it directs for continuation of proceedings of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor i.e. Amzen Transportation Industries Ltd. from the stage of issuance of a fresh 'Form-G'.
- c) Recall the observations made by this Hon'ble Tribunal in para 105 108 and 111-118 of the judgment and order dated 25.07.2025 passed in Company Appeal (AT) (Ins.) No. 859 of 2025 in so far as they relate to the ineligibility of the applicant i.e. Cosmic CRF Ltd. under Section 29A of the Insolvency and Bankruptcy Code, 2016.
- d) Grant ad-interim ex-parte stay of operation of the judgment and order dated 25.07.2025 passed in Company Appeal (AT)(Ins.) No. 859 of 2025 to the extent it holds the Applicant to be ineligible under Section 29A of IBC.
- e) Grant ad-interim ex-parte stay of the operation of the judgment and order dated 25.07.2025 passed in Company Appeal (AT)(Ins.) No. 859 of 2025 to the extent it directs the Respondent No.2 to issue fresh Form-G and any further proceeding pursuant thereto.

- f) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances.”

Submissions of R1-Myotic Trading Private Limited & Ors.

45. In the present IA No. 4810 of 2025, Learned Counsel for the R1-Myotic changed its stance and filed an affidavit dated 22.08.2025 stating that it has decided not to participate in the ongoing resolution process of the Corporate Debtor and expressed no objection for Cosmic CRF Ltd. to be held not ineligible under Section 29A of IBC. Their submissions are extracted as below:

“10. Thus, the appellant has decided to respectfully and humbly accept the judgment of this Hon'ble Tribunal dated 25.07.2025 that appellant is no longer eligible to be a resolution applicant on account of the fact that the consortium (of which it was the lead member) no longer exists and that Ld. NCLT had rightly dismissed appellant's application IA 1240/2025 vide order dated 29.05.2025 on the ground of locus.

11. In light of the aforesaid, appellant (Respondent No. 1 in above recall application) has now taken a considered decision not to participate in the ongoing resolution process of the Corporate Debtor in any manner. The Appellant only wishes to get the refund of earnest money of Rs. 1.5 crores deposited by it.

12. In light of the above, the Appellant Myotic Trading has therefore no objection if the observations contained in the judgment dated 25.07.2025 holding Cosmic CRF Ltd. to be ineligible under Section 29A of IBC and the direction relating to CIRP to proceed from the stage of issuance of a fresh Form-G are modified / set aside in the present proceedings.”

Submissions of R5 – UCO Bank

46. Learned Counsel for the R5 – UCO Bank in its written submission dated 03.09.2025 had stated as under:

“7. It is submitted that as the main issue in the captioned Appeal as well as never arose for consideration on merits i.e., to consider the issue of eligibility or ineligibility of Cosmic CRF Limited, therefore the matter was never argued on merits by the UCO Bank. Even the word 'merits' mentioned in the order dated 25.06.2025 passed by this Hon'ble Appellate Tribunal is pertaining to the issue whether

the consortium exist or not for which consensus arrived between the parties to decide the Appeal so that the orders can be passed on merits on the issue of locus and existence of consortium of M/s. Myotic Trading Private Limited and M/s. Fortune Global Solutions Pte Ltd. and instead for remanding the matter back to the Hon'ble Adjudicating Authority.

12. It is submitted that if the opportunity for defending/justifying the decision taken in the 55th meeting of the Committee of Creditor have granted then the UCO bank could have placed the opinion of the Senior Advocate on the basis of whose opinion M/s. Cosmic CRF Limited was declared to be eligible, but such situation never arose before the Hon'ble adjudicating Authority nor before this Hon'ble Appellate Tribunal. But the order dated 25.07.2025 also covers aspects pertaining to the decision taken by the Committee of Creditors.

13. It is submitted that the order dated 25.07.2025 is liable to be recalled not only on the ground of lack of jurisdiction but also on the ground of violation of principles of natural justice as no opportunity to address the arguments on merits i.e., on eligibility/ineligibility was ever granted to the Committee of Creditors.

14. In view of the above, the Respondent No. 5/ UCO Bank prays that this Hon'ble Appellate Tribunal may pass an order of recalling of the judgment dated 25.07.2025 as the same is passed without jurisdiction.”

Submissions of R4 – Prudent ARC Ltd

47. Learned Counsel for the R4 – Prudent ARC Ltd. had also adopted similar arguments dated 04.09.2025 and 26.11.2025 and states that:

“10. That this Hon'ble Appellate Tribunal has in Paragraph 106 of the Judgement dated 25.07.2025 has held that the Respondents have not replied to the real issues raised by the Appellant.

11. That the Appellant had placed reliance on the ED Provisional Attachment Order dated 25.03.2025 and also upon the various other pleadings in the captioned Appeal which did not form part of the documents/pleadings of IA 1240/2025 upon which the Impugned Order dated 29.05.2025 was passed by the Hon'ble Adjudicating Authority nor was the same subject matter or the grounds urged before the Hon'ble Adjudicating Authority. The submissions of the Respondent no. 4 are also recorded in Para nos. 61 to 78 [Pg. 115] of the Judgement dated 25.07.2025.

12. The issue framed by the Hon'ble Adjudicating Authority in the Impugned Order dated 29.05.2025 and this Hon'ble Appellate Tribunal in the Judgement dated 25.07.2025, was limited to the locus standi of Myotic to maintain the IA 1240/2025. That, the said

issues were never raised before the Hon'ble Adjudicating Authority or this Hon'ble Appellate Tribunal. Without prejudice, there no occasion nor any opportunity granted to the Respondents to reply to the said real issues before the Hon'ble Adjudicating Authority or this Hon'ble Appellate Tribunal.

13. In view of the above facts and circumstances, the fact remains that this Hon'ble Appellate Authority was only called upon to decide the issue of whether IA 1240 of 2025 was maintainable before the Ld. Adjudicating Authority or not.”

Final submissions of R4-Prudent ARC

48. After the hearings, in his written submissions placed on record on 27th Jan 2026 R4 - Prudent ARC states as follows:

“8. In view of the same, the Respondent has the following concise submissions:

8.1. As far as the eligibility of Cosmic under Section 29A is concerned, the CoC has already confirmed the eligibility in the 55th CoC meeting dated 06.03.2025. The Respondent no. 4 will abide by any decision taken by this Hon'ble Appellate Tribunal on the eligibility of Cosmic under Section 29A.

8.2. The observations in paragraph nos. 112 to 116 with respect to Respondent no. 4 be deleted, as the said observations have come without any opportunity being provided to the Respondent no. 4 to meet them. In any event, the said pleadings were part of IA no. 2548/2025, which were the subject matter of Appeal No. Company Appeal (AT) (Ins) No. 877/2025, which has already been remanded to the Hon'ble Adjudicating Authority by this Hon'ble Appellate Tribunal.”

Submissions of the RP – R2

49. Learned Counsel for the RP of the Corporate Debtor – Mr. Deepak Maini in its written submissions dated 17.09.2025 also submits as follows:

“4. Further, this Hon'ble Appellate Tribunal vide Judgement dated 25.07.2025 held that Cosmic CRF is not eligible as per Section 29A of the Insolvency and Bankruptcy Code, 2016 ("Code") and further directed the RP to publish fresh FORM - G in accordance with law. It is submitted that the said question of law was neither formulated before the Ld. Adjudicating Authority or this Hon'ble Appellate Tribunal and neither any pleadings or arguments were made by any of the parties before the Ld. Adjudicating Authority or this Hon'ble Appellate Tribunal.

5. It is submitted that this Hon'ble Adjudicating Tribunal stated that the RP and CoC has wrongly declared Cosmic CRF as eligible in

terms of Section 29A of the Code (Reference: Para 111 of judgement dated 25.07.2025). However, it is submitted that RP has complied with the Regulation 36A (8) & (9) of the CIRP Regulations while examining the eligibility of Cosmic under Section 29A of the Code, which categorizes due diligence based on the material on record. The Hon'ble Supreme Court in Arcelor Mittal India Private Limited v. Satish Kumar Gupta, [(2019) 2 SCC 1] has held that the role of the RP is merely to facilitate and the final decision regarding the Resolution Plan is left within the domain of the members of the CoC.

7. It is pertinent to mention that the Impugned Order was passed by Ld. Adjudicating Authority only considering the issue of maintainability of Myotic to file an Application and no other question of law was considered. No findings or even arguments were made by any party with respect to the eligibility or ineligibility of Cosmic before the Ld. Adjudicating Authority and no opportunity was accorded to any party to rebut the question of eligibility of Cosmic.

8. It is submitted that the issue before this Hon'ble Appellate Authority also was limited to issue of locus standi of Myotic challenging the eligibility of Cosmic CRF, which was decided by this Hon'ble Appellate Authority as stated in Para 96, 99 and 103 of judgement dated 25.07.2025.”

50. RP further submits that it has duly complied with direction given vide judgement dated 25.07.2025:

“9. It is submitted that the RP has duly complied with the direction given by this Hon'ble Appellate Authority vide Judgement dated 25.07.2025 and further issued fresh Form - G dated 22.08.2025 and corrigendum dated 01.09.2025 (published in newspaper on 02.09.2025) to Form G dated 22.08.2025 outlines:

- Date of issuance of provisional list of Prospective Resolution Applicants is: 24.09.2025.
- Last date of submissions of objections to the provisional list is: 29.09.2025.
- Date of issuance of final list of Prospective Resolution Applicants is: 08.10.2025.
- Date of issuance of Information Memorandum, evaluation matrix and request for Resolution Plans to the Prospective Resolution Applicants is:

13.10.2025.

- Last date for submission of Resolution Plans: 12.11.2025 (proposed).”

Final submissions of RP – R2

51. RP also in his final submissions placed on 29th Jan 2026 states as follows:

“5. It is submitted that this Hon'ble Appellate Tribunal ordered that the RP and CoC have erred in declaring Cosmic CRF eligible in terms of Section 29A of the Code (Reference: Para 111 of judgement dated 25.07.2025). However, it is submitted that RP has complied with the Regulation 36A (8) & (9) of the CIRP Regulations while examining the eligibility of Cosmic under Section 29A of the Code, which categorizes due diligence based on the material on record. The Hon'ble Supreme Court in Arcelormittal India Private Limited v. Satish Kumar Gupta, [(2019) 2 SCC 1/ has held that the role of the RP is merely to facilitate and the final decision regarding the Resolution Plan is left within the domain of the members of the CoC. (Refer Para 80 of the Judgement).

6. Furthermore, this Hon'ble Appellate Tribunal in the matter of Sharavan Kumar Vishnoi v. Upma Jaiswal & Ors, [Company Appeal (AT)(Ins) No. No. 371 of 2022] while relying upon the decision of the Hon'ble Supreme Court in Arcelormittal (supra) wherein it was held that the RP can only form his opinion in regards to the eligibility of the PRA and it is the CoC to take decisions qua eligibility of any PRA. (Refer Para 7 & 8 of the Judgement).

7. It is pertinent to mention that the Impugned Order dated 29.05.2025 was passed by Ld. Adjudicating Authority only considering the issue of maintainability of Myotic to file an application and no other question of law was considered. No findings or even arguments were made by any party with respect to the eligibility or ineligibility of Cosmic before the Ld. Adjudicating Authority and no opportunity was accorded to any party to rebut the question of eligibility of Cosmic.

8. It is submitted that this Hon'ble Appellate Authority only adjudicated on the issue of locus standi of Myotic challenging the eligibility of Cosmic CRF, which is recorded in Para 96, 99 and 103 of judgement dated 25.07.2025 passed by this Hon'ble Appellate Authority. RP HAS DULY COMPLIED WITH DIRECTION GIVEN VIDE JUDGEMENT DATED 25.07.2025

9. It is submitted that the RP has duly complied with the direction given by this Hon'ble Appellate Authority vide Judgement dated

25.07.2025 and issued a fresh Form-G dated 22.08.2025, wherein the extended last date, as approved by the CoC, for submission of EOI was stipulated as 30.09.2025. That the revised timelines are as under:

- Last date for submission of Resolution Plans: 30.01.2026 (proposed);
- Total number of PRA: 11;
- Resolution Plans received till date: 4

That vide Order dated 10.10.2025, this Hon'ble Appellate Tribunal, has directed the RP that, "the resolution plan(s), if any, received, shall not be opened and placed before the CoC."

52. RP further contends that once the present application is allowed, certain paragraphs ought to be expunged from the judgement dated 25.07.2025 extracted as below:

"10. It is submitted that the CoC of the Corporate Debtor, in its 55th meeting convened on 06.03.2025, unanimously resolved and approved that Cosmic CRF satisfies the eligibility criteria prescribed under Section 29A of the Code. It is further submitted that the RP, whose role under the Code is limited to that of a neutral facilitator and process manager, acted strictly in accordance with and in faithful compliance of the commercial wisdom and collective decision of the CoC. The RP neither exercised any independent discretion nor acted beyond the mandate conferred upon him under the Code, and merely implemented the decision taken by the CoC.

11. It is further submitted that in the event that this Hon'ble Appellate Tribunal, while adjudicating the present Application on merits, arrives at a conclusion that Cosmic CRF is eligible under Section 29A of the Code, then, in such circumstances, the adverse findings, observations, or conclusions recorded by this Hon'ble Appellate Tribunal against the Resolution Professional in the Judgment dated 25.07.2025 would become unsustainable in law and in fact. Consequently, such findings ought to be expunged or set aside, as the RP cannot be faulted for having acted in accordance with the prevailing

interpretation and his bona fide understanding of the law at the relevant time.

12. It is submitted that this Hon'ble Appellate Tribunal, in Paragraph Nos. 111-112, 114-115 & 118 of the Judgment dated 25.07.2025, has recorded certain findings and observations against the Resolution Professional of the Corporate Debtor, specifically in relation to the declaration of Cosmic CRF eligible under Section 29A of the Code. It is submitted that in the present Application, if this Hon'ble Appellate Tribunal ultimately holds that Cosmic CRF is eligible under Section 29A of the Code, then the aforesaid paragraphs of the earlier judgment dated 25.07.2025, being premised on a contrary assumption, would no longer hold good and, therefore, ought to be expunged or suitably modified to prevent prejudice, unwarranted stigma, or adverse consequences to the RP who acted bona fide and within the framework of the Code.”

Final submissions of the Applicant

53. While presenting his case the Applicant-Cosmic CRF claims that it is eligible under Section 29A of IBC and claims that the reports and opinion that the opining the applicant to be ineligible are fallacious.

54. Applicant contends that AHSK report dated 20.09.2020 had opined that the Applicant i.e. Cosmic CRF is eligible under Section 29A of IBC. However, as the connected person of the Applicant i.e. Aditya Vikram Birla and Ravi Birla were ineligible under Section 29A (c), for that reason the applicant i.e. Cosmic CRF Ltd. also became ineligible on account of the ineligibility of its connected persons. Thus, AHSK opined the applicant to be ineligible under Section 29A for the following reasons:

- Aditya Vikram Birla as on 31.03.2018 held 9540 shares [0.09%] directly in Cosmic Ferro Alloys Ltd. (“CFAL”) and was the promoter of CFAL.

- Aditya Vikram Birla held 53,13,889 shares [51.06%] indirectly in CFAL through corporate entities.
- Total shareholding of Birla Family in CFAL as on 31.07.2018 was 67.78%.
- Ravi Birla [Father of Aditya Vikram Birla] was the director and promoter of CFAL.
- CFAL was classified as NPA on 03.04.2017.
- CFAL was admitted into CIRP on 16.01.2018
- Resolution Plan of consortium of United Tradeco FZC and QVC Exports Pvt. Ltd. was approved by NCLT on 11.10.2018. Through the approval of the Resolution Plan the entire financial debt of CFAL of Rs. 178 crores got settled at an amount of Rs. 50 crores. The balance debt still remains outstanding and payable by the erstwhile promoters of CFAL, who were guarantors to the debt raised by CFAL.
- Applicant is ineligible as the connected person of Applicant i.e. [Aditya Vikram Birla (being director and 63.99 % shareholder of Applicant) and Ravi Birla (father of Aditya Vikram Birla)] were in control and management of CFAL when CFAL was classified as NPA, hence, they were ineligible under Section 29A(c).

55. **Reliance by AHSK on otiose provisions of law:** Applicant-Cosmic CRF contends that AHSK in its report has quoted an incorrect provision as Section 29A (c) had been amended by way of Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 with retrospective effect from 06.06.2018. As per the amendment, the words “*at the time of submission of resolution plan*” has been inserted at the beginning of Section 29A (c). This amendment is pivotal as it clarifies that the ineligibility of the resolution applicant has to be seen on the date when the resolution applicant submits its resolution plan for the Corporate Debtor. Thus, the date of submission of Resolution Plan by the applicant i.e. 28.06.2024 is the relevant date for determining ineligibility under Section 29A (c). Applicant places it reliance

on the judgement of Hon'ble Supreme Court in **Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Ors., (2019) 2 SCC 1** (para 46). Thus the entire report has been prepared by AHSK by analyzing the incorrect provision of law.

56. **CFAL was no longer NPA as it is resolved:** Applicant-Cosmic CRF took us through Order dated 11.10.2018 passed by Ld. NCLT, Kolkata Bench in CP(IB) No. 596/KB/2017. The Resolution Plan of CFAL was approved on 11.10.2018. After approval of resolution plan of CFAL, the entire shareholding stood extinguished and the entire management, control and shareholding vested with the new resolution applicant therein and the account of CFAL was no longer NPA. Furthermore, the Resolution Plan submitted by the Consortium of QVC Exports and United Tradeco FZC provided that the account of CFAL was to be upgraded to 'Standard Category' from NPA upon the approval of Resolution Plan by the Ld. NCLT. As per the Resolution Plan, since the value payable to shareholder of CFAL was 'Nil' therefore existing equity shares will be extinguished and shares will be issued to new promoters. As per Resolution plan, the Resolution Applicant will appoint directors to take over the Management of CFAL. As per Resolution Plan, all the debts of the financial creditors will get fully satisfied and extinguished and there remains nothing to be recovered out of such dues.

57. Thus, Applicant-Cosmic CRF further contends that the entire reasoning of AHSK for opining Applicant as ineligible under Section 29A is fallacious for the following reasons:

- AHSK relied upon otiose provisions of law and failed to take into account and appreciate the amendment carried out in Section 29A (c) by Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 with retrospective effect from 06.06.2018.
- AHSK failed to appreciate the effect of approval of Resolution Plan of CFAL and made factually incorrect statements.
- AHSK failed to appreciate that Ravi Birla is not connected to the Applicant in any manner.

58. **Applicant not connected to Ravi Birla:** Applicant-Cosmic CRF also contends that Ravi Birla is not connected to the Applicant in any manner. Applicant-Cosmic CRF contends that Aditya Vikram Birla was not the promoter of CFAL as is evident from the Resolution Plan itself that Aditya Vikram Birla was never a director nor a promoter in CFAL and the miniscule shareholding of 0.09% also stood extinguished. Applicant contends that the observation that Aditya Vikram Birla held 53,13, 889 shares [51.06%] indirectly in CFAL through corporate entities is flawed as Aditya Vikram Birla was not a shareholder in such corporate entities. [Except 0.4% in Cosmic Steels which in turn had only 2.88% in CFAL]. In any event, the entire shareholding in CFAL stood extinguished and the equity shares stood vested with the Successful Resolution Applicant.

59. Applicant-Cosmic CRF further contends that AHSK in its report has reproduced the shareholding of CFAL after approval of Resolution Plan as on 31.03.2021. Neither the name of the applicant nor the name of the Aditya Vikram Birla nor the name of any shareholder CFAL as on 31.03.2018 is reflected in the shareholding as on 31.03.2021.

60. **Ravi Birla- not a connected person to Applicant-Cosmic CRF:** Mr.

Ravi Birla, father of Mr. Aditya Vikram Birla (who was a promoter of CFAL) has no connection with business activity of the applicant, and therefore cannot be considered to be a person connected with the applicant. Ravi Birla is neither a director, nor a shareholder and not connected in any manner with the business of the applicant. Under the expression 'related party' and 'relative' only those persons would be included who are connected with the business activity of the resolution applicant. Applicant places its reliance on the following for this purpose:

- **Swiss Ribbons Private Limited and Anr. v. Union of India and Ors., (2019) 4 SCC 17, Paragraph 109;**
- **Eva Agro Feeds Private Limited v. Punjab National Bank and Anr., (2023) 10 SCC 189, Paragraph 86, 92.**

Furthermore, it is claimed that, ties of Ravi Birla with CFAL were also severed after approval of Plan.

61. Applicant-Cosmic CRF further contends that Applicant or its Connected person - have no connection with SRA of CFAL. SRA is a consortium of United Tradeco FZC and QVC Exports Pvt. Ltd. Promoters of United Tradeco FZC are Sabita Agarwal and Umesh Babu Sharma. The key administration of QVC Exports Ltd. is with Arun Mondal, Neha Chauhan, Arpita Roy and Nilesh Sharma. Thus, neither the applicant nor Aditya Vikram Birla are in any way connected with the consortium.

62. **No guarantee to any entity by Aditya Vikram Birla:** Applicant-Cosmic CRF further claims that Aditya Vikram Birla never gave any guarantee to any entity for the loans taken by CFAL. Thus, the observation

of AHSK that the balance amount of debt is payable by the promoters on account of guarantee qua Aditya Vikram Birla is incorrect. No document has been filed showing that Aditya Vikram Birla gave any guarantee, that guarantee was invoked or any action was taken to recover the money any guarantee. The entire observation of AHSK is based on conjectures.

63. Thus, the applicant i.e. Cosmic CRF Ltd. is not a NPA and does not hold any NPA as on the date of submission of Resolution Plan i.e. 28.06.2024. Similarly, the connected person to Cosmic CRF Ltd. i.e. Aditya Vikram Birla is not the promoter nor in management or control of any Corporate Debtor which is classified as a NPA as on the date of submission of Resolution Plan i.e. 28.06.2024. Thus, the applicant is eligible under Section 29 A (c).

64. Applicant-Cosmic CRF further claims that the legal opinion obtained by the CoC from a Senior Advocate has also after analyzing the provisions of law and facts of the case opined Applicant and its connected persons to be eligible under Section 29A (c).

65. **AHSK Report:** AHSK report argues that after approval of Resolution Plan of CFAL, Aditya Vikram Birla was working as Marketing Executive of CFAL. Applicant-Cosmic CRF contends that the resolution plan itself states that Aditya Vikram Birla will have no influence in the business, decision making process, management or control of CFAL. In *presentai* or at the time of submission of Resolution Plan with the CD, Aditya Vikram Birla is not working as Marketing Executive in any manner whatsoever.

66. AHSK has also observed that Pursuant to the Business Transfer Agreement dated 19.01.22, Applicant acquired Singur unit of CFAL on slump sale basis. Applicant-Cosmic CRF contends that after the Consortium of QVC Exports and United Tradeco FZC took over CFAL, the new owners deleveraged the Company and sold one unit (smaller unit) out of the 2 units to the applicant for a valuable consideration of 49 crores. The allegation that the applicant had purchased all the assets of CFAL is factually incorrect. CFAL is a separate legal entity owned by a Consortium of QVC Exports and United Tradeco FZC and Cosmic CRF is a separate legal entity. They have no connection with each other. There is adversarial litigation pending between the CFAL and the applicant in respect of such purchase of unit. Applicant-Cosmic CRF places its reliance on the order dated 05.11.2024 passed by the **Hon'ble Supreme Court in Cosmic Ferro Alloys Limited Vs. Messrs Cosmic CRF Limited, SLP (C) No. 5735 of 2024**. In this regard applicant contends that, such purchase does not draw any disqualification under Section 29A (c). Hence, it is claimed that the Applicant and its connected persons do not suffer from any ineligibility under Section 29A (c). AHSK report dated 18.10.2020 found Applicant-Cosmic CRF to be ineligible u/s 29A(c) quoting the incorrect provision of law.

67. AHSK opined that Applicant i.e Cosmic CRF would be ineligible under the first proviso to Section 29A (c) as the ineligibility can only be removed if the person submitting resolution plan makes payment of all overdue amounts with interest and charges relating to non- performing asset before submission of the resolution plan. Applicant-Cosmic CRF

claims that after approval of the Resolution Plan, the NPA of CFAL got upgraded to Standard Category and the debts of the Financial Creditor stood fully satisfied and extinguished.

68. Furthermore, applicant claims that Aditya Vikram Birla never gave any guarantee to any entity for the loans taken by CFAL and no document has been filed showing that Aditya Vikram Birla gave any guarantee and that guarantee was invoked or any action was taken to recover the money.

69. It is claimed that thus the applicant i.e. Cosmic CRF Ltd. is not a NPA and does not hold any NPA as on the date of submission of Resolution Plan i.e. 28.06.2024. Similarly, the connected person to Cosmic CRF Ltd. i.e. Aditya Vikram Birla is not the promoter nor in management or control of any Corporate Debtor which is classified as a NPA as on the date of submission of Resolution Plan i.e. 28.06.2024. Hence, it is claimed that the first proviso will not be applicable since there is no NPA and thus there is no occasion for payment of any overdue amounts.

70. **PSA Report:** PSA report dated 18.10.2020 found applicant to be ineligible u/s 29A(a), (c), (h) and (j). PSA opined that Applicant i.e. Cosmic CRF is eligible under Section 29A of IBC, however, the connected person of the Applicant i.e. Aditya Vikram Birla and Ravi Birla are ineligible under Section 29A (a), (c) and (h). Hence, the applicant i.e. Cosmic CRF Ltd. also becomes ineligible on account of the ineligibility of its connected persons.

71. On PSA's opinion that the applicant to be not ineligible under Section 29A for being undischarged insolvent, the applicant claims that in order for

a person to be ineligible under Section 29A (a), there has to be a court order declaring such person to be an undischarged insolvent. Applicant relies on **SREI Multiple Asset Investment Trust v. IDBI Bank Ltd. And Ors., 2022 SCC Online NCLAT 304. Para 49**. It claims that in the absence of any court order declaring the applicant or any connected person to be an undischarged insolvent, the ineligibility under Section 29A(a) will not attach. It also claims that no document has been produced in this respect. Applicant also claims that AHSK also has in its report also opined the Applicant and connected persons to be eligible under Section 29A (a). Thus, there is contradiction between the two reports. The legal opinion obtained by the CoC from a Senior Advocate has also after analyzing the provisions of law and facts of the case opined the Applicant and its connected persons to be eligible under Section 29A (a).

72. On PSA's opinion that the applicant to be not ineligible under Section 29A(h) for an undischarged Corporate Guarantee as Archana Impex Pvt. Ltd. [Alleged connected person of Applicant] had given corporate guarantee on 09.06.2014 on behalf of CFAL to consortium of Banks. Later CFAL was admitted into Corporate Insolvency Resolution Process and hence, the applicant is found to be ineligible under Section 29A(h). However, Applicant-Cosmic CRF contends that PSA relied upon otise provisions of law in opining applicant to be ineligible under Section 29A(h). However, PSA in its report has quoted an incorrect provision as Section 29A(h) as it had been amended by way of Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 with retrospective effect from 06.06.2018. By way of 2018 amendment the words "*and such guarantee has been invoked by the*

creditor and remains **unpaid** full or part” has been added at the end of Section 29A(h). However, this pivotal amendment has been completely overlooked by PSA. Thus, in order for the applicant to be ineligible the corporate guarantee has to be invoked by the creditor and the amount should remain unpaid in full or part. No document has been placed on record either by AHSK or PSA to show that the corporate guarantee extended by Archana Impex Pvt. Ltd. has been invoked. In the absence of any document showing the invocation of guarantee the provisions of Section 29A (h) would not apply. Even assuming without admitting that corporate guarantee stood invoked, there is no allegation or document that any proceedings in any form whatsoever was filed by creditors to recover the amount under guarantee documents. Thus, it cannot be said any amount remains unpaid in full or part. Applicant claims that even AHSK in its report has opined that the applicant and its connected persons are eligible under Section 29(h). Further, as per PSA themselves Archana Impex Pvt. Ltd. has not defaulted in any loan repayment.

73. Applicant further claims that PSA has opined that **Archana Impex Pvt. Ltd. is a connected person of Applicant** as Aditya Vikram Birla is a director in certain entities, which are in turn in shareholders of Archana Impex Pvt. Ltd. and those entities are having significant shareholding in CFAL as on 31.03.2018. Applicant-Cosmic CRF contends that Archana Impex Pvt. Ltd. is not a connected person to the applicant. Aditya Vikram Birla is/was not a director in Archana Impex Pvt. Ltd. and relies on the history of Directorship of Aditya Vikram Birla. PSA is factually incorrect in stating that the entities mentioned in Table B at Pg. 343 Vol. 3 are having

significant shareholding in CFAL. The Resolution Plan of CFAL was approved by the Ld. NCLT, Kolkata Bench on 11.10.2018 and after approval of the plan since the equity shares were having 'nil' value; thus, the shares were extinguished and the shareholding vested with the new successful resolution applicant. Thus, the entities mentioned in the report in Table B have no shareholding in CFAL after 11.10.2018. AHSK in its report has reproduced the shareholding of CFAL after approval of Resolution Plan as on 31.03.2021. Name of the none of the entities mentioned in Table B in this report at Page 343 Vol. 3 would appear in the shareholding of CFAL as on 31.03.2021. Further, Archana Impex is not even a connected person as per the report of AHSK. AHSK reproduced the list of 96 connected persons to the applicant and the name of Archana Impex Pvt. Ltd. is not in the list of 96 connected persons. Further, Archana Impex Pvt. Ltd. will not be a connected person to the Applicant as it will not come within the definition of 'related party' of Aditya Vikram Birla. (Section 5(24A) which defines related party of individuals). Thus, Archana Impex does not fall within any of the sub-section of Section 5(24A).

74. Applicant thus contends that Applicant-Cosmic CRF and its connected persons are eligible under Section 29A (h). Even otherwise the question whether the applicant is ineligible under Section 29A was not an issue before this Hon'ble Tribunal in the subject appeal in which the recall application has been filed. Thus, the applicant is eligible under all the subsections of Section 29A as submitted above.

75. Applicant-Cosmic CRF requests to recall the judgment and order

dated 25.07.2025 specially paras 105 -112, 115-118(a) wherein this Hon'ble Tribunal has discussed, observed and held the applicant to be ineligible under Section 29A and declare the applicant to be eligible under Section 29A and recall the judgment and order dated 25.07.2025 to the extent it has directed that proceedings of CIRP are to be proceeded from the stage of issuance of fresh Form- G and finally to set aside the Form G dated 22.08.2025 published in the newspapers on 23.08.2025 in pursuance to the judgment and order dated 25.07.2025 and set aside any step taken in furtherance of Form-G dated 22.08.2025.

Analysis and Evaluation

76. On the grievance of the Applicant that they have been declared as ineligible under Section 29A of the IBC without being heard on this issue and without being given any opportunity to file reply in relation to the allegations of Applicant's ineligibility under Sections 29A, we gave an Opportunity to all the parties file their replies in relation to Applicant's ineligibility under Section 29A and how their claim that they are eligible under Section 29A can be sustained vide order dated 25.09.2025.

77. During the pendency of above IA 4810 of 2025, the applicant moved another I.A. 5965 of 2025 seeking to set aside the Form G dated 22.08.2025 published in the newspapers on 23.08.2025 and to set aside any step taken in furtherance of Form-G dated 22.08.2025, which CIR process was going on as per the orders of this Tribunal in CA (AT) (Ins.) No. 595 of 2025. In this I.A. No. 5965, we passed the following interim orders on 10.10.2025:

"20. In this background, the instant application has been moved by the Applicant requesting at first to set aside the form G (invitation of EOIs), to stay the operation and effect of

the form G and further to direct the Respondent No. 2 not to take any further step in pursuance of the Form G.

21.As we have already noticed during the submissions made by Ld. Counsel for the parties, especially Ld. counsel for the IRP that the stage of receiving of EOIs is already over, as according to the IRP, 11 EOIs have already been received and in pursuance of the same, the IRP has published a date for receiving of the resolution plans i.e. till 19.11.2025 and he is in the process of receiving objection and in this regard 11.10.2025 is the last date for preferring objections pertaining to provisional list of applicants who have submitted EOIs.

22. Thus, it is reflected that this Appellate Tribunal has given opportunity to the Applicant to contest the issue of his ineligibility by filing reply and 27.10.2025 has been fixed for hearing. The RP has also advertised the date of receiving the resolution plans by the PRA's and last date for the same is fixed as 19.11.2025. The plea of ineligibility of the Applicant is to be reconsidered again by us in view of the reply which he has filed.

23. Therefore, keeping in view all the facts and circumstances of the case, we are of the considered view that the ends of justice would meet if the IRP is instructed to continue all exercise with regard to the finalisation of EOIs till the receipt of the resolution plan, however, the resolution plan(s), if any, is received, shall not be opened and placed before the CoC without any further direction of this Tribunal."

78. After hearing all sides and after perusal of materials placed on record and as noted by Hon'ble Apex Court, the issue in this case is relating to the ineligibility of the applicant under Section 29A of Insolvency and Bankruptcy Code, 2016. Hon'ble Apex Court in para 2 of the order dated 04.08.2025 has noted as under:

"...

2. Today, the entire debate before us was on Section 29A of the Insolvency and Bankruptcy Code, 2016 (for short "the IBC, 2016")."

79. It will be instructive to take note of all the reports and opinions which

were on record in this case, which we noting hereinafter.

First AHSK report dated 19.08.2024

80. **First AHSK report dated 19.08.2024** concludes that “Hence M/s Cosmic CRF Limited, is not ineligible person under section 29A of IBC subject to the observations made by us and is not connected to Company under CIRP and not ineligible as a Resolution Applicant under the provisions of Section 29A of Insolvency and Bankruptcy Code.” But it was subsequently revised later on basis other material which came to its notice.

Complaint by Energy Watchdog dated 27.08.2024

81. **Complaint by Energy Watchdog dated 27.08.2024:** A complaint was filed with by one of the NGOs in the CIR proceedings of M/s Amzen Transportation Industries Private Limited. This complaint is placed @ 14 to 18 in the affidavit filed by Respondent No.4. Briefly speaking it gives graphic description about the integrity of the CIR Proceedings of CFAL and the eligibility of the promoters of Cosmic CRF Limited under Section 29A of the IBC and the conclusion is as follows:

“The current investigation indicates potential violations of the Code and suggests that the entire transaction needs to be investigated by the relevant agencies to uncover such financial crimes that have put not only public funds but also huge amounts of taxpayer money at stake.

The stakeholders are cautioned about allowing Cosmic CRF Ltd or its promoters, namely Aditya Vikram Birla, Purvi Birla, and others, to participate in the resolution process of Amzen Transportation Industries Pvt. Limited, given their ineligibility under Section 29A and potential violations of other laws. The copy of this letter is also being sent to other investigating agencies for deeper investigation into the modus operandi and preventing such kind of further financial crimes.”

“5. It has been informed to me by the querist that it has received a copy of complaint dated 27.08.2024 sent by one NGO, named Energy Watchdog, to the Resolution Professional of Amzen. I am quoting the facts as stated in the said complaint as follows: -

- i. **Backhand Dealing:** During the CIRP of CFAL ("Cosmic Ferro Alloys Ltd"), records and the manner in which the entire CIRP was conducted suggest that the original promoters (Birlas & others), through backhand dealings with QVC Exports Ltd & Others (Successful Applicant therein), caused certain loans to be bought by Phoenix ARC prior to CIRP commencement by indirectly funding the trust acquiring the loan.
- ii. **Settlement and Connivance:** Pursuant to the approval of the Resolution Plan by NCLT, the balance outstanding of other financial creditors was settled and transferred to Phoenix ARC at Rs. 50 Crores through the approval of the Resolution Plan. Some amounts also seem to have been funded by the erstwhile promoters, as the sequence of events relating to agreements, mortgages, conveyances, etc., suggests that Phoenix ARC was acting in connivance with the erstwhile promoters, with at least one director appearing to act on behalf of the erstwhile promoters. List of Loan of CFAL attached herewith.
- iii. **Formation of Cosmic CRF Ltd:** From the records, it is apparent that after the implementation of the Resolution Plan by the SRA of CFAL, the erstwhile promoters stepped into the management of the CD by forming a new company in the name of Cosmic CRF Ltd, with its related parties and erstwhile promoters being subscribers to the memorandum. The equity shareholding interest as of 31.03.2022 was owned and controlled by Mr. Pawan Kumar Tibrewala (in-law of one of the erstwhile promoters).

- iv. **Shareholding Changes:** Mr. Pawan Kumar Tibrewala entered into a business transfer agreement dated 19.01.2022 for the acquisition of assets related to the Singur unit in Cosmic CRF, and simultaneously after the said agreement, there was a change in shareholding, with the entire shareholding being transferred to Aditya Vikram Birla (son of Ravi Birla) and his wife Purvi Birla (daughter of Mr. Pawan Kumar Tibrewala and wife of Aditya Vikram Birla) as of 31.03.2023.
- v. **Board Induction:** Aditya Vikram Birla and Purvi Birla were also inducted onto the Board, thereby controlling 100% of the interest in the company after the said business transfer agreement, taking over the assets of CFAL.
- vi. **Preference Shares Subscription & Mohta:** Mr. Anand Mohta and Ms. Raj Laxmi Mohta, who were also erstwhile promoters of CFAL, joined the bandwagon by subscribing to 100% of the preference shares in the company amounting to approximately Rs. 5 Crores through their wholly-owned private limited companies, Anand Raj Developer Pvt Ltd and AV Realestate Pvt Ltd. Cosmic CRF was formed with related parties of Anand Mohta as subscribers to the memorandum; however, their names do not feature in subsequent shareholder lists.
- vii. **Shareholding and Control:** Aditya Vikram Birla, apart from being the son of Mr. Ravi Birla, one of the main promoters of CFAL, was also a shareholder in the company and director/shareholder in many of the group companies, having a cumulative shareholding interest in CFAL of more than 45%. Detail of Shareholding attached herewith.
- viii. **Guarantee and Assignment:** It is also apparent from the records that the loan by secured lenders prior to the CIRP was secured by guarantees given by the promoters/directors along with corporate

guarantees by its group companies, in which Mr. Aditya Vikram Birla has direct controlling interest through directorship/shareholdings of more than 48% and controlling interest of 100% along with its other related parties and connected persons.

Since the entire loan along with the underlying guarantee was assigned to Phoenix ARC (presumably in connivance with the erstwhile promoters), the said guarantees seemed to have been invoked and not enforced by Phoenix ARC, although a significant haircut has been suffered by most of the banks due to these transactions and the CD going through CIRP. This has caused a huge loss of public money.

The company extending the corporate guarantee does not even have a record of the existence of any such guarantee being given on behalf of CFAL in any of its financial statements available in the public domain.

- ix. **Avoidance Application:** From the records, it is also apparent that the Resolution Professional filed an avoidance application against the erstwhile management for fraudulent transactions, which, as per the approved Resolution Plan, has been transferred to the Resolution Applicant as the beneficiary. It is also surprising to note that since the Resolution Applicant, controlled by the erstwhile management, did not want to pursue the application and even submitted before the NCLT for its dismissal, citing that the Resolution Applicant as of this date has not filed an application for substituting its name in the said application.
- x. **Asset Transfer and Shell Company Formation:** It is apparent that the funds siphoned off by the erstwhile promoters of CFAL have been used for its resolution in the CIRP process and that the erstwhile promoters were always in control of the entire CIRP

process, including the company after resolution. The control and management of one of its main units has been swiftly shifted back to the erstwhile promoters/directors of CFAL under the guise of a new company, Cosmic CRF Limited.

After the execution of the business transfer agreement, two addendum agreements were executed by Mr. Promod Kumar Agarwal on behalf of CFAL with CRF, reducing the consideration from Rs. 49 Crores to Rs. 39 Crores, apparently without the approval of the board of CFAL. This action enabled the execution of conveyance deeds and mortgages with Kotak Mahindra Bank even without paying the agreed consideration, which further indicates that Mr. Promod Kumar Agarwal was always acting on the instructions of the erstwhile promoters, being on the board since the approval of the resolution plan.

It is also apparent from the records that, simultaneous with the sale of the unit to Cosmic CRF, another unit of CFAL was sold on 19th January 2022, thereby converting the corporate debtor into a shell company. This is substantiated by the fact that no annual returns have been filed since the financial year 2020-21 by CFAL. The mortgage and acquisition agreement also specifies that the acquirers have paid for the outstandings of Phoenix ARC and that there exists the possibility of some underhand dealings between the SRA, Phoenix ARC, and the erstwhile promoters, even prior to CIRP commencement.

- xi. **Litigation and Disputes:** There also appears to be litigation ongoing between CFAL and Cosmic CRF regarding non-payment of Rs. 10 Crores as per the business purchase agreement. The entire litigation further corroborates the underhand dealing between the SRA and the erstwhile promoters. It would have been impossible to execute the addendum agreement, deed of conveyance, mortgage, and

transfer of assets of Cosmic CRF without the erstwhile promoters being in control of the management of Cosmic Ferro after the approval of the Resolution Plan and pending payment of Rs. 10 Crores of consideration as alleged in the said disputes.

The litigation appears to be the fallout of some hidden understanding between the erstwhile promoter and the successful Resolution Applicant, managing CIRP on their behalf. It is also surprising to note that the applicant in the litigation, while filing a complaint with SEBI, the Stock Exchange, and the Hon'ble High Court, did not raise the above serious observations, which could be due to their awareness of the entire facts and their complicity before the disputes broke out.

- xii. **Property Acquisition and registered office:** It has been further noted that one of the major shareholders of Cosmic CRF, Prilika Enterprises Private Limited, also has Suranjan Birla (wife of Ravi Birla and mother of Aditya Vikram Birla) as one promoter/director/shareholder jointly with Aditya Vikram Birla. This entity executed a lease agreement on behalf of the company in favor of Cosmic CRF, where the current registered office of Cosmic CRF is situated. The said property seems to have been acquired during the year 2021 (when the company was incorporated), and the possibility cannot be ruled out that it was previously owned by the erstwhile promoters of CFAL or its group companies, which requires further investigation.
- xiii. **Acquisition of N.S. Engineering Projects Pvt Ltd:** Cosmic CRF has also acquired another company, N.S. Engineering Projects Pvt Ltd, through the CIRP process, in violation of Section 29A of the Insolvency and Bankruptcy Code, 2016.

- xiv. **Financial Transparency:** On analyzing the financial statements of Cosmic CRF, the source of funds prior to the public issue during the year 2023 appears to be shoddy and non-transparent. The financial statements disclose a substantial sum of money taken as unsecured loans from third parties without disclosing the terms of such loans, the names of the lenders, and other details. This raises concerns that siphoned-off money from CFAL is being used in these acquisitions."

82. We also note that the original appellant in CA(AT) (Ins.) No. 859 of 2025 namely M/s Myotic had also flagged the complaint of Energy Watchdog and requested the RP to enquire into the matter and defer the then ongoing bidding process, which was scheduled for 20.08.2024.

Opinion of another Senior Advocate (Mr Gopal Jain) 28.08.2024

83. Legal opinion dated 28.08.2024 was taken from another Senior Advocate Mr. Gopal Jain by Myotic Trading Private Limited – the Appellant in original Company Appeal (AT) (Insolvency) No. 859 of 2025 which was forwarded by the original Appellant to the RP. This legal opinion is also worth reproducing as follows:

The Senior Advocate Mr. Gopal Jain in his opinion states as follows:

"7. Section 29A, thus, according to me has three layers of ineligibility:

- Person acting in concert: Persons who have the common objective/purpose of acquisition of shares/ voting rights in/exercising control over a company pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares/voting rights in/exercise of control of the company.

- **Connected Persons:** Any person who is the promoter or in the management or control of the resolution applicant;

Any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

Holding company, Subsidiary company, Associate company or related party of a person referred in above

Related Party: anyone in relation to the individual (defaulter promoter) or their spouse; partner in a partnership firm or trustee in a trust in which the defaulter individual is associated; a private company in which is the individual is a director and holds over 2% share capital including family and relatives.

8. The interpretation of Section 29-A (c) is that any person who wishes to submit a resolution plan for any Corporate Debtor, if he or it does so acting jointly, or in concert with other persons, which person or other persons or other persons happen to either manage or control or be promoters of a corporate debtor, who is classified as a non-performing asset and whose debts have not been paid off for a period of at least one year before commencement of the corporate insolvency resolution process, becomes ineligible to submit a resolution plan. This provision therefore ensures that if a person wishes to submit a resolution plan, and if such person or any person acting jointly or any person in concert with such person, happens to either manage, control, or be promoter of a corporate debtor declared as a non-performing asset one year before the corporate insolvency resolution process begins, is ineligible to submit a resolution plan.

9. The first proviso to clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan

makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan. Any person who wishes to submit a resolution plan acting jointly or in concert with other persons, any of who may either manage, control or be a promoter of a corporate debtor classified as a non-performing asset in the period abovementioned, must first pay off the debt of the said corporate debtor classified as a non-performing asset in order to become eligible under Section 29-A(c).

10. Moreover, Section 29A (h) specifies that if the promoter/director/ connected person has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part, the said person would also be ineligible under Section 29A.

Conclusion:

11. If the allegations in the said complaint against are correct, then it is apparent that Mr. Aditya Vikram Birla & others were the promoters and Directors in many of shareholders Company of Cosmic Ferro Alloys Limited with substantial interest prior to the commencement of CIRP and that entire debt in relation to the said debtor still remains outstanding after its declaration of NPA, with the secured lenders apparently taking huge haircuts in the Resolution Process. Further Mr. Aditya Vikram Birla alongwith other Birla family members were controlling both majority stakes and management control in Cosmic Ferro Alloys Limited as on the CIRP commencement date. In addition to above it is alleged Mr. Aditya Vikram Birla along-with its related parties, was also holding direct controlling interest in the Companies that have extended corporate

guarantees towards loan of Cosmic Ferro Alloys Limited and no records of any payments towards such guarantees could be found.

12. It is therefore alleged by the querist that Mr. Aditya Vikram Birla & others, after approval of the resolution plan of Cosmic Ferro Alloys Limited has taken control and possession of one of the main operational units of Cosmic Ferro Alloys Limited in a newly incorporated Company in the name of Cosmic CRF Limited, in violation of the provisions of Insolvency Code, 2016.

13. I am of the opinion that the above facts as alleged by the Querist based on the complaint by Energy Watchdog and other publically available information, ought to be thoroughly investigated by the Resolution Professional of Amzen Transportation Industries Private Limited. Based on the above alleged facts, in my opinion Mr. Aditya Vikram Birla, Mr. Purvi Birla, Cosmic CRF Limited & other erstwhile promoters of Cosmic Ferro Alloys Limited are apparently ineligible to participate in any resolution process under Insolvency and Bankruptcy Code, 2016 by virtue of bar contained in Section 29A of the Act. The facts, if found to be true, would mean that Cosmic CRF Ltd / its promoters are ineligible to participate in the CIRP of Amzen Transportation Industries Private Limited owing to their disqualification under Section 29A of the Insolvency and Bankruptcy Code, 2016.

14. I am further of the opinion that till due verification is done of the above allegations, the RP should not proceed with CIRP of Amzen with Cosmic CRF Ltd as one of its bidders and all the relevant facts as stated above ought to be investigated and also placed before the Committee of Creditors (CoC) by the Resolution Professional.”

Enquiries by Prudent ARC (email dated 01.09.2024)

84. R4 - Prudent ARC also took an opinion from one Sr. Advocate (Mr. Amit Sibbal) and verification report of one Insolvency Professional (Mahender Khandelwal). In its covering letter M/s Prudent ARC raised concerns and wrote as follows:

“Sh. Amit Sibbal has opined that the CIRP in Amzen Transportation Industries Private Limited should not be proceeded pending the verification of the allegation concerning the ineligibility of the Resolution Applicant - M/s Cosmic CRF Limited by the Resolution Professional and the Committee of Creditors. You are requested to convene a COC meeting immediately to discuss the alleged ineligibility of Resolution Applicant -/s Cosmic CRF Limited before proceeding with the challenge mechanism process in the matter of Amzen Transportation Industries Private Limited which is already under process.”

85. Specially speaking, one Insolvency Professional - Mr. Mahender Kr. Khandelwal in its report as follows:

“1. As per details on Page 16 of the said report:

a. Archana Impex Pvt Limited had given Corporate Guarantee against Loan of Cosmic Ferro Alloys Ltd, in which Aditya Vikram Birla had direct controlling interest through Directorship in the Companies which are its shareholder of 48.49% as under, apart from 100% control & ownership jointly with the related parties.

Name	Status	No. of Shares	%
Aar Ess Homes Pvt Ltd	Company	43,000	13.00
Vista Vision Pvt Ltd	Company	41,600	12.58
Cosmic Steels Pvt Ltd	Company	19,000	5.74
Topsell Vinimay Pvt Ltd	Company	56,800	17.17

TOTAL		48.49
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b. Ravi Birla, father of Aditya Birla was a promoter of Cosmic Ferro Alloys Limited and their family hold 13.70% shareholding in Cosmic Ferro Alloys Limited.

c. Aditya Vikram Birla is a Promoter of Cosmic CRF Limited and holds 39.82% shareholding in the company.

2. As per details on page 18 of the said report, Cosmic Ferro Alloys Limited is undischarged insolvent. It is the subject identified in IBBI database where NCLT Kolkata Bench initiated insolvency process against the company in 2018. The company default in payment with CITI bank. Further, the company was acquired by consortium of United Tradeco FZC and QVC Export Ltd.

3. As per details on page 20 of the said report, Cosmic Ferro Alloys Limited and Ravi Kumar Birla are identified as Non-performing Assets - Name of the subject identified in CIBIL Suit filed account of default more than INR 100 lakh. The default was related to Cosmic Ferro Alloys Limited. The default was with CITI Bank and amount outstanding was INR 13.06 crore as on 31-12-2018.

4. It is further observed that Pursuant to the Business Transfer Agreement entered into between Cosmic CRF Limited and Cosmic Ferro Alloys Limited on 19th January, 2022, the Company acquired the running Cold Rolled Forming (CRF) unit located at Singur, District: Hooghly, West Bengal of CFAL on September 7, 2022, under a going concern and on slump sale basis, thereby forming its sole business assets since its incorporation.

Thus, based on the above fact both Aditya Vikram Birla & its related parties and Anand Mohta & its related parties are jointly having substantial interest in both Cosmic Ferro Alloys Limited and Cosmic CRF

Limited, as the promoters. Further they have also acquired the substantial assets of Cosmic Ferro Alloys Limited through back door entry after its CIRP.

5. Aditya Vikram Birla was having shareholding in Cosmic Ferro Alloys Ltd. through directorship in companies which went under CIRP process. Aditya Vikram Birla is also a promoter director in Cosmic CRF Ltd.

Conclusion:

The details from the report as mentioned makes Cosmic CRF Ltd. ineligible under Section 29A of IBC 2016 to participate in any CIRP process.”

86. The Insolvency Professional had relied on the independent report of CLA Global Indus value Consulting Pvt. Ltd. and that report is available in records in the affidavit filed by R-4 @ 32 – 71. The detailed report is not being extracted herein but the observations made in this report are relevant and are noted as below:

“Observation:

1. **Cosmic Ferro Alloys Limited** - Subject is an undischarged insolvent

Name of the subject identified in IBBI database where NCLT Kolkata Bench initiated insolvency process against the company in 2018. The company defaulted in payment with CITI bank. Further, the company was acquired by the consortium of United Tradeco FZC and QVC Export Ltd. For details refer to exhibit 3.1.

2. **Cosmic Ferro Alloys Limited and Ravi Kumar Birla** - Subject is identified as a Non-Performing Asset.

Name of the subject identified in CIBIL Suit filed on account of default more than INR 100 lakh. The default was related to Cosmic

Ferro Alloys Limited. The default was with CITI Bank and amount outstanding was INR 13.06 crore as on 31-12-2018. For details, refer exhibit 3.2.

Basis above facts, it is observed that Mr. Aditya Birla (Along with Family Member and Companies in which Mr. Aditya Birla is Director or have shareholding) and Mr. Anand Mohta (Along with Relatives) have substantial interest in both Cosmic Ferro Alloys Limited and Cosmic CRF Limited.

Further, CIRP process has been initiated against Cosmic Ferro Alloys Limited in 2018. Cosmic Ferro Alloys Limited and Mr. Ravi Kumar Birla has been identified as Non-Performing Assets on account of default with Citi Bank.

The above facts would possibly lead to disqualification of highlighted connected entities under Section 29A of Insolvency and Bankruptcy code 2016.

Our review and opinions are based on documents provided to us for review and documents available in public domain identified on best effort basis. Further, we suggest taking legal opinion on disqualification of highlighted connected entities as per Section 29A of Insolvency and Bankruptcy Code 2016.”

87. The conclusions of the legal opinion of the Sr. Advocate (Sh. Amit Sibbal), as obtained by R4 - Prudent ARC is as follows:

“24. Applying the facts supplied by the Querist to a literal and purposive interpretation of the relevant provisions of the IBC, it prima facie appears that Mr. Aditya Vikram Birla, Mr. Ravi Birla and Mr. Anand Mohta (being erstwhile directors/shareholders/beneficial owners of defaulting entity - CFAL) and their related parties are ineligible as per Section 29A(c) of the IBC. The account of CFAL was declared NPA for the

first time on 09.12.2016 and the CIRP of Amzen commenced on 04.05.2022. The eligibility of M/s. Archana Impex Pvt. Ltd. under Section 29A(h) of the IBC also needs to be examined by the RP and the COC.

25. My considered opinion on the issues arising in this case referred to in Para 11 is as follows:

i. Assuming that the facts submitted by the Querist are correct, CFAL was declared NPA on 09.12.2016 and therefore its then shareholders/directors/ promoters are prima facie ineligible to submit a Resolution Plan under section 29A(c) of the IBC, for the resolution of Amzen. The erstwhile directors/shareholders/beneficial owners of CFAL and present directors/shareholders/beneficial owners of CRF appear to be common and therefore, prima facie, the ineligibility attaches to CRF as well.

ii. The facts mentioned in this Opinion and in the complaint dated 27.08.2024 by Energy Watchdog should be independently verified by the RP and also by the COC before proceeding ahead with the resolution process. When a complaint or information has been received by the RP/COC concerning participation of an ineligible bidder, it is the duty of the RP/COC as per sub-regulation 8 of regulation 36A of the CIRP Regulations 2016 and the judgment of Canara Bank (supra) to first verify its contents and ascertain whether the bidder is eligible to make the bid. This is so because the selection of an ineligible bidder or even its mere participation may vitiate the entire resolution process or make it susceptible to various legal challenges, as held by the NCLAT in its decision cited in the opinion.

Therefore, in my opinion, the CIRP in Amzen Transportation Industries Private Limited should not proceed pending the verification of the allegations concerning the ineligibility of the

Resolution Applicant M/s Cosmic CRF Ltd by the Resolution Professional and the Committee of Creditors.”

Replies to the complaints by the Applicant

88. On 02.09.2024 the resolution applicant and the applicant in the present IA 4810 namely M/s Cosmic CRF Ltd. submitted its reply [@ 92 - 93] in connection to the email dated 31.08.2024 sent by RP regarding the complaint by Energy Watchdog and claimed as follows:

“We are clarifying our stand on the allegations levelled by Energy Watchdog through the letter dated August 27, 2024 as under:

Our Company (Cosmic CRF Limited] has no association or connection of any nature with Cosmic Ferro Alloys Limited (CFAL] and the allegations relating to alleged irregularities by our Company during the CIRP of Cosmic Ferro Alloys Limited is false, baseless, unsubstantiated and motivated.

Indeed, a Business Transfer Agreement relating to safe of CRF unit at Singur owned by Cosmic Ferro Alloys Limited was executed and the transaction contemplated under such Business Transfer Agreement has also, since been, consummated, although there are certain pending litigations with Cosmic Ferro Alloys Limited relating to the commercial understanding between our Company and Cosmic Ferro Alloys Limited on the basis of which the Business Transfer Agreement [read with the addendum] was executed.

Our present promoters Mr. Aditya Kumar Birla and Mrs. Purvi Birla have had no association or connection with Cosmic Ferro Alloys Limited at any point of time and continue to have no association with Cosmic Ferro Alloys Limited.

Our Managing Director Mr Aditya Vikram Birla, Whole Time Director Mrs Purvi Birla or any other does not come under conditions of ineligibility under Section 29A of Insolvency and Bankruptcy Code, 2016.

Our Company and our promoters are conducting the affairs of our Company prudently and there is no irregularities reported by any authority in respect of compliances, business dealings at all.

The contents of the letter dated August 27, 2024 apart from levelling unsubstantiated allegations also seeks to make it evident that such letter has been issued with an ulterior and oblique motive to cause us prejudice in our ongoing participation in the bidding process for Amzen Transportation Industries Private Limited.

We are not privy to or have any relation with the alleged irregularities in the CIRP process of Cosmic Ferro Alloys Limited and do not wish to make any comment on the matter.

We are not privy to the CIBIL of Cosmic Ferro Alloys Limited or the date of NPA of the loan accounts of Cosmic Ferro Alloys Limited.

We are attaching the CIBIL our Executive Directors [Mr. Aditya Vikram Birla and Mrs. Purvi Birla for your consideration. We have requested Credit Information Bureau (India) Ltd for the CIBIL of our Company, which requires 10 working days time, we request you to kindly allow us the said time to furnish the same.

Hope, you will understand the matter and drop the allegations raised which have no relevance in our case.”

89. We note that the reply in brief claims that they are not ineligible under Section 29 of the Code. We further note that thereafter the matter was placed before the 55th CoC meeting and it approved that the applicant is not ineligible under Section 29A as noted herein separately.

AHSK updated report dated 20.09.2024

90. In the meantime, AHSK also updated its report dated 19.08.2024 and at @119 and 120 concluded as follows:

“Based on the search, it is clearly identified that there is no case against the Resolution Applicant or its connected parties declaring them as undischarged insolvent under any law in India or in jurisdiction outside India. This makes the Resolution Applicant not ineligible under Section 29A (a) of IBC.

Based on the search, it is clearly identified that there is no case identified against Resolution Applicant and their connected parties declaring them or listing them as wilful defaulter(s) by RBI under Banking Regulation Act, 1949. This makes the Resolution Applicant not ineligible under Section 29A (b) of IBC. Please note that wilful defaulter data is of defaults of more than 25 lakhs INR where a suit is filed as updated on CIBIL. CIBIL publishes its data on the last day of the last quarter as per the RBI mandate. CIBIL does not make real time data available. However, there is no adverse remark identified against Resolution Applicant or any of his connected parties.

On the basis of information received after submission of the Original Report Dt.20/08/ 2024,data obtained from the public sources, documents gathered and check applied it is clearly identified that there is a connection identified against the Resolution Applicant (Cosmic CRF Limited) and its connected persons(Aditya Vikram Birla & Ravi Kumar Birla) with Corporate Debtor (Cosmic Ferro Alloys Limited) account has been declared as “Non-Performing Asset” account under Banking Regulation Act, 1949 and the amount with interest has not been cleared within a period of 1 year from the classification of account as NPA, thus making them ineligible as per Section 29A (c) of IBC.

Based on search there are no cases identified against connected parties and Resolution Applicant it is clearly identified that neither Resolution Applicant nor its connected parties are convicted for any offence punishable with imprisonment for two years or more under any Act specified under the Twelfth Schedule or for seven years or more under any law for the time being in force. This clearly defeats the ineligibility criteria held under Section 29A (d) of IBC.

Neither Resolution Applicant nor its Connected Parties are identified as disqualified under Section 164 of Companies Act. Which clears Resolution Applicant and its connected parties from being ineligible under Section 29A (e) of IBC.

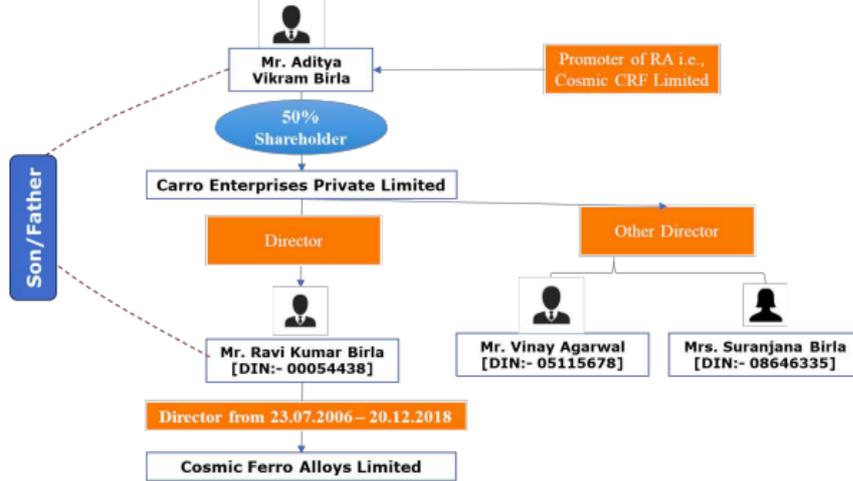
Based on the search, there are no cases identified against the RA and its connected parties no order prohibiting them from trading in securities or accessing the securities markets had been passed by SEBI.

No transaction had been identified against Resolution Applicant and their connected parties with Corporate Debtor falling under Sections 43, 45, 50 and 66 of IBC where orders had been passed by any adjudicating authority under IBC which clears the Resolution Applicant from being ineligible under Section 29A(g) of IBC.

Though there are cases identified against few connected parties, none of them had been identified against Resolution Applicant and their connected parties and hence no concept of guarantee provided by them. This makes the Resolution Applicant and their connected persons not ineligible under Section 29A (h) of IBC.

Based on the search conducted and with available information, no case identified except for clause (c) corresponding to Section 29A (a) to (h) of IBC under any law in a jurisdiction outside India.”

5.1 Connection 1 : Mr. Ravi Kumar Birla and Mr. Aditya Vikram Birla



PSA Report dated 18th Oct 2024

91. This report has brought out the following **connections** between the promoters of the resolution applicant-CRF and Cosmic Ferro Alloys Ltd. (CFAL) - and are noted hereinafter.

20.1 "Connection 1: Mr. Ravi Kumar Birla and Mr. Aditya Vikram Birla

Mr. Aditya Vikram Birla, the promoter of the RA is holding substantial interest 'Carro Enterprises Pvt. Ltd.'. Further Mr. Ravi Kumar Birla is holding posting the Board of such company. Hence Mr. Ravi Birla is considered is person acting jointly in concert with Mr. Aditya Vikram Birla as on the date of submission of resolution plan and is a related party in terms of Section 5(24A) of the Code".

20.2 "Connection 2: Mr. Aditya Vikram Birla and Cosmic Ferro Alloys Limited (CFAL): - Shareholder as on 31.03.2018

Company>>>		Cosmic Ferro Alloys Limited	Comic Steels Pvt. Ltd	Aar Ess Homes Pvt Ltd	Adarsh Technococ m Pvt.Ltd.	Archana Impex Pvt Ltd	Apollo Vinimay Pvt Ltd	Topsell Vinimay Pvt. Ltd.	Vista Vision Pvt Ltd	Pragati Realtors Pvt Ltd
Shareholders	Birla Family	16.73%	1.23%	0.42%	46.25%	38.20%	0.13%	-	39.68%	5.75%
	Aditya Vikram Birla	0.09%	0.41%	-	-	-	-	-	-	-
	Cosmic Steel Pvt. Ltd.	2.88%	-	-	18.89%	5.74%	19.31%	12.04%	4.15%	5.75%
	AAR Ess Homes Pvt. Ltd.	2.50%	24.59%	-	19.47%	13.00%	-	8.03%	1.10%	-
	Topsell Vinimay Pvt. Ltd.	-	24.59%	17.71%	5.77%	17.17%	10.94%	-	9.95%	2.30%
	Apollo Vinimay	10.14%	-	33.16%	-	-	-	11.24%	8.50%	-

Pvt. Ltd.										
Vista Vision Pvt. Ltd.	20.73%	-	19.62%	-	12.58%	17.51%	16.05%	-	5.18%	
Pragati Realtors Pvt. Ltd.	0.50%	-	14.27%	-	-	-	16.05%	0.23%	-	
Velmon Tie-up Pvt. Ltd.	22.34%	24.59%	13.02%	-	-	-	-	2.24%	20.48%	
Adarsh Technocom Pvt.Ltd.	-	-	1.74%	-	7.26%	18.24%	16.13%	0.35%	-	
Archana Impex Pvt Ltd	5.48%	24.59%		-	-	25.75%	20.47%	2.36%	4.03%	
Others	18.61%	-	0.07%	9.62%	6.05%	8.11%	-	31.44%	56.51%	
TOTAL	100.00%									

- As depicted in above table Birla Family along with Mr. Aditya Vikram Birla along with cross shareholding in different companies were exercising the signification control over Cosmic Ferro Alloys Limited.
- As per the information the loan account of Cosmic Ferro Alloys Limited was classified as Non-Performing Assets (NPA) on 09.12.2016 and CIRP petition was admitted on 16.01.2018 (Ref Annexure-G Order of CIRP).
- Therefore, as on the date of classification as NPA and after commencement of CIRP the Mr. Aditya Vikram Birla along with Birla Family were having significant control over the Cosmic Ferro Alloys Limited.
- Hence, at time of NPA classification, the Birla Family including the current promoter of Resolution Applicant were in the control of the Cosmic Ferro Alloys Limited.
- Further while analyzing the directorship of Mr. Aditya Vikram Birla, it was noted that Mr. Aditya Birla was holding and, in some cases, continue to hold directorship in the company which were having shareholding in Cosmic Ferro Alloys Limited as aforementioned.”

20.3 “Connection 3: Mr. Aditya Vikram Birla Directorship in companies having significant shareholding in Cosmic Ferro Alloys Limited (CFAL):

Sr. No.	Company Name	Directorship		
		Name	From	to
1	Cosmic Steel Pvt. Ltd.	Aditya Vikram Birla	21-Oct-13	Current Director

2	AAR Ess Homes Pvt. Ltd.	Aditya Vikram Birla	29-Sep-17	14-Apr-23
3	Topsell Vinimay Pvt. Ltd.	Aditya Vikram Birla	14-Dec-15	23-Jul-24
4	Apollo Vinimay Pvt. Ltd.	Aditya Vikram Birla	29-Mar-19	Current Director
5	Pragati Realtors Pvt. Ltd.	Aditya Vikram Birla	8-Dec-15	Current Director
6	Adarsh Technocom Pvt.Ltd.	Aditya Vikram Birla	21-Oct-13	Current Director

Hence, at time of NPA classification, the Birla Family including the current promoter of Resolution Applicant Mr. Aditya Vikram Birla were in the Management (Board of Directors) of companies, who holds significant control in Cosmic Ferro Alloys Limited.”

20.4 “Connection 4: Corporate Guarantee Given by the Company for loans availed by Cosmic Ferro Alloys Limited (CFAL): -

It was observed that M/s Archana Impex Pvt. Ltd., in which companies listed in Table B, was a shareholder which in turn was shareholders in CFAL. In these companies (Table-B), Mr. Aditya Vikram Birla, who has served and continues to serve as a director, was classified as a promoter of CFAL. Furthermore, M/s Archana Impex Pvt. Ltd. had executed a Corporate Guarantee for the loans of CFAL (refer to Annexure I for Corporate Guarantee documents).”

20.5 “Connection 5: Mr. Aditya Vikram Birla retained as Marketing Executive of Cosmic Ferro Alloys Limited (CFAL) post approval of Plan and subsequent purchase of unit of CFAL by Cosmic CRF Limited owned by Mr. Aditya Birla: -

As per the extract of resolution plan, Mr. Aditya Vikram Birla was retained as Marketing Executive post approval of resolution plan, from existing management (Ref Annexure-J).

As per the disclosure made in the financial of Cosmic CRF Limited (Note -14 of Audited Financial of Cosmic CRF Limited for FY 2021-22), the post approval of plan, the Cosmic CRF Limited acquired the running Cold Rolled Forming (CRF) unit in Singur on slump sale basis from Cosmic Ferro Alloys Limited (Ref Annexure-K).

Hence, as per facts above, it is clear that Mr. Aditya Vikram Birla was not only in management and control of Cosmic Ferro Alloys Limited but also continued

to in the operation and also post slump sale continued to control and enjoy the assets of NPA entities.”

92. PSA has also gone into the response to the show cause notice dated 27.09.2024 and the rationale given by the resolution applicant- who is the applicant herein - and has given the following findings (page 344 of Vol. 3 of:

“ ...

- The above rational has been taken on the assumption that once the resolution plan is approved, the erstwhile promoters of Corporate Debtors are released from their ineligibility as they cease to be the promoter of the corporate debtor.
- The Supreme Court in ArcelorMittal India private limited v. Satish Kumar Gupta (2019) 2 SCC 1, has already clarified that:

“The first proviso to sub-clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan. The position in law is thus clear. Any person who wishes to submit a resolution plan acting jointly or in concert with other persons, any of whom may either manage, control or be a promoter of a corporate debtor classified as a non-performing asset in the period abovementioned, must first pay off the debt of the said corporate debtor classified as a non-performing asset in order to become eligible under Section 29A(c).”

Hence the rational given by the Resolution Applicant will not hold good for the following reason:

- a) First the at time of NPA classification and post such classification the promoters and their connected parties were in the management/ control of Cosmic Ferro Alloys Limited.
- b) The fact above has not been denied and available on the records as per ROC Fillings.

c) The Promoters of Resolution Applicant Mr. Aditya Birla was retained in the operation of assets of Cosmic Ferro Alloys Limited post approval of resolution plan.

d) After the resolution plan was implemented, the assets of Cosmic Ferro Alloys Limited were taken over by the Promoter of the Resolution Applicant and renamed Cosmic CRF Limited. Thus, lifting the corporate veil reveals that the underlying management and control of the assets—on which the NPA was classified—remained the same. Only the company's name changed, not its fundamental ownership or control.

e) The Dues of the financial creditors of the Cosmic Ferro Alloys Limited post NPA classification remains unpaid contrary to provision laid down in first proviso to clause (c) of Section 29A of the Code.”

93. We further note that the PSA report which is placed on record concludes that:

“a) It is a fact, based on ROC filings, that the Birla family, including the current promoter of the Resolution Applicant, Mr. Aditya Vikram Birla, and entities under their common control and management, were promoters of Cosmic Ferro Alloys Limited.

b) After the resolution plan was implemented, the assets of Cosmic Ferro Alloys Limited were taken over by the Promoter of the Resolution Applicant and renamed Cosmic CRF Limited. Thus, lifting the corporate veil reveals that the underlying management and control of the assets—on which the NPA was classified—remained the same. Only the company's name changed, not its fundamental ownership or control.

c) It is the position in law is thus clear. Any person who wishes to submit a resolution plan acting jointly or in concert with other persons, any of whom may either manage, control or be a promoter of a corporate debtor classified as a non-performing asset, must first pay off the debt

of the said corporate debtor classified as a non-performing asset in order to become eligible under Section 29A(c).

d) It is also the fact that the condition as laid down in first proviso to clause (c) of Section 29A of the Code has not been fulfilled by the Resolution Applicant.

e) As a result, discussed abovementioned, Resolution Applicant M/s Cosmic CRF Limited and its connected parties are found to be ineligible under Section 29A of the Insolvency and Bankruptcy Code 2016 as of the date of submission of the resolution plan.”

94. The above-mentioned PSA report finally concludes as follows:

“Concluding Remark: As a result of background checks applied, documents gathered, and data obtained from public sources, **Resolution Applicant M/s Cosmic CRF Limited and its connected parties are found to be ineligible under Section 29A** of the Insolvency and Bankruptcy Code 2016 as of the date of submission of the resolution plan.”

95. The above report finally concludes as extracted below:

A. **Eligibility Check of RA Under Section 29A of the Code.**

“As a result of background checks applied, documents gathered, and data obtained from public sources, **Resolution Applicant M/s Cosmic CRF Limited and its connected parties are found to be ineligible** under Section 29A of the Insolvency and Bankruptcy Code 2016 as of the date of submission of the resolution plan.”

B. **Eligibility Check of Related Parties of RA Under Section 29A of the Code:**

“As a result of background checks applied, documents gathered, and data obtained from public sources, Related

Parties of Resolution Applicant M/s Cosmic CRF Limited, are found to be ineligible under Section 29A of the Insolvency and Bankruptcy Code 2016 as of the date of submission of the resolution plan.”

C. Eligibility Check of **Related Parties of Promoters of RA** Under Section 29A

“As a result of background checks applied, documents gathered, and data obtained from public sources, Related Parties of Promoters of Resolution Applicant M/s Cosmic CRF Limited, are found be ineligible under Section 29A of the Insolvency and Bankruptcy Code 2016 as of the date of submission of the resolution plan.”

Opinion of Sr. Advocate Mr. Krishnendu Datta

96. We also look into the opinion given by one Sr. Advocate Mr. Krishnendu Datta, which has been relied upon by the CoC, the relevant part of which is extracted as below:

“Queries:

In the aforesaid background, the Querist seeks opinion on the following query:

Whether Cosmic is eligible under Section 29A of IBC on the basis of the February 18, 2025 report of PSA and on the basis of its representations to the CoC?

C. ANALYSIS

1 . I have perused the report dated February 18, 2025 submitted by PSA and have noted that Cosmic has been declared to be ineligible under Section 29A (a), (c), (h) and (j). Each sub-section under Section 29A declaring Cosmic as ineligible has been dealt with individually in the present opinion.

2. At the outset, it is pertinent to note that the present opinion is based on report dated February 18, 2025 submitted by PSA. I have not independently verified the contents of the report of PSA dated February 18, 2025 or the factual conclusion arrived at by the author. Therefore, the present opinion proceeds on the premise that the report dated February 18, 2025 submitted by PSA is accurate and exhaustive on all material and relevant factual points.

INELIGIBILITY UNDER SECTION 29A(A) (a) OF IBC:

3. As per Section 29A (a) of IBC, Cosmic shall be rendered ineligible if Cosmic or any of its connected person or any person acting jointly or in concert with Cosmic is an undischarged insolvent.

4. The term undischarged insolvent has not been defined in IBC. It is pertinent to note that the word “insolvent” has been defined under Section 79 (3) of IBC. It is to be noted that Section 79(3) of IBC is under Part III of IBC and the same is applicable to individuals and partnership firms. As per Section 79(3) of IBC, bankrupt means as follows: -

a. a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126,

b. each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm or

c. any person adjudged as an “undischarged insolvent”.

5. From a perusal of Section 79(3) of IBC it is evident that the term “undischarged insolvent” would be applicable to individuals and partnership firms. Further, as Cosmic is neither an individual nor a partnership firm, it cannot be classified as an “undischarged insolvent” as per IBC. It is further to be noted that, the Hon’ble National Company Law Appellate Tribunal in SREI Multiple Asset Investment Trust -vs- IDBI Bank Ltd. & Ors. [2022 SCC Online NCLAT 304] observed that “an

undischarged insolvent means a person declared by the relevant court to be insolvent".

6. I have perused the report of PSA dated February 18, 2025 and have noted that no document has been provided whereby it can be observed that Cosmic or any of its connected persons have been declared as insolvent by a court of law. Hence, Cosmic is eligible under Section 29A(a) of IBC.

INELIGIBILITY UNDER SECTION 29A(A) (c) OF IBC:

7. As per Section 29A (c) of IBC, Cosmic shall be rendered to be ineligible if Cosmic or any of its connected person or any person acting jointly or in concert with Cosmic, as on the plan submission date i.e. June 28, 2024, has any account which has been classified as NPA or are in management of control of a Corporate Debtor whose account has been classified as NPA or are a promoter of a Corporate debtor whose account has been classified as NPA.

8. PSA in its report dated February 18, 2025 has observed that Cosmic is ineligible under Section 29A(c) of IBC due to the following reasons: -

i. CFAL was classified as a Non-Performing Asset (NPA) on December 9, 2016.

ii. Mr. Aditya Vikram Birla, the promoter and Managing Director of Cosmic CRF, exercised significant management and control over CFAL during and after the NPA classification and continued to manage and control the assets with rebranded name.

iii. As, Mr. Aditya Vikram Birla who is one of the main promoters of CFAL is ineligible under section 29A of the 2016 IBC. As a result, Cosmic is ineligible under section 29A of the IBC, 2016.

iv. Mr. Aditya Vikram Birla was retained as the Marketing Executive post approval of resolution plan, from the existing management of CFAL.

v. At the time of submission of the resolution plan (July 31, 2024), CFAL remained an NPA entity, and the dues were not cleared full.

vi. As per the disclosure made in the financial of Cosmic (Note -14 of Audited Financial of Cosmic for Financial Year 2021-22), post approval of plan of CFAL, Cosmic acquired the running Cold Rolled Forming unit of CFAL in Singur on a slump sale basis and hence, it is clear that Mr. Aditya Vikram Birla was not only in the management and control of CFAL but also continued to be in the operation and also post slump sale continued to control and enjoy the assets of NPA entities.

9. From a perusal of the report of PSA dated February 18, 2025 it is evident that it is an undisputed fact that CFAL was admitted into CIRP on January 16, 2018. Further, a resolution plan was submitted by a consortium of United Tradeco FZC and QVC Exports Private Limited in respect of CIRP of CFAL and the same was approved on October 11, 2018 (which is well before the initiation of CIRP of the Corporate Debtor).

10. I have gone through the resolution plan of the consortium of United Tradeco FZC and QVC Exports Private Limited in respect of the CIRP of CFAL ("CFAL Resolution Plan"). With regards to the equity shareholders (which includes shareholding of Mr. Aditya Vikram Birla) the CFAL Resolution Plan notes as follows: -

"As the Value payable to shareholders of the Corporate Debtor are NIL the Equity Shares will be extinguished, and new Shares will be issued to the New Promoters."

11. The CFAL Resolution Plan further notes that: -

“Specific Order to the Secured Financial Creditors to “UPGRADE” the Account of Corporate Debtor with Banks/ FI under the CIBIL Mechanism to “Standard Category” from NPA on the completion of the Upfront Payment to Secured Financial Creditors under this Resolution Plan so as to enable the Resolution Applicant to revive the business of Corporate Debtor afresh and such action would enable the Resolution Applicant to take Loans for Balance Payment of the Resolution Plan or Upgradation of the Plant & Machinery of the Corporate Debtor which will assist in complete revival account of CFAL was upgraded to ‘Standard Category from NPA upon its approval.’”

12. Thus, once the CFAL Resolution Plan was approved by the Hon’ble NCLT, the account of CFAL would no longer be NPA and was upgraded to Standard Category. Also, the shareholding of the previous shareholders of CFAL stood extinguished and the new shareholding stood vested in the successful Resolution Applicant of CFAL i.e. United Tradeco FZC and QVC Exports Private Limited.

13. Section 29A of IBC stipulates that the eligibility of a Resolution Applicant and any other connected person with respect to having an account which is classified as a non-performing asset has to be ascertained at the time when the resolution applicant submits its resolution plan.

14. The Hon’ble Supreme Court in the case of ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors. reported in [(2019) 2 SCC 1] while dealing with the issue under Section 29A(c) of IBC held as follows:

“46. According to us, it is clear that the opening words of Section 29-A furnish a clue as to the time at which clause (c) is to operate. The opening words of Section 29-A state: “a person shall not be eligible to submit a resolution plan...”. It is clear therefore that the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant. The contrary view expressed by Shri Rohatgi is

obviously incorrect, as the date of commencement of the corporate insolvency resolution process is only relevant for the purpose of calculating whether one year has lapsed from the date of classification of a person as a non-performing asset. Further, the expression used is “has”, which as Dr. Singhvi has correctly argued, is in praesenti. This is to be contrasted with the expression “has been”, which is used in clauses (d) and (g), which refers to an anterior point of time. Consequently, the amendment of 2018 introducing the words “at the time of submission of the resolution plan” is clarificatory, as this was always the correct interpretation as to the point of time at which the disqualification in clause (c) of Section 29-A will attach. In fact, the amendment was made pursuant to the Insolvency Law Committee Report of March, 2018.

That Report clearly stated:

“In relation to applicability of Section 29-A(c), the Committee also discussed that it must be clarified that the disqualification pursuant to Section 29-A(c) shall be applicable if such NPA accounts are held by the resolution applicant or its connected persons at the time of submission of the resolution plan to the RP.”

15. Therefore, from the aforesaid it is clear that on the date Cosmic had submitted its resolution plan i.e. June 28, 2024 and as on that date neither Cosmic nor any of its connected persons held any account which was classified as NPA nor were in management or control of the Corporate Debtor whose account have been classified as NPA and were also not a promoter of a corporate debtor whose account has been classified as NPA.

16. In my opinion, as on the date of submission of resolution plan by Cosmic it cannot be said that CFAL is NPA and thus Cosmic cannot be said to be ineligible under Section 29A (c).

17. Further, CFAL Resolution Plan itself notes that Mr. Aditya Vikram Birla will be working as Marketing Executive in the operation of Cosmic plant with no influence in the business decision making process, management and/or control of the Company, i.e. CFAT.

18. Thus, in my opinion Cosmic is eligible under Section 29A(c) of IBC.

INELIGIBILITY UNDER SECTION 29A(A) (h) OF IBC:

19. PSA in its report dated February 18, 2025 has observed that Cosmic is ineligible under Section 29A(h) of IBC due to the following reasons: -

i. Archana Impex Pvt. Ltd., a company controlled by Aditya Vikram Birla, provided a corporate guarantee for the loans of CFAL.

ii. This corporate guarantee was invoked but remains unpaid, making Cosmic CRF ineligible under Section 29A(h).

iii. According to the records of the Registrar of Companies (ROC), the charge in respect of the guarantee extended by Archana Impex Pvt. Ltd. remains active.

20. As per Section 29A (h) of IBC, Cosmic shall be rendered to be ineligible if Cosmic or any of its connected person or any person acting jointly or in concert with Cosmic, has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under IBC and such guarantee has been invoked by the creditor and remains unpaid in full or part.

21. PSA in its report dated February 18, 2025 has observed that Cosmic is ineligible under Section 29A(h) of IBC as one entity being Archana Impex Private Limited [alleged connected party of Cosmic] had executed a corporate guarantee for the loans of CFAL and CFAL was admitted to CIRP on petition made by Citibank NA and hence Cosmic was ineligible under Section 29A (h).

22. I note that no document has been provided by PSA in its report dated February 18, 2025 evidencing invocation of guarantee by any creditor and same remaining unpaid in full or part. Further, PSA in its report dated February 18, 2025 has noted that the guarantee was invoked and not enforced. Hence, it is unclear whether the corporate guarantee remains unpaid or not.

23. In the absence of any document being provided, I am of the opinion that Cosmic is eligible under Section 29A (h) of IBC.

INELIGIBILITY UNDER SECTION 29A(A) (j) OF IBC:

24. PSA in its report dated February 18, 2025 has observed that Cosmic is ineligible under Section 29A(j) of IBC due to the following reasons: -

- i. Cosmic CRF Limited qualifies as a “connected person” under Explanation I to Section 29A(j).
- ii. CFAL, an ineligible entity, was controlled and continued to be controlled by Birla Family, making Cosmic CRF Limited ineligible.
- iii. Since Cosmic CRF Limited is a connected entity to CFAL, which was an NPA and ineligible under IBC, Cosmic CRF Limited is ineligible under Section 29A(j).

25. From the aforesaid discussion, it is evident that the shareholding of the Birla Family (including Mr. Aditya Vikram Birla) was extinguished after the CFAL Resolution Plan was approved by the Hon’ble NCLT. Hence, the Birla Family (including Mr. Aditya Vikram Birla) do not continue to control CFAL. Further, CFAL was no longer NPA after the CFAL Resolution Plan was approved by the Hon’ble NCLT. It is also noted that the report dated February 18, 2025 of PSA does not provide any reasoning as to how Cosmic is a connected entity of CFAL. Hence, CFAL does not fall under the definition of connected person nor related party under Explanation I to Section 29A(j) of IBC.

26. In view of the aforesaid, I am of considered opinion that Cosmic is eligible under Section 29A of IBC to take part in the CIRP of the Corporate Debtor.

27. The query is accordingly answered.”

55th Meeting of CoC – Section 29-A compliance

97. The CoC in its 55th Meeting on 6th March 2025, decided that the applicant is eligible to be a resolution applicant and satisfies all the conditions under Section 29A. The relevant extract of the meeting of the CoC gives the details of the process undertaken for deciding that the RA is eligible and not the justification to determine sub-section wise eligibility under Section 29A and is extracted as below:

“At this stage RP initiated the discussion by presenting on the screen both (i) the Report dated 18th February 2025 of Priyanka Sharma & Associates (PSA) and (ii) the Opinion dated 03.03.2025 of Mr. Krishnendu Datta (Senior Advocate).

The RP explained in detail the contents, observations, and findings of both these professionals to the CoC. He added that the report of PSA has given a finding that RA Cosmic CRF Limited is ineligible under sub-sections (a), (c), (h), (j) of Section 29A of IBC, 2016. However, after thorough examination of the report dated 18.02.2025 of PSA, Mr. Krishnendu Datta (Senior Advocate) was of the opinion that RA Cosmic CRF Limited is eligible under sub-sections (a), (c), (h), (j) of Section 29A of IBC, 2016. The opinion of Mr. Datta is supported by justification under each head.

At this stage, the RP invited views of each CoC member present in the meeting to give their views/opinion on the eligibility of RA Cosmic CRF Limited on the basis of the two above report/opinion. Upon query of the CoC, the Retainer Legal Counsel Mr. Abhishek Anand opined that on

the basis of the opinion of the Senior Advocate, RA Cosmic CRF Limited is eligible under Section 29A of IBC, 2016. The RP also gave his preliminary views that RA Cosmic CRF Limited is eligible.

The Representatives from UCO Bank, Prudent ARC Limited, & WLD Investments Private Limited gave a unanimous view that on the basis of the opinion of Mr. Krishnendu Datta (Senior Advocate) & in view of the Retainer Legal Counsel Mr. Abhishek Anand, RA Cosmic CRF Limited be considered as eligible.

It was further decided to withdraw the earlier declaration of RA Consortium of Myotic Trading Private Limited & Fortune Global Solutions Pte Ltd as Winner of Challenge Mechanism Process as CoC wanted to resume the Challenge Mechanism Process...”

98. Perusal of the minutes of the CoC indicates that the CoC has heavily on the opinion of the Sr. Advocate. It has not considered individual issues raised by the Complainant and flagged by several consulting firms and also the advice of other Sr. Advocates. We find the CoC has not recorded its reasons for determining the ineligibility of the Resolution Applicant under various sub-sections of 29A of the Code - even though there were serious doubts about its eligibility and also sufficient material was available on record against its eligibility. In such a situation analysis and reasoning under individual sub-sections of Section 29A would have provided a clear conclusion that the Applicant-Cosmic CRF is not ineligible under Section 29A of the Code. We find that the CoC has totally relied on the opinion of the Senior advocate as if he is the final arbiter and can overrule all other reports – whether of advocates or of financial experts – and has not brought out on record its own analysis and reasoning except for the process undertaken by them. This is particularly important in the

background that all the earlier reports had flagged connections between the resolution applicant and another business entity [CFAL] which was resolved under the Code and various other conditions of ineligibility. In such a background, it is the CoC which has to ensure that the resolution applicant is in compliance of Section 29-A. Such a decision could have been basis speaking minutes determining eligibility under each sub-section of 29A. We don't find the self-speaking reasoning in the minutes of the CoC which could indicate that the resolution applicant was complying with Section 29-A of the Code.

99. Since the ineligibility under Section 29A has not been gone into sub-Section wise and even though we need not have gone into the details of such conditions of ineligibility, yet basis the facts and circumstances of the case, we are forced to look into ineligibility under Section 29A of the Code.

Our determination- RA eligible or not under Section 29A

100. To appreciate how Cosmic CRF is ineligible or otherwise under Section 29A of the Code, we recapitulate the factual matrix of separate CIRP proceedings of another business entity namely Cosmic Ferro Alloys Ltd. (CFAL), for which the relevant facts are on record. The CIRP of Cosmic Ferro Alloys Limited ("CFAL") commenced on an application filed under Section 7 by the FC- Citibank on 16.01.2018 vide application bearing CP (IB) No. 59d/KB/2017. In the CIRP proceedings of CFAL, the resolution plan of consortium of United Trade Co., United Tradeco FZC and QVC Exports Pvt. Ltd. was approved by 95.86% of the COC members under Section 31(1) of the IBC, which was subsequently approved by NCLT on 11.10.2018. It is

brought on record that through the approval of the Resolution Plan, entire financial debt of CFAL amounting to about Rs. 178 Crores got settled for an amount of Rs. 50 Crores. Applicant-RA Cosmic CRF Ltd. argues that since the CFAL was resolved through CIRP process, therefore CFAL's debt is settled and the equity shareholding of earlier shareholders also gets extinguished.

101. We observe that herein the applicant Cosmic CRF Limited is a Resolution Applicant in the CIR Proceedings of M/s Amzen Transportation Industries Private Limited (ATIPL), which was admitted into CIRP on 4th May 2022. Even though the Applicant - Cosmic CRF Ltd is the RA in a separate CIR proceeding of M/s Amzen, but we go on to see whether it has any connection with CFAL and its resolution. We will also be taking note of various reports and legal opinion placed on record, and also the views of CoC and try to assess the eligibility of the applicant per several conditions enumerated under Section 29A of the Code.

102. For better appreciation relevant portion of Section 29-A is reproduced herein as follows:

Section 29A. Person not eligible to be resolution applicant.

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

(a) is an undischarged insolvent;

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

(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued

under the Banking Regulation Act, 1949 (10 1949) ³[or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation. I.--XXX.

*Explanation. II.--*For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

(d) XXX;

(e) XXX;

(f) XXX;

(g) XXX;

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i)

Explanation. I -- For the purposes of this clause, the expression **connected person** means--

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression related party shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed,] prior to the insolvency commencement date;

Explanation. II.-XXX

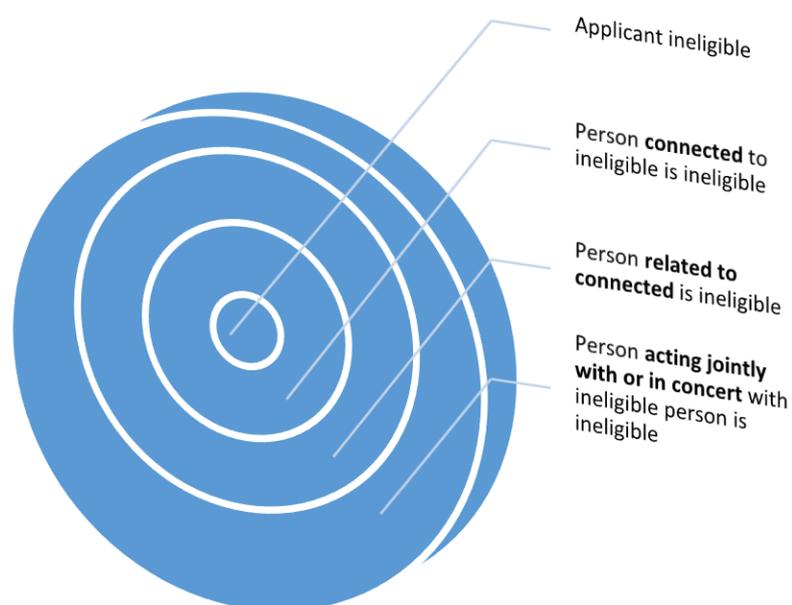
103. The intention of legislature to insert Section 29A becomes clear in para 2 of Statement of Objects and Reasons appended to Amendment Bill 2017, which is noted as follows:

“The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision. responsibility is also being entrusted on the Committee of Creditors (CoC) to give a reasonable period to repay overdue amounts and become eligible.”

104. From a plain overall reading of relevant Sections of Section 29A, it aims to keep out undesirable persons from bidding as a resolution applicant. We also note that Section 29A, provides several conditions of ineligibility, and such conditions of ineligibility relate to:

- The applicant themselves i.e. persons themselves are ineligible.
- Persons connected to ineligible persons connected persons, such as those in management or control of the applicant.
- Persons “related” to ineligible person is ineligible- i.e. related parties of those connected persons.
- Person acting jointly with or in concert with ineligible person- i.e. anyone acting in concert with individuals in the above three categories.

105. Various layers of ineligibility can be graphically shown as below:



106. From the plain reading of Section 29-A, we observe that the ineligibility criteria of a resolution applicant under Section 29A has to be tested not only against the resolution applicant, but also against a wide gamut of persons, namely:

- A. Persons acting jointly with the resolution applicant;
- B. Persons acting in concert with the resolution applicant;
- C. Connected persons of the resolution applicant (defined in explanation I to Section 29A) which includes:
 - i. any person who is the promoter or in the management or control of the resolution applicant;
 - ii. any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan;
 - iii. the holding company, subsidiary company, associate company and related party of any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan.

107. We also note that the phrase 'person acting in concert' is not defined under the Code and has been borrowed from Section 2(1) of SEBI (TAKEOVER) Regulations, and which is as follows:

"person acting in concert" comprises, -

- (1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established:

(i) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to in sub-clause(i) of clause (2) and their associates;

(iv) mutual fund with sponsor or trustee or asset management company;

(v) foreign institutional investors with sub account(s);

(vi) merchant bankers with their client(s) as acquirer;

(vii) portfolio managers with their client(s) as acquirer;

(viii) venture capital funds with sponsors;

(ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer.

Provided that sub-clause (ix) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work.

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2% of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2% of the paid up capital of the latter company.

Note: For the purposes of this clause `associate' means:

- (a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and
- (b) family trusts and Hindu Undivided Families.”

108. Furthermore, the concepts of ‘acting jointly’, ‘persons acting in concert’ and ‘promoters’ used in Section 29-A were dealt in by Hon’ble **Supreme Court in Arcelor Mittal (supra)** and which are being noted by us herein to determine the eligibility of the resolution applicant in this case.

109. To appreciate these concepts better, the opening part of the is extracted as below:

Section 29A. Person not eligible to be resolution applicant.

29A. Person not eligible to be resolution applicant. --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--

Acting Jointly

110. Hon’ble Supreme Court in **Arcelor Mittal (supra)** has in noted as follows:

“35. The expression “acting jointly” in the opening sentence of Section 29A cannot be confused with “joint venture agreements, as was sought to be argued by Shri Rohatgi. He cited various judgments including Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. & Anr., (2008) 10 SCC 345, and Laurel Energetics Private Limited v. Securities and

Exchange Board of India, (2017) 8 SCC 541, to buttress his submission that a joint venture is a contractually agreed sharing of control over an economic activity. We are afraid that these judgments are wholly inapplicable. All that is to be seen by the expression “acting jointly” is whether certain persons have got together and are acting jointly” in the sense of acting together. If this is made out on the facts, no super added element of “joint venture” as is understood in law is to be seen. The other important phrase is “in concert”. By Section 3(37) of the Code, words and expressions used but not defined in the Code but defined inter alia by the SEBI Act, 1992, and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts. In exercise of powers conferred by Sections 11 and 30 of the SEBI Act, 1992, the 2011 Takeover Regulations have been promulgated by SEBI.”

111. Hon’ble Supreme Court has provided an expansive interpretation to hold that all that is to be seen by the expression "acting jointly" is whether certain persons have got together and are acting "jointly" in the sense of acting together and if this is made out on the facts, no super added element of "joint venture" is required to be seen. In the facts of the case, we find that the resolution applicant has been acting jointly with the erstwhile promoters of another business entity namely CFAL for which a resolution process was completed and in which the resolution applicant was a member in its implementation.

Persons Acting in Concert

112. Hon’ble Supreme Court in **Arcelor Mittal (supra)** has noted as follows:

“36. Originally, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994, defined “**persons acting in concert**” as follows:

(d) “person acting in concert” comprises persons who, pursuant to an agreement or understanding acquires or agrees to acquire shares in a company for a common objective or purpose of substantial acquisition of shares and includes:

- i. a company, its holding company, or subsidiaries of such companies or companies under the same management either individually or all with each other.
- ii. a company with any of its directors, or any person entrusted with the management of the funds of the company;
- iii. directors of companies, referred to in clause (i) and his associates; and
- iv. mutual fund, financial institution, merchant banker, portfolio manager and any investment company in which any person has an interest as director, fund manager, trustee, or as a shareholder having not less than 2% of the paid-up capital of that company.

Explanation – For the purposes of this clause “associate” means: -

- A. Any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);
- B. the director or his relative whether individually or in aggregate holding more than 2% of the paid-up equity capital of such company.”

This was replaced in 1997 by the Regulations of 1997, and then further by the 2011 Takeover Regulations.”

“42. It will be seen from the wide language used, that any understanding, even if it is informal, and even if it is to indirectly cooperate to exercise control over a target company, is included. Under sub-clause (2) of clause (q), a deeming fiction is enacted, by which a presumption is raised in the categories mentioned, that a person falling within one category is deemed to be acting in concert with another person mentioned in the same category, unless the contrary is established. The corporate veil is not merely torn but is left in tatters by sub-clauses (i) to (iv) of Regulation 2(1) (q)(2). What is also important to note is that “immediate relatives” are also covered by sub-clause (v)

- i.e., father and son, brothers, etc. Also of importance is the definition of “associate” in the explanation to Regulation 2(1)(q)(2), which subsumes not merely immediate relatives but other forms in which a person can be associated with another - which includes the form of trust, partnership firm and HUF. What is of great importance is that wherever persons act jointly or in concert with the “person” who submits a resolution plan, all such persons are covered by Section 29A.....”

113. We observe that the meaning of 'persons acting in concert' is not explained in the IBC and Hon'ble Supreme Court in **Arcelor Mittal (supra)** referred to the definition of 'persons acting in concert' in SEBI Regulations. As per the said definition, 'persons acting in concert' are persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company. SC held that any understanding, even if it is informal, and even if it is to indirectly cooperate to exercise control over a target company, is included.

114. Applying the above interpretation of 'persons acting in concert', we observe that in the facts and circumstances of the case resolution applicant has been acting in concert with persons who were exercising control over another company (CFAL) till its resolution. Furthermore, one of the promoters of the resolution applicant was part of the implementation team of the SRA of CFAL and later on as per Business Transfer Agreement, substantial assets of CFAL were transferred to Cosmic CRF Limited - which

is the resolution applicant in this case. Thus the resolution applicant very much falls in the broad meaning of 'persons acting in concert' with the erstwhile promoter/director of CFAL.

Promoter

115. Hon'ble Supreme Court in the judgment of **Arcelor Mittal (supra)** has further noted as follows:

"52. The third concept is that of a promoter. "*Promoter*" is defined by Section 2(69) of the Companies Act, 2013 as follows:

"(69) "promoter" means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;"

116. We note that in the facts and circumstances of the case and as noted by us herein separately the relationship/connections of the applicant is clearly established. Aditya Vikram Birla is not only the promoter/director of the resolution applicant (Cosmic CRF - Applicant in this case) but also had connections with CFAL - being a direct shareholder and with substantial indirect shareholding exercising control over CFAL, which gets further established in the analysis herein separately.

117. Except for the legal opinion of a senior advocate just before the 55th COC meeting, we observe that almost all experts and legal opinions, have come to the same conclusion that the applicant is not meeting the eligibility under Section 29A, even though it could be having different findings with respect to different clauses of Section 29A. For that reason, we have ourselves analysed each clause to arrive at our independent findings noted herein.

118. To appreciate the issue before us and also the grievance of the applicant we take the assistance of a question which was framed by a consulting firm (PSA @ 341, Vol-3) noted as below:

“The key questions that arise from these opinions, reports, and complaints are summarized below for a better understanding of the matter:

- a) Whether 'Cosmic Ferro Alloys Limited (CFAL)' or Mr. Ravi Birla has, had, or currently has any connection, as defined under section 5(24) or 5(24A) of the Code, with the current promoters of the Resolution Applicant, M/s Cosmic CRF Limited.”
- b) Even if the answer to (a) above is affirmative, whether such a connection falls within the ineligibility criteria outlined under clauses (a), (c), and/or (h), read in/or conjunction with clause (j) of Section 29A of the Code.”

119. To find answer to the above question we now look into the connections as noted above and for this purpose rely on the material placed on record, including all reports.

Connections between RA-Cosmic CRF and CFAL

120. Before proceeding further to, it will be useful to briefly look into the history of the resolution Applicant-Cosmic CRF Ltd., which is the applicant in the CIR proceedings of the CD-Amzen and find that this RA was incorporated on 21.12.2021 by Mr. Pawan Kumar Tibrewala (Father-in-law of Mr. Aditya Vikram Birla) and others on 21.12.2021. Later, on 31.03.2023 the entire shareholding in Cosmic CRF Ltd was transferred to Mr. Aditya Vikram Birla (Son of Mr. Ravi Birla) and his wife Ms. Purvi Birla (Daughter of Mr. Pawan Kumar Tibrewala). Mr. Aditya Vikram Birla and Ms. Purvi Birla were also inducted onto the Board of CRF, thereby controlling almost 100% interest in CRF. The present set of Directors in Cosmic CRF are as follows:

No.	DM/PM	Name	Designation	Date of appointment
1.	06613927	ADITYA VIKRAM BIRLA	Managing Director	14/07/2022
2.	01056704	PAWAN KUMAR TIBREWALLA	Director	21/12/2021
3.	01713323	BINOD KUMAR KHAITAN	Director	21/04/2023
4.	02488423	PURVI BIRLA	Whole-time Director	23/12/2022
5.	*****055 6A	RAM PADA MANDAL	CFO	02/01/2023
6.	*****013 9L	TRUPTI UPADHYAY	Company Secretary	12/02/2024
7.	01580287	ASHOK BARNWAL	Director	21/04/2023

121. For testing the eligibility of Cosmic CRF under various sub-sections of 29A of the code, we delve look into the issue whether Cosmic Ferro Alloys Ltd. (CFAL) or Mr. Ravi Birla or Aditya Vikram Birla, had or are currently

having any connection defined under Section 5 (24) or Section 5 (24A) of the code with the current promoters of the resolution applicant i.e. Cosmic CRF Ltd.

122. From the materials placed on record we find that Mr. Aditya Vikram Birla, the promoter of the RA is holding substantial interest [50% as on 31st March 2023- @375, v3 filed by Applicants] in 'Carro Enterprises Pvt. Ltd.'. Further Mr. Ravi Kumar Birla was holding the post of the Board of such company. Hence Mr. Ravi Birla is considered as a person acting jointly in concert with Mr. Aditya Vikram Birla as on the date of submission of resolution plan and is also a related party in terms of Section 5(24A) of the Code. The relationship is shown in the above noted infographic.

123. Further we look into the direct and indirect shareholding / cross shareholding of Mr. Aditya Vikram Birla and Cosmic Ferro Alloys Limited (CFAL) as on 31.03.2018, even though it is prior to resolution of CFAL, which is extracted in below mentioned tables:

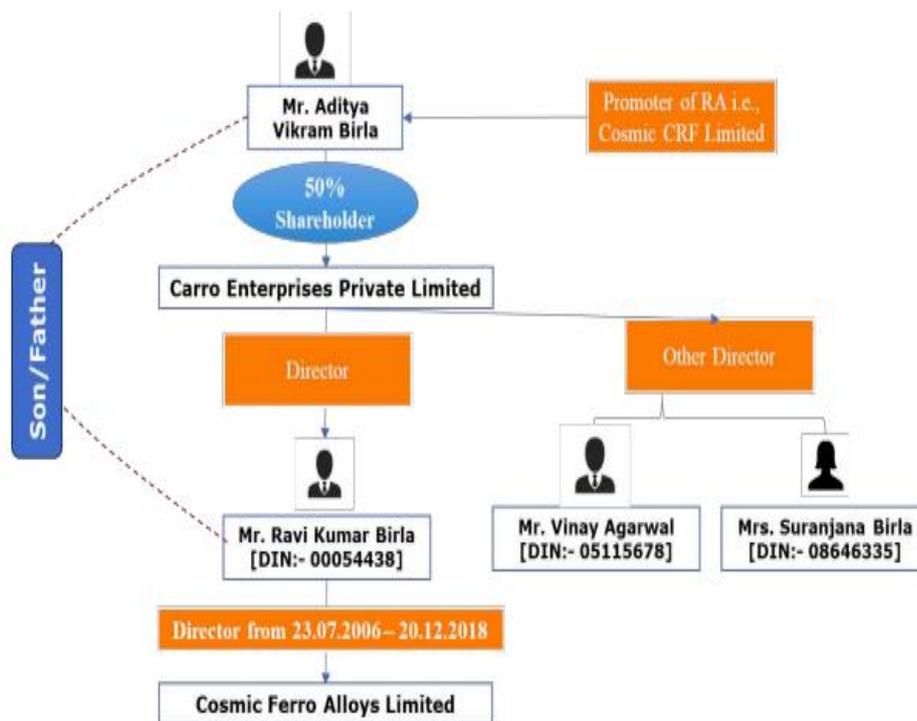


Table A

Company>>>	Cosmic Ferro Alloys Limited	Comic Steels Pvt. Ltd	Aar Ess Homes Pvt Ltd	Adarsh Technocom Pvt.Ltd.	Archana Impex Pvt Ltd	Apollo Vinimay Pvt Ltd	Topsell Vinimay Pvt. Ltd.	Vista Vision Pvt Ltd	Pragati Realtors Pvt Ltd
Shareholders									
Birla Family	16.73%	1.23%	0.42%	46.25%	38.20%	0.13%	-	39.68%	5.75%
Aditya Vikram Birla	0.09%	0.41%	-	-	-	-	-	-	-
Cosmic Steel Pvt. Ltd.	2.88%	-	-	18.89%	5.74%	19.31%	12.04%	4.15%	5.75%
AAR Ess Homes Pvt. Ltd.	2.50%	24.59%	-	19.47%	13.00%	-	8.03%	1.10%	-
Topsell Vinimay Pvt. Ltd.	-	24.59%	17.71%	5.77%	17.17%	10.94%	-	9.95%	2.30%
Apollo Vinimay Pvt. Ltd.	10.14%	-	33.16%	-	-	-	11.24%	8.50%	-
Vista Vision Pvt. Ltd.	20.73%	-	19.62%	-	12.58%	17.51%	16.05%	-	5.18%
Pragati Realtors Pvt. Ltd.	0.50%	-	14.27%	-	-	-	16.05%	0.23%	-
Velmon Tie-up Pvt. Ltd.	22.34%	24.59%	13.02%	-	-	-	-	2.24%	20.48%
Adarsh Technocom Pvt.Ltd.	-	-	1.74%	-	7.26%	18.24%	16.13%	0.35%	-
Archana Impex Pvt Ltd	5.48%	24.59%	-	-	-	25.75%	20.47%	2.36%	4.03%
Others	18.61%	-	0.07%	9.62%	6.05%	8.11%	-	31.44%	56.51%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Table B

Sr. No.	Company Name	Directorship		
		Name	From	to
1	Cosmic Steel Pvt. Ltd.	Aditya Vikram Birla	21-Oct-13	Current Director
2	AAR Ess Homes Pvt. Ltd.	Aditya Vikram Birla	29-Sep-17	14-Apr-23
3	Topsell Vinimay Pvt. Ltd.	Aditya Vikram Birla	14-Dec-15	23-Jul-24
4	Apollo Vinimay Pvt. Ltd.	Aditya Vikram Birla	29-Mar-19	Current Director
5	Pragati Realtors Pvt. Ltd.	Aditya Vikram Birla	8-Dec-15	Current Director
6	Adarsh Technocom Pvt.Ltd.	Aditya Vikram Birla	21-Oct-13	Current Director

124. While looking into the connection between Mr. Aditya Vikram Birla and Cosmic Ferro Alloys Ltd., we note that prior to CIRP, Birla family along with Mr. Vikram Birla had shareholding in various companies as noted in Table C as below in conjunction with Table A.

Table C				
SL	SHAREHOLDER NAME	STATUS	DIRECT HOLDING	Director
1.	Apollo Vinimay Pvt Ltd	Company	10553.10	A V Birla
2.	Adarsh Technocom Pvt Ltd	Company	919000	A V Birla
3.	Cosmic Steels Pvt Ltd	Company	300000	A V Birla
4.	Aar Ess Homes Pvt Ltd	Company	260000	A V Birla
5.	Aditya Vikram Birla	Individual	9540	
6.	Vista Vision Pvt Ltd (Topsell Vinimay Pvt Ltd being Shareholder)	Company	2157400	A V Birla
7.	R S Birla HUF	HUF	70000	HUF
Total			4771250	

125. We note that Mr. Aditya Vikram Birla (AV Birla) and the above-mentioned companies in Table B in turn had shareholding in CFAL as shown in Table A and Table C. This shows that AV Birla had a direct interest in CFAL as a shareholder and indirectly through cross shareholdings. In addition to the above, the material placed on record also indicates that the Birla family had controlling interest through shareholding and Directorship of more than 50% in CFAL, prior to commencement of its CIRP.

126. Thus, Birla Family along with Mr. Aditya Vikram Birla are/were having cross shareholding in different companies and were exercising significant control over Cosmic Ferro Alloys Limited. We further note that the loan account of Cosmic Ferro Alloys Limited was classified as Non-Performing Assets (NPA) on 09.12.2016 and CIRP petition was admitted on 16.01.2018. Therefore, as on the date of classification as NPA and after commencement of CIRP Mr. Aditya Vikram Birla along with Birla Family were having significant control over the Cosmic Ferro Alloys Limited. Hence, at the time of NPA classification, the Birla Family including the current promoter of Resolution Applicant were in the control of the Cosmic Ferro Alloys Limited. Further while analysing the directorship of Mr. Aditya Vikram Birla, it was noted that Mr. Aditya Birla was holding and, in some cases, continue to hold directorship in the company which in turn were having shareholding in Cosmic Ferro Alloys Limited as noted earlier by us. Thus, arguments of the applicant that it was holding only 0.09% shareholding in CFAL loses its relevance and needs to be rejected.

127. We also observe that the loan account of Cosmic Ferro Alloys Limited was classified as Non-Performing Assets (NPA) on 09.12.2016 and CIRP petition was admitted on 16.01.2018. Therefore, as on the date of classification of CFAL as NPA and till commencement of CIRP the Mr. Aditya Vikram Birla along with Birla Family were having significant control over the Cosmic Ferro Alloys Limited. Hence, at time of NPA classification, the Birla Family including the current promoter of Resolution Applicant were in the control of the Cosmic Ferro Alloys Limited.

128. We also note that in the companies listed at Table-B, Mr. Aditya Vikram Birla, serve and/or continues to serve as a director, and was classified as a promoter of CFAL. Further while analyzing the directorship of Mr. Aditya Vikram Birla, it was noted that Mr. Aditya Birla was holding and, in some cases, continue to hold directorship in the company which were having shareholding in Cosmic Ferro Alloys Limited as aforementioned. Thus, Mr. Aditya Vikram Birla, was having Directorship in companies having significant shareholding in Cosmic Ferro Alloys Limited (CFAL) and at the time of NPA classification, the Birla Family including the current promoter of Resolution Applicant Mr. Aditya Vikram Birla were in the Management (Board of Directors) of companies, holding significant control in Cosmic Ferro Alloys Limited.

129. We further note that as per the disclosure made in the financial of Cosmic CRF Limited (Note -14 of Audited Financial of Cosmic CRF Limited for FY 2021-22), post approval of plan, the Cosmic CRF Limited acquired the running Cold Rolled Forming unit located at Singur, District Hooghly, West Bengal on slump sale basis from Cosmic Ferro Alloys Limited. This was through a Business Transfer Agreement (BTA) between CFAL and Cosmic CRF on 19.01.2022. The purchase consideration of Rs. 49 Crores was determined for transfer of the acquired business from CFAL. However, there is a dispute of payment between two parties. We note substantial assets of CFAL were transferred from CFAL to CRF and they were transferred after a short period of approval of the resolution plan of CFAL. A question arises as to whether these were arm's length business transactions, which becomes clear in our analysis herein after.

130. Furthermore, it is also observed that Mr. Aditya Vikram Birla was retained as Marketing Executive of Cosmic Ferro Alloys Limited (CFAL) post approval of Resolution Plan from existing management. Thus, Mr. Aditya Vikram Birla was not only in management and control of Cosmic Ferro Alloys Limited but also continued to be in the operation and also post slump sale continued to control and enjoy the assets of NPA entities.

131. Thus, we find that Mr. Aditya Vikram Birla & others were the promoters and Directors in many of shareholders Company of Cosmic Ferro Alloys Limited with substantial interest prior to the commencement of CIRP and that entire debt in relation to the said debtor still remains outstanding after its declaration of NPA, with the secured lenders apparently taking huge haircuts in the Resolution Process. Further Mr. Aditya Vikram Birla along with other Birla family members were controlling both majority stakes and management control in Cosmic Ferro Alloys Limited as on the CIRP commencement date. In addition to above Mr. Aditya Vikram Birla along-with its related parties, was also holding direct controlling interest in the Companies that have extended corporate guarantees towards loan of Cosmic Ferro Alloys Limited and we don't find any records of any payments towards such guarantees.

132. We also note that Mr. Anand Mohta, a shareholder-promoter of CRF-RA (Preference shareholder), was also a related party as it had direct shareholding in CFAL prior to CIRP which is noted as below:

Table D			
Name	Father/ Husband	No. of Shares	Percent
Anand Mohta	Deo Kishan Mohta	40000	0.38
D K Mohta & Sons (HUF)	-	1500100	1.44
Raj Laxmi Mohta	Shyam Sunder Rathi	70000	0.67
Total			2.49

133. Mr. Aditya Mohta and his related parties thus have a direct interest in CRF through Mr. Anand Raj Developers Pvt. Ltd., and AV Realestate Pvt. Ltd., holding 100% of the preference shares. Thus, the ownership of CRF equity and preferential share shows that Mr. Aditya Mohta, and his related parties owned more than 40% of economic interest in CRF.

134. We also take on record into the relationship of promoters and directors of Cosmic CRF with the promoters and directors of CFAL, which is described as follows:

- Mr. Ravi Kumar Birla - Father of Mr. Aditya Vikram Birla
- Ms. Purvi Birla - Wife of Mr. Aditya Vikram Birla
- Mr. Pawan Kumar Tibrewala - Father of Ms. Purvi Birla
- Mr. Suranjana Birla - Mother of Mr. Aditya Vikram birla and wife of Mr. Ravi Kumar Birla
- Other Birla Family Members: Mr. Satish Kumar Birla, Mr. Radhey Shyam Birla, Ms. Madhu Birla, Ms. Manju Birla, Mr. Prabhu Dayal Birla, Mr. Vijay Kumar Birla

135. Now, we also look into the issue of corporate guarantee of M/s Archana Impex Pvt. Ltd., which was provided for the loan of CFAL. The material on record indicates M/s Archana Impex Pvt. Ltd. was having 24.59% shareholding in Cosmic Steel Pvt. Ltd. and in turn Cosmic Steel Pvt. Ltd. was having 2.88% in Cosmic Ferro Alloys Ltd. Same way Archana

Impex Pvt. Ltd. was having 25.75% shareholding in Apollo Vinimay Pvt. Ltd. which in turn was having 10.14% shareholding in Cosmic Ferro Alloy Ltd., which is depicted in table A. Thus, we note that M/s Archana Impex Pvt. Ltd., in which companies listed in Table B, was a shareholder which in turn was shareholders in CFAL-which shows cross shareholding of M/s Archana Impex Pvt. Ltd. in CFAL. We also note that Mr. Aditya Vikram Birla was/is director in at least in the companies in Table B. These companies in turn had shareholding in M/s Archana Impex Pvt. Ltd. with shareholding of about 48.49% as under, apart from 100% control and ownership jointly with the related parties as shown in following Table: -

Table E			
Name	Status	No.of Shares	%
Aar Ess Homes Pvt Ltd	Company	43,000	13.00
Vista Vision Pvt Ltd	Company	41,600	12.58
Cosmic Steels Pvt Ltd	Company	19,000	5.74
Topsell Vinimay Pvt Ltd	Company	56,800	17.17
TOTAL			48.49

136. We also that the status of invocation of corporate guarantee against M/s Archana Impex has not been brought on record, which in normal course should have been invoked by the financial creditor or the assignee of the debt. And if it was not done so what were the reasons but it has not been brought on record. It is claimed to be unrelated issue for the applicant but we find it to be an important determining factor.

137. Summarizing we note that:

- a) CFAL was declared NPA for the first time on 09.12.2016 and the CIRP in respect of CFAL commenced on 16.01.2018 at the

instance of CITIBANK. The Resolution Plan of CFAL was approved by the NCLT on 11.10.2018.

b) Separately, Cosmic CRF was incorporated and it purchased one of the major business units of CFAL after conclusion of its CIRP proceedings under BTA dated 19.01.2022.

c) Mr. Ravi Birla (father of Mr. Aditya Vikram Birla) and related parties were holding direct controlling interest in CFAL at the time of commencement of CIRP of CFAL on 16.01.2018.

d) Mr. Aditya Vikram Birla was holding shares in CFAL as promoter and was a Director in several companies who were substantial shareholders of CFAL at the time of commencement of CIRP of CFAL. He is also a major shareholder and Director in CRF.

e) Mr. Anand Mohta and his related parties were classified as the promoters in CFAL prior to its CIRP and are also the holder of 100% preference shares in CRF.

f) Archana Impex Pvt. Ltd. had given corporate guarantees for securing the debt of CFAL. M/s Archana Impex was owned and controlled by members of Birla family through corporate shareholders. Mr. Aditya Vikram Birla was also Director in such shareholder Companies of M/s. Archana Impex Pvt. Ltd.

138. From the above noted facts, it's clear that Mr. Aditya Vikram Birla, was not only in the management and control of Cosmic Ferro Alloys Ltd.

but also continues to be in the operations and also post slump sale, continues to control and enjoy the assets of NPA entities.

139. We observe that the above-mentioned connections cannot be brushed aside, but were to be deeply gone into by the CoC themselves, rather it has relied upon the opinion of one of the senior Advocates, which we have noted hereinafter in the judgement.

140. Basis above analysis, we find that CFAL and Mr. Ravi Birla were having connection as defined under Section 5(24) and also under Section 5(24A) of the Code with the current promoters of the resolution applicant i.e. Cosmic CRF Limited.

Testing eligibility under various clauses of Section of 29A

141. Now we go on to test the ineligibility of the resolution applicant against various relevant sub-clauses of Section 29A- particularly sub-clauses (a), (c), (h) and (j).

142. For better appreciation we again note the opening line of Section 29A clause (j), for understanding the scope of persons to be tested for the disqualification criteria. And this reads as follows:

“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 suffers from any of the infirmities stated in clauses (a) to (i) or has a connected person not eligible under clauses (a) to (i).”

Testing eligibility under Clause (a) of Section of 29A:

143. Section 29A(a) states that: “29-A: *Persons not eligible to be a Resolution Applicant: 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.” We note that this provision determines ineligibility in case the Resolution Applicant(s) is an undischarged insolvent. The applicant claims that they are not undischarged insolvent and therefore this sub-section is not attracted against them. The applicant further contends that the applicant or its connected persons have not been declared as 'undischarged insolvent' by any court of law. In the absence of any court order declaring the Applicant or any connected person to be an undischarged insolvent, the ineligibility under Section 29A(a) will not attach. Furthermore, no document has been produced by the professional agencies to hold the Applicant ineligible under Section 29A(a). Applicant claims it has been held by this Appellate Tribunal in the case of **SREI Multiple Asset Investment Trust v IDBI Bank Ltd. & Ors. reported in 2022 SCC Online NCLAT 304** that *"To elaborate further, with regard to undischarged insolvent means a person declared by the relevant court to be insolvent"*.

144. The Applicant further brings to our notice that AHSK & Co. has not found the applicant to be ineligible under Section 29A (a). Thus, there seems discrepancy in the two reports of the Professional Agencies.

145. Now we look into the reports of various professional agencies and also the legal opinions with respect to Section 29A(a) which are placed on record and briefly noted as below:

- a) **Report of AHSK dated 19.08.2024:** There is no case against the Resolution Applicant or its connected parties declaring them as undischarged insolvent under

any law in India or in jurisdiction outside India. This makes the Resolution Applicant not ineligible under Section 29A (a) of IBC.

- b) **Updated Report of AHSK dated 18, October 2024:** It may be noted that, the entire analysis examination of the set of documents/data provided by the RP was done keeping in mind the Plan submission date as of 31st July 2024. This covers the requirement of amended Section 29A. However, inadvertently, the amended section/provisions were missed which has no impact on the outcome/findings of our report.
- c) **Report of Sr. Advocate (Mr. Gopal Jain) dated 28.08.2024:** Does not comment on ineligibility under Section 29A(a) however, generally considers ineligible.
- d) **Report of CLA Value Consulting Private Limited dated 01.09.2024**

According to the searches, one of the subjects is identified as potential red flag:

a. **Cosmic Ferro Alloys Limited**

Name of the subject identified in IBBI database where NCLT Kolkata Bench initiated insolvency process against the company in 2018. The company defaulted in payment with CITI bank. Further, the company was acquired by the consortium of United Tradeco FZC and QVC Export Ltd.

- e) **Report of Khandelwal – Insolvency Professional dated 01.09.2024:** Based on the above fact both Aditya Vikram Birla & its related parties and Anand Mohta & its related parties are jointly having substantial interest in both Cosmic Ferro Alloys Limited and Cosmic CRF Limited, as the promoters. Further they have also acquired the substantial assets of Cosmic Ferro Alloys Limited through back door entry after its CIRP. Aditya Vikram Birla was having shareholding in Cosmic Ferro Alloys Ltd. through directorship in companies which went under CIRP process. Aditya Vikram Birla is also a promoter director in Cosmic CRF Ltd. The details from the report as mentioned makes Cosmic CRF Ltd. ineligible under Section 29A of IBC 2016 to participate in any CIRP process.

- f) **Report of Sr. Advocate (Mr. Amit Sibal) dated 01.09.2024:** Does not comment on ineligibility under Section 29A(a) however, generally considers ineligible.
- g) **Report of PSA dated 08.10.2024:** Based on the verification of records available in the public domain, it is clearly identified that there is no case against the Resolution Applicant however as explained to Executive Summary in this report (Page 05-10) its connected parties have been found to be ineligible.
- h) **Report of Sr. Advocate (Mr. Krishnendu Dutta) dated 03.03.2025:** I have perused the report of PSA dated February 18, 2025 and have noted that no document has been provided whereby it can be observed that Cosmic or any of its connected persons have been declared as insolvent by a court of law. Hence, Cosmic is eligible under Section 29A(a) of IBC.

146. We note that clause (a) of Section 29A makes a resolution applicant ineligible if the resolution applicant is undischarged insolvent. We also note M/s Archana Impex had provided corporate guarantee to CFAL and status of its invocation is not clearly brought out on record, which could help us to decide indelibility accordingly. In the facts and circumstances of the present case, and as noted by us separately that the applicant, RP and other stakeholders have not transparently disclosed all the facts related to its association with CFAL and status of avoidance applications and invocation of corporate guarantees, we do not find sufficient material on record to suggest that the resolution applicant is an undischarged insolvent. For this reason, we are constrained to come to a conclusion on the applicability of this clause.

Eligibility under Clause (c) of Section 29-A

147. Clause (c) of Section 29-A states that 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 (c) at the time of submission of the resolution plan has an account, or an account of a Corporate Debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 1949) ³[or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

148. Applicant claims that the Professional Agency has not only applied the facts of this case on a primordial, anachronistic and pre-amended provision contained in Section 29A (c) of the IBC but have also placed his reliance on the submission by the parties recorded in the judicial precedents in an unusual and unprecedented manner. The Professional Agency seems to have ignored the law laid down and the ratio decided in such judicial precedents, which unquestionably, incontrovertibly and unequivocally supports the case of the Company. The Report prepared by the professional Agency is without any application of mind and has been premised on incorrect and non-existent provisions of law and fails to take into account the actual facts of the case. Aditya Vikram Birla was not a

shareholder in such corporate entities. [Except 0.4% in Cosmic Steels which in turn had only 2.88% in CFAL]. The Resolution Plan of CFAL was approved on 11.10.2018 and taken over by consortium of United Tradeco FZC and QVC Exports Private Limited. As per the Resolution Plan, the account was upgraded to 'Standard Category' from NPA upon its approval. Applicant contends that the bar under Section 29-A(c) of the IBC would not apply for the reason that a Resolution Plan of a consortium of United Tradeco FZC and QVC Exports Private Limited has been approved by the NCLT, Kolkata Bench by an order dated October 11, 2018 and a new management has taken control over the affairs of CFAL. It claims that all connections of Mr. Aditya Vikram Birla that may have existed with CFAL before it was admitted to undergo the CIRP were severed and he ceased to be in its control or management on and from such date of CIRP, i.e, January 16, 2018. It further claims that any association of the present promoters with CFAL does not continue anymore, and there was absolutely no connection or association with CFAL as on the date of submission of the Expression of Interest and Resolution Plan for the Corporate Debtor by them. It further claims that per the provisions of Section 29A (c) of the IBC, even CFAL could not be held to be ineligible for participating in the CIRP of the Corporate Debtor as after approval and implementation of the Resolution Plan of CFAL, the account of CFAL would cease to be classified as a non-performing asset and such account would have been regularized to normal and secondly, Explanation II to Section 29A (c), clarifies that CFAL or its new management [who has acquired such account pursuant to the resolution plan] would not be barred under the provisions of Section

29A (c) of the IBC for a period of three years from the date of approval of such resolution plan [with respect to CFAL] under the provisions of IBC.

149. Now we go on to extract the reports and opinions of legal experts and also financial experts on record with respect to clause (c) of section 29-A and it is noted herein after.

a) **Report of AHSK dated 19.08.2024:** “The NPA data is of defaults of more than Rs.1 Crore as updated on CIBIL. As CIBIL data is updated on the last date of the Quarter, Real-time data is not available in CIBIL records. Based on the search, it is clearly identified that there is no connection identified against the Resolution Applicant or any of its connected persons w with any Corporate Debtor and none of their accounts are declared as “Non-Performing Asset” account under Banking Regulation Act, 1949. This makes the Resolution Applicant not ineligible under Section 29A (c) of IBC. Though there are certain lists identified against connected party of Resolution Applicant, the real- time data is not available and hence not considered. Should they be continued as wilful defaulters, then the Resolution Applicant becomes ineligible.”

b) **Final Report of AHSK dated 18, October 2024:**

“It may be noted that, the entire analysis/examination of the set of documents/data provided by the RP was done keeping in mind the Plan submission date as 31st July 2024. This covers the requirement of amended section 29A. However, inadvertently, the amended section/provisions were missed which has no impact on the outcome/findings of our report.

The RA has not substantiated the fact by way of submission of any documentary evidence to proof their point.

We draw attention to page 02 of our updated report dated 20.09.2024 and annexure thereto (List of Shareholder, Promoters and Directors of Cosmic Ferro Alloys Limited), wherein we have specifically demonstrated the connection of

Mr. Adity Bilra with various companies classified as promoter of Cosmic Ferro Alloys Ltd.

We additionally draw attention to point No. 06 at page no 02 of our updated report dated 20.09.2024 wherein Indirect holding interest of Mr. Aditya Birla is established with CFAL.

We further draw attention to extract of approved Resolution of CFAL, wherein Mr. Aditya Birla has been retained as "Marketing Executive from the existing management. Hence plan itself admif that Mr. Aditya Birla was part of the management of CFAL.

Further we also draw attention to note no. 14 of Cosmic CRF Limited Financial statement for FY 2021-22 wherein the CRF unit of CFAL was acquired by the company owned by Mr. Aditya Biria, which implied that the assets which were subject NPA classification continued to be owned and control by Birla's were actually post CIRP.

We draw attention to page 02 of our updated report dated 20.09.2024 and annexure thereto (List of Shareholder, Promoters and Directors of Cosmic Ferro Alloys Limited), wherein we have specifically demonstrated the connection of Mr. Adity Bilra with various companies classified as promoter of Cosmic Ferro Alloys Ltd.

The first proviso to sub-clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan. Hence the contention taken by the RA does not hold good and bad in law.

It is matter of fact the lenders of CFAL were not able to recover their legitimate dues but Birla's continue to enjoy the assets subject to NPA classification hence it was gross abuse of the provision of law and purported show orchestrated by them."

c) **CLA Indus Value Consulting Private Limited dated 01.09.2024:**

“According to the searches, two of the subjects have been identified as Red Flag.

Refer below details:

1. Cosmic Ferro Alloys Limited

2. Ravi Kumar Birla

Name of the subject identified in CIBIL Suit filed on account of default more than INR 100 lakh. The default was related to Cosmic Ferro Alloys Limited. The default was with CITI Bank and amount outstanding was INR 13.06 crore as on 31-12-2018.”

d) **Report of Insolvency Professional (Khandelwal) dated 01.09.2024:**

“Based on the above fact both Aditya Vikram Birla & its related parties and Anand Mohta & its related parties are jointly having substantial interest in both Cosmic Ferro Alloys Limited and Cosmic CRF Limited, as the promoters. Further they have also acquired the substantial assets of Cosmic Ferro Alloys Limited through back door entry after its CIRP. Aditya Vikram Birla was having shareholding in Cosmic Ferro Alloys Ltd. through directorship in companies which went under CIRP process. Aditya Vikram Birla is also a promoter director in Cosmic CRF Ltd. The details from the report as mentioned makes Cosmic CRF Ltd. ineligible under Section 29A of IBC 2016 to participate in any CIRP process. Generally considers ineligible.”

e) **Report of Sr. Advocate (Mr. Gopal Jain) dated 28.08.2024:** “If the allegations in the said complaint against are correct, then it is apparent that Mr. Aditya Vikram Birla & others were the promoters and Directors in many of shareholders Company of Cosmic Ferro Alloys Limited with substantial interest prior to the commencement of CIRP and that entire debt in relation to the said debtor still remains outstanding after its declaration of NPA, with the secured lenders apparently taking huge haircuts in the Resolution Process. Further Mr. Aditya Vikram Birla along with other Birla family members were controlling both majority stakes and management control in Cosmic Ferro Alloys Limited as on the CIRP commencement date. In addition to above it is alleged Mr. Aditya Vikram Birla

along-with its related parties, was also holding direct controlling interest in the Companies that have extended corporate guarantees towards loan of Cosmic Ferro Alloys Limited and no records of any payments towards such guarantees could be found.

It is therefore alleged by the querist that Mr. Aditya Vikram Birla & others, after approval of the resolution plan of Cosmic Ferro Alloys Limited has taken control and possession of one of the main operational units of Cosmic Ferro Alloys Limited in a newly incorporated Company in the name of Cosmic CRF Limited, in violation of the provisions of Insolvency Code, 2016.

I am of the opinion that the above facts as alleged by the Querist based on the complaint by Energy Watchdog and other publicly available information, ought to be thoroughly investigated by the Resolution Professional of Amzen Transportation Industries Private Limited. Based on the above alleged facts, in my opinion Mr. Aditya Vikram Birla, Mr. Purvi Birla, Cosmic CRF Limited & other erstwhile promoters of Cosmic Ferro Alloys Limited are apparently ineligible to participate in any resolution process under Insolvency and Bankruptcy Code, 2016 by virtue of bar contained in Section 29A of the Act. The facts, if found to be true, would mean that Cosmic CRF Ltd / its promoters are ineligible to participate in the CIRP of Amzen Transportation Industries Private Limited owing to their disqualification under Section 29A of the Insolvency and Bankruptcy Code, 2016.

I am further of the opinion that till due verification is done of the above allegations, the RP should not proceed with CIRP of Amzen with Cosmic CRF Ltd as one of its bidders and all the relevant facts as stated above ought to be investigated and also placed before the Committee of Creditors (CoC) by the Resolution Professional.”

- f) **Report of Sr. Advocate (Mr. Amit Sibal) dated 01.09.2024:** “As per Section 29A(c) of the IBC. 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, at the time of submission of the resolution plan, has an account under the management or control of such person or of whom such person is a promoter,

classified as non-performing asset (CFAL. in this case) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the CIRP of the Corporate Debtor. Assuming that the facts submitted by the Querist are correct, CFAL was declared NPA on 09.12.2016 and therefore its then shareholders/directors/promoters are prima facie ineligible to submit a Resolution Plan under section 29A(c) of the IBC, for the resolution of Amzen. The erstwhile directors/shareholders/beneficial owners of CFAL and present directors/shareholders/beneficial owners of CRF appear to be common and therefore, prima facie, the ineligibility attaches to CRF as well.”

- g) **Report of PSA dated 08.10.2024:** “It is brought to your notice that the NPA data is of defaults of more than Rs.1 Crore as updated on CIBIL. As CIBIL data is updated on the last date of the Quarter, Real-time data is not available in CIBIL records. Based on the search, it is clearly identified that there is no connection identified against the Resolution Applicant or any of its connected persons with any Corporate Debtor and none of their accounts are declared as "Non-Performing Asset" account under Banking Regulation Act, 1949. This makes the Resolution Applicant not ineligible under Section 29A (c) of IBC. Though there are certain lists identified against connected party of Resolution Applicant, as explained to Executive Summary in this report (Page 05-10) its connected parties have been found to be ineligible.”
- h) **Report of Sr. Advocate (Mr. Krishnendu Dutta) dated 03.03.2025:** “From a perusal of the report of PSA dated February 18, 2025 it is evident that it is an undisputed fact that CFAL was admitted into CIRP on January 16, 2018. Further, a resolution plan was submitted by a consortium of United Tradeco FZC and QVC Exports Private Limited in respect of CIRP of CFAL and the same was approved on October 11, 2018 (which is well before the initiation of CIRP of the Corporate Debtor).

I have gone through the resolution plan of the consortium of United Tradeco FZC and QVC Exports Private Limited in respect of the CIRP of CFAL (“CFAL Resolution

Plan”). With regards to the equity shareholders (which includes shareholding of Mr. Aditya Vikram Birla) the CFAL Resolution Plan notes as follows: -

“As the Value payable to shareholders of the Corporate Debtor are NIL the Equity Shares will be extinguished, and new Shares will be issued to the New Promoters.”

The CFAL Resolution Plan further notes that: -

“Specific Order to the Secured Financial Creditors to “UPGRADE” the Account of Corporate Debtor with Banks/ FI under the CIBIL Mechanism to “Standard Category” from NPA on the completion of the Upfront Payment to Secured Financial Creditors under this Resolution Plan so as to enable the Resolution Applicant to revive the business of Corporate Debtor afresh and such action would enable the Resolution Applicant to take Loans for Balance Payment of the Resolution Plan or Upgradation of the Plant & Machinery of the Corporate Debtor which will assist in complete revival account of CFAL was upgraded to Standard Category from NPA upon its approval.

Thus, once the CFAL Resolution Plan was approved by the Hon’ble NCLT, the account of CFAL would no longer be NPA and was upgraded to Standard Category. Also, the shareholding of the previous shareholders of CFAL stood extinguished and the new shareholding stood vested in the successful Resolution Applicant of CFAL i.e. United Tradeco FZC and QVC Exports Private Limited.

Section 29A of IBC stipulates that the eligibility of a Resolution Applicant and any other connected person with respect to having an account which is classified as a non-performing asset has to be ascertained at the time when the resolution applicant submits its resolution plan.

The Hon’ble Supreme Court in the case of **Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors. reported in [(2019) 2 SCC 1]** while dealing with the issue under Section 29A(c) of IBC held as follows:

“46. According to us, it is clear that the opening words of Section 29-A furnish a clue as to the time at which clause (c) is to operate. The opening words of Section 29-A state: “a person shall not be eligible to submit a resolution plan...”. It is clear therefore that the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant. The contrary view expressed by Shri Rohatgi is obviously incorrect, as the date of commencement of the corporate insolvency resolution process is only relevant for the purpose of calculating whether one year has lapsed from the date of classification of a person as a non-performing asset. Further, the expression used is “has”, which as Dr. Singhvi has correctly argued, is in praesenti. This is to be contrasted with the expression “has been”, which is used in clauses (d) and (g), which refers to an anterior point of time. Consequently, the amendment of 2018 introducing the words “at the time of submission of the resolution plan” is clarificatory, as this was always the correct interpretation as to the point of time at which the disqualification in clause (c) of Section 29-A will attach. In fact, the amendment was made pursuant to the Insolvency Law Committee Report of March, 2018.

That Report clearly stated:

“In relation to applicability of Section 29-A(c), the Committee also discussed that it must be clarified that the disqualification pursuant to Section 29-A(c) shall be applicable if such NPA accounts are held by the resolution applicant or its connected persons at the time of submission of the resolution plan to the RP.”

Therefore, from the aforesaid it is clear that on the date Cosmic had submitted its resolution plan i.e. June 28, 2024 and as on that date neither Cosmic nor any of its connected persons held any account which was classified as NPA nor were in management or control of the Corporate Debtor whose account have been classified as NPA and were also not a promoter of a corporate debtor whose account has been classified as NPA.

Further, CFAL Resolution Plan itself notes that Mr. Aditya Vikram Birla will be working as Marketing Executive in the operation of Cosmic plant with no influence in the business decision making process, management and/or control of the Company, i.e. CFAL.

Thus, in my opinion Cosmic is eligible under Section 29A(c) of IBC.”

150. Applicant has relied on the judgement of Hon'ble Supreme Court in the case of **Arcelor Mittal India Pvt. Ltd.(supra) as noted above**. The complete relevant paragraphs are extracted as follows for better appreciation:

"46. According to us, it is clear that the opening words of Section 29A furnish a clue as to the time at which sub-clause (c) is to operate. The opening words of Section 29A state: "a person shall not be eligible to submit a resolution plan...". It is clear therefore that the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant. The contrary view expressed by Shri Rohatgi is obviously incorrect, as the date of commencement of the corporate insolvency resolution process is only relevant for the purpose of calculating whether one year has lapsed from the date of classification of a person as a non-performing asset. Further, the expression used is "has", which as Dr. Singhvi has correctly argued, is in praesenti. This is to be contrasted with the expression "has been", which is used in sub-clauses (d) and (g), which refers to an anterior point of time. Consequently, the amendment of 2018 introducing the words "at the time of submission of the resolution plan" is clarificatory, as this was always the correct interpretation as to the point of time at which the disqualification in sub-clause (c) of Section 29A will attach. In fact, the amendment was made pursuant to the Insolvency Law Committee Report of March, 2018. That report clearly stated:

"In relation to applicability of section 29A(c), the Committee also discussed that it must be clarified that the disqualification pursuant to section 29A(c) shall be applicable if such NPA accounts are held by the resolution applicant or its connected persons at the time of submission of the resolution plan to the RP."

47. The ingredients of sub-clause (c) are that, the ineligibility to submit a resolution plan attaches if any person, as is referred to in the opening lines

of Section 29A, either itself has an account, or is a promoter of, or in the management or control of, a corporate debtor which has an account, which account has been classified as a non-performing asset, for a period of at least one year from the date of such classification till the date of commencement of the corporate insolvency resolution process. For the purpose of applying this sub-section, any one of three things, which are disjunctive, needs to be established. The corporate debtor may be under the management of the person referred to in Section 29A, the corporate debtor may be a person under the control of such person, or the corporate debtor may be a person of whom such person is a promoter.

48. The expression "management" would refer to the de jure management of a corporate debtor. The de jure management of a corporate debtor would ordinarily vest in a Board of Directors, and would include, in accord with the definitions of "manager", "managing director" and "officer" in Sections 2(53), 2(54) and 2(59) respectively of the Companies Act, 2013, the persons mentioned therein.

49. The expression "control" is defined in Section 2(27) of the Companies Act, 2013 as follows: -

"2(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;"

151. We further note that Hon'ble Supreme Court in the same judgment in the subsequent paragraphs has clarified the position and which is extracted as below:

"57. The interpretation of Section 29A(c) now becomes clear. Any person who wishes to submit a resolution plan, if he or it does so acting jointly, or

in concert with other persons, which person or other persons happen to either manage or control or be promoters of a corporate debtor, who is classified as a non-performing asset and whose debts have not been paid off for a period of at least one year before commencement of the corporate insolvency resolution process, becomes ineligible to submit a resolution plan. This provision therefore ensures that if a person wishes to submit a resolution plan, and if such person or any person acting jointly or any person in concert with such person, happens to either manage, control, or be promoter of a corporate debtor declared as a non-performing asset one year before the corporate insolvency resolution process begins, is ineligible to submit a resolution plan. The first proviso to sub-clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan.”

152. Plain reading of the above judgment makes it clear that as per Section 29A(c) if a person who wishes to submit a resolution plan and if such person or any person acting jointly or any person in concert with such person, happens to either manage, control or be promoters of a Corporate Debtor declared as a non-performing asset, one year before the CIR Process begins, is ineligible to submit a resolution plan.

153. Further, the first proviso to clause (c) make it clear that the ineligibility can be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan. Therefore, the Applicant must first pay off the debt of the

said corporate debtor classified as a non-performing asset in order to become eligible under Section 29-A(c).

154. It is argued by the Applicant that once the resolution plan is approved, the erstwhile promoters of Corporate Debtors are released from their ineligibility as they cease to be the promoter of the Corporate Debtor. Furthermore, it was argued that on the principle of clean slate, the resolution plan extinguishes all the liabilities and overdue payments which were classified as NPA. Even though the applicants claim that they are eligible on the basis of the clean slate theory, on the ground that the Corporate Debtor, CFAL, has been resolved through the process of CIRP, we do not find the said argument to be satisfactory. The clean slate theory must be screened through the filter provided under Section 29A and its purposive interpretation. In the present case “regularisation” of the NPA account has not happened due to the efforts of the applicants, but due to the resolution plan by another consortium. Hence, this situation cannot be equated with a situation in which a Resolution Applicant has come out of ineligibility by payment of the entire amount due. In the present case, the ultimate haircut is being borne by someone else including public exchequer. The facts and circumstances of the present case show that even after the resolution of the Corporate Debtor, the Resolution Applicant had purchased significant assets of CFAL. However, proof of payment in respect of the same has not been placed on record, and there exists a dispute between the two entities (Applicant and CFAL) regarding the said transaction. The said dispute cannot be permitted to be used by the applicants to their own advantage. Further, the resolution plan provides

that the promoters of the applicant, namely Shri Aditya Vikram Birla and Shri Abhishek Birla, would work as marketing /technical executives of CFAL. Hence, the circumstances clearly show that even after the resolution, the Resolution Applicant and its connected parties were having association and control of the CFAL and therefore, cannot claim benefit under the clean slate theory. Viewed through the filter of Section 29-A and with purposive interpretation 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 to. It is a settled position of law, as emphasized in **Chitra Sharma v. Union of India (2018) SCC 575**, that insolvency proceedings should not become a route for backdoor entry of persons responsible for default. The present case is essentially one of such impermissible backdoor entry.

155. Furthermore, no party has placed material on record to show the current status of CFAL including its health, financial reports and invocation of corporate guarantees of M/s Archana Impex etc, to allay apprehensions that CFAL has been or getting reduced to a shell company after the sale of its assets to Cosmic CRF – which is an RA in the case hand.

156. The first proviso to clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan. Any person who wishes to submit a resolution plan acting jointly or in concert with other persons, any of who may either manage, control or be a promoter of a corporate debtor classified as a non-performing asset in the

period abovementioned, must first pay off the debt of the said corporate debtor classified as a non-performing asset in order to become eligible under Section 29-A(c). Thus, we find that the condition as laid down in first proviso to clause (c) of Section 29A of the Code has not been fulfilled by the Resolution Applicant. As a result, as discussed above, Resolution Applicant M/s Cosmic CRF Limited and its connected parties are found to be ineligible under clause (c) of Section 29A of the Insolvency and Bankruptcy Code 2016 as of the date of submission of the resolution plan.

Testing eligibility under Clause (h) of Section 29A

157. Clause (h) of Section 29-A states that 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 has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part.

158. The Applicant contends that PSA has quoted Section 29A(h) in its report but has quoted an incorrect provision as Section 29A (h) had been amended by way of Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 with retrospective effect from 06.06.2018. By way of 2018 amendment the words “*and such guarantee has been invoked by the creditor and remains unpaid full or part*” has been added at the end of Section 29A (h). However, this pivotal amendment has been completely overlooked by PSA. Thus, in order for the applicant to be ineligible the corporate guarantee has to be invoked by the creditor and the amount should remain unpaid in

full or part. Furthermore, no document has been placed on record either by AHSK or PSA to show that the corporate guarantee extended by Archana Impex Pvt. Ltd. has been invoked. In the absence of any document showing the invocation of guarantee the provisions of Section 29A (h) would not apply. Furthermore, there is no allegation or document that any proceedings in any form whatsoever was filed by creditors to recover the amount under guarantee documents. Thus, it cannot be said any amount remains unpaid in full or part. Even AHSK in its report has opined that the applicant and its connected persons are eligible under Section 29A (h). Further, as per PSA themselves Archana Impex Pvt. Ltd. has not defaulted in any loan repayment. Furthermore, Archana Impex Pvt. Ltd. is not a connected person to the applicant. Aditya Vikram Birla is/was not a director in Archana Impex Pvt. Ltd.

159. PSA is factually incorrect in stating that the entities mentioned in Table B at Pg. 343 Vol. 3 are having significant shareholding in CFAL. The applicant further claims that the Resolution Plan of CFAL was approved by the Ld. NCLT, Kolkata Bench on 11.10.2018 and after approval of the plan since the equity shares were having 'nil' value thus the shares were extinguished and the shareholding vested with the new successful resolution applicant. Thus, the entities mentioned in Table B have no shareholding in CFAL after 11.10.2018. AHSK in its report has reproduced the shareholding of CFAL after approval of Resolution Plan as on 31.03.2021. Name of the none of the entities mentioned in Table B at Page 343 Vol. 3 would appear in the shareholding of CFAL as on 31.03.2021. Further, Archana Impex is not even a connected person as per the report

of AHSK. AHSK reproduced the list of 96 connected persons to the applicant (Pg. 296-302 Vol 2) and the name of Archana Impex Pvt. Ltd. is not in the list of 96 connected persons. Further, Archana Impex Pvt. Ltd. will not be a connected person to the Applicant as it will not come within the definition of 'related party' of Aditya Vikram Birla as per Section 5(24A), which defines related party of individuals. Archana Impex does not fall within any of the sub-section of Section 5(24A). It thus claims that the applicant and its connected persons are eligible under Section 29A (h).

160. Now we go on to note the reports of financial experts and some legal opinions placed on record.

- a) **Report of AHSK dated 19.08.2024:** NPA data is of defaults of more than Rs.1 Crore as updated on CIBIL. As CIBIL data is updated on the last date of the Quarter, Real-time data is not available in CIBIL records. Based on the search, it is clearly identified that there is no connection identified against the Resolution Applicant or any of its connected persons with any Corporate Debtor and none of their accounts are declared as "Non-Performing Asset" account under Banking Regulation Act, 1949. This makes the Resolution Applicant not ineligible under Section 29A (c) of IBC. Though there are certain lists identified against connected party of Resolution Applicant, the real-time data is not available and hence not 'considered. Should they be continued as wilful defaulters, then the Resolution Applicant becomes ineligible.
- b) **Final Report of AHSK:** Does not comment on 29(A)(h), however generally considers ineligible.
- c) **Report of CLA Indus Value Consulting Pvt Ltd. dated 01.09.2024:** Research did not identify any instance where any of the Subjects has executed an enforceable guarantee in favour of a creditor in respect of a

bidder against which an application for insolvency resolution made by such creditor has been admitted.

- d) **Report of Insolvency Professional-Khandelwal dated 01.09.2024:** Does not comment on 29(A)(h), however generally considers ineligible.
- e) **Report of Sr. Advocate (Mr. Amit Sibal) dated 01.09.2024:** Applying the facts supplied by the Querist to a literal and purposive interpretation of the relevant provisions of the IBC, it prima facie appears that Mr. Aditya Vikram Birla, Mr. Ravi Birla and Mr. Anand Mohta (being erstwhile directors/shareholders/beneficial owners of defaulting entity - CFAL) and their related parties are ineligible as per Section 29A(c) of the IBC. The account of CFAL was declared NPA for the first time on 09.12.2016 and the CIRP of Amzen commenced on 04.05.2022. The eligibility of M/s. Archana Impex Pvt. Ltd. under Section 29A(h) of the IBC also needs to be examined by the RP and the COC.
- f) **Report of PSA dated 08.10.2024:** Based on the verification of records available in the public domain, no such transaction was found entered into by the resolution applicant. However, as explained to Executive Summary in this report (Page 05-10), It was observed that M/s Archana Impex Pvt. Ltd. (a connected party of RA), had executed a Corporate Guarantee for the loans of CFAL (refer to Annexure I for Corporate Guarantee documents). CFAL was admitted to CIRP on petition made by Citi Bank NA.
- g) **Report of Mr. Gopal Jain (Sr. Advocate) dated 28.08.2024:** Does not comment on 29(A)(h), however generally considers ineligible.
- h) **Report of Sr. Advocate (Mr. Krishnendu Dutta) dated 03.03.2025:** As per Section 29A (h) of IBC, Cosmic shall be rendered to be ineligible if Cosmic or any of its connected person or any person acting jointly or in concert with Cosmic, has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency

resolution made by such creditor has been admitted under IBC and such guarantee has been invoked by the creditor and remains unpaid in full or part.

PSA in its report dated February 18, 2025 has observed that Cosmic is ineligible under Section 29A(h) of IBC as one entity being Archana Impex Private Limited [alleged connected party of Cosmic] had executed a corporate guarantee for the loans of CFAL and CFAL was admitted to CIRP on petition made by Citibank NA and hence Cosmic was ineligible under Section 29A (h). I note that no document has been provided by PSA in its report dated February 18, 2025 evidencing invocation of guarantee by any creditor and same remaining unpaid in full or part. Further, PSA in its report dated February 18, 2025 has noted that the guarantee was invoked and not enforced. Hence, it is unclear whether the corporate guarantee remains unpaid or not. In the absence of any document being provided, I am of the opinion that Cosmic is eligible under Section 29A (h) of IBC.

161. In the facts and circumstances of the case and the material placed on record, including the reports of experts and legal opinion, we find that it is an undisputed fact that M/s Archana Impex Pvt. Ltd., had executed a Corporate Guarantee for the loans of CFAL. CFAL was admitted to CIRP on petition made by Citi Bank NA. It is also observed that M/s Archana Impex Pvt. Ltd, who has given corporate guarantee, is a connected party. As noted by us herein before at other places also that sufficient material information has not been placed before us by various stakeholders in the present case, which could have helped us to find out the status of invocation of corporate guarantee. Thus, we may not be able to come to any conclusion on the basis of the limited materials placed on record to determine ineligibility under Section 29-A(h).

Testing eligibility under Clause (j) of Section of 29A:

162. This clause states that “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 has a connected person not eligible under clauses (a) to (i)”.

We also note the explanations involved in this Section which is as extracted as follows:

“Explanation. I-- For the purposes of this clause, the expression connected person means--

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).

For testing eligibility under this clause, now we extract the reports of financial experts and some legal opinions placed on record with respect to this clause and is noted below:

a. Report of AHSK dated 19.08.2024

Based on the verification of background checks applied on related parties of RA and related parties of promoters of RA and its connected parties found to be ineligible as explained to Executive Summary in this report (Page 05- 10).

b. CLA Indus Value Consulting Private Limited

Does not comment on 29(A)(j), however generally considers ineligible.

c. Report of Insolvency Professional-Khandelwal- dated 01.09.2024

Does not comment on 29(A)(j), however generally considers ineligible.

d. Report of Sr. Advocate (Mr. Amit Sibal)

Does not comment on 29(A)(j), however generally considers ineligible.

e. Final Report of AHSK dated 18, October 2024

Does not comment on 29(A)(j), however generally considers ineligible.

f. Report of Sr. Advocate (Mr. Gopal Jain) dated 28.08.2024

Does not comment on 29(A)(j), however generally considers ineligible.

g. Report of PSA dated 08.10.2024

Based on the verification of background checks applied on related parties of RA and related parties of promoters of RA and its connected parties found to be ineligibility as explained to Executive Summary in this report (Page 05- 10).

h. Report of Sr. Advocate (Mr. Krishnendu Dutta) dated 03.03.2025

“PSA in its report dated February 18, 2025 has observed that Cosmic is ineligible under Section 29A(j) of IBC due to the following reasons: -

- Cosmic CRF Limited qualifies as a “connected person” under Explanation I to Section 29A(j).
- CFAL, an ineligible entity, was controlled and continued to be controlled by Birla Family, making Cosmic CRF Limited ineligible.
- Since Cosmic CRF Limited is a connected entity to CFAL, which was an NPA and ineligible under IBC, Cosmic CRF Limited is ineligible under Section 29A(j).

From the aforesaid discussion, it is evident that the shareholding of the Birla Family (including Mr. Aditya Vikram Birla) was extinguished after the CFAL Resolution Plan was approved by the Hon’ble NCLT. Hence, the Birla Family (including Mr. Aditya Vikram Birla) do not continue to control CFAL. Further, CFAL was no longer NPA after the CFAL Resolution Plan was approved by the Hon’ble NCLT. It is also noted that the report dated February 18, 2025 of PSA does not provide any reasoning as to how Cosmic is a connected entity of CFAL. Hence, CFAL does not fall under the definition of connected person nor related party under Explanation I to Section 29A(j) of IBC.”

163. For determining whether Cosmic CRF Limited qualifies as a “connected person” under Explanation I to Section 29A(j) or not, we look

into material on record, which has also been noted by us herein in this judgement, and which is partly reiterated herein.

164. Before proceeding further, we also note the implications of the explanation for “connected person” under Section 29A in the facts and circumstances of the case. We find that Birla Family along with Mr. Aditya Vikram Birla along with cross shareholding in different companies were exercising a significant control over Cosmic Ferro Alloys Limited. The loan account of Cosmic Ferro Alloys Limited was classified as Non-Performing Assets (NPA) on 09.12.2016 and CIRP petition was admitted on 16.01.2018. Therefore, as on the date of classification as NPA and after commencement of CIRP the Mr. Aditya Vikram Birla along with Birla Family were having significant control over the Cosmic Ferro Alloys Limited. Hence, at time of NPA classification, the Birla Family including the current promoter of Resolution Applicant were in the control of the Cosmic Ferro Alloys Limited. Further while analyzing the directorship of Mr. Aditya Vikram Birla, it is noted that Mr. Aditya Birla was holding and, in some cases, continues to hold directorship in the companies, which were having shareholding in Cosmic Ferro Alloys Limited as aforementioned. Hence, at the time of NPA classification, the Birla Family including the current promoter of Resolution Applicant Mr. Aditya Vikram Birla were in the Management (Board of Directors) of companies, holding significant control in Cosmic Ferro Alloys Limited. We also observe that a Corporate Guarantee was given by M/s Archana Impex Pvt. Ltd for loans availed by Cosmic Ferro Alloys Limited (CFAL). We observe that M/s Archana Impex Pvt. Ltd was a shareholder in several companies listed in Table B, which in turn were shareholders in

CFAL. In the companies in Table-B, Mr. Aditya Vikram Birla, who has served and continues to serve as a director, was classified as a promoter of CFAL. It is also observed that Mr. Aditya Vikram Birla was retained as Marketing Executive of Cosmic Ferro Alloys Limited (CFAL) post approval of Plan from existing management. Further, post approval of plan, the Cosmic CRF Limited acquired the running Cold Rolled Forming (CRF) unit in Singur on slump sale basis from Cosmic Ferro Alloys Limited. Hence, it is clear that Mr. Aditya Vikram Birla was not only in management and control of Cosmic Ferro Alloys Limited but also continued to be in the operation and also post slump sale continued to control and enjoy the assets of NPA entities. Thus, we find that Mr. Aditya Vikram Birla & others were the promoters and Directors in many of shareholders Company of Cosmic Ferro Alloys Limited with substantial interest prior to the commencement of CIRP and that entire debt in relation to the said debtor still remains outstanding after its declaration as NPA, with the secured lenders apparently taking huge haircuts in the Resolution Process. Further Mr. Aditya Vikram Birla along with other Birla family members were controlling both majority stakes and management control in Cosmic Ferro Alloys Limited as on the CIRP commencement date. In addition to above Mr. Aditya Vikram Birla along-with its related parties, was also holding direct controlling interest in the Companies that have extended corporate guarantees towards loan of Cosmic Ferro Alloys Limited.

165. Despite limited information made available to us, we can safely come to a conclusion that the applicant attracts the bar under this clause of Section 29 A and becomes ineligible under this clause also.

Purposive application of Section 29-A

166. In *Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.*, (2021) 7 SCC 474 while giving a *purposive interpretation*, Hon'ble SC has held as follows:

“53. This line of decisions, beginning with *Chitra Sharma* [*Chitra Sharma v. Union of India*, (2018) 18 SCC 575] and continuing to *ArcelorMittal* [*ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1] and *Swiss Ribbons* [*Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17] is significant in adopting a purposive interpretation of Section 29-A. Section 29-A has been construed to be a crucial link in ensuring that the objects of the IBC are not defeated by allowing “ineligible persons”, including but not confined to those in the management who have run the company aground, to return in the new *avatar* of resolution applicants. Section 35(1)(f) is placed in the same continuum when the Court observes that the erstwhile promoters of a corporate debtor have no vested right to bid for the property of the corporate debtor in liquidation. The values which animate Section 29-A continue to provide sustenance to the rationale underlying the exclusion of the same category of persons from the process of liquidation involving the sale of assets, by virtue of the provisions of Section 35(1)(f). More recent precedents of this Court continue to adopt a purposive interpretation of the provisions of the IBC. [See in this context the judgments in *Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd.* [*Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd.*, (2021) 3 SCC 475 : (2021) 2 SCC (Civ) 1 at paras 103-104] , *Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd.* [*Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd.*, (2021) 3 SCC 224 : (2021) 2 SCC (Civ) 65 at paras 23 and 25] and *Jaypee Infratech Ltd. v. Axis Bank Ltd.* [*Jaypee Infratech Ltd. v. Axis Bank Ltd.*, (2020) 8 SCC 401 : (2021) 2 SCC (Civ) 334 at paras 28.4 and 28.5]]

54. The purpose of the ineligibility under Section 29-A 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 29-A, 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.”

167. Thus, it was held in the above judgement that S. 29-A of the Code is a crucial link in ensuring that the objects of the IBC are not defeated by allowing "ineligible persons", including but not confined to those in the management who have run the company aground, to return in the new avatar of resolution applicants. Further, the purpose of the ineligibility under S. 29-A IBC 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. The basic idea behind Section 29A is that only those who contributed to defaults of the company or are otherwise undesirable are rendered ineligible.

168. Further we note that S. 29A encompasses not only conduct in relation to the corporate debtor but in relation to other companies as well. This is clear from clause (c) *which says "an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, is classified as a non-performing asset"* and clauses (e),(f),(g),(h) and (i) which broaden the net beyond the conduct in relation to the corporate debtor. Section 29A of the Code has been construed to be a crucial link in ensuring that the objects of the Code are not defeated by

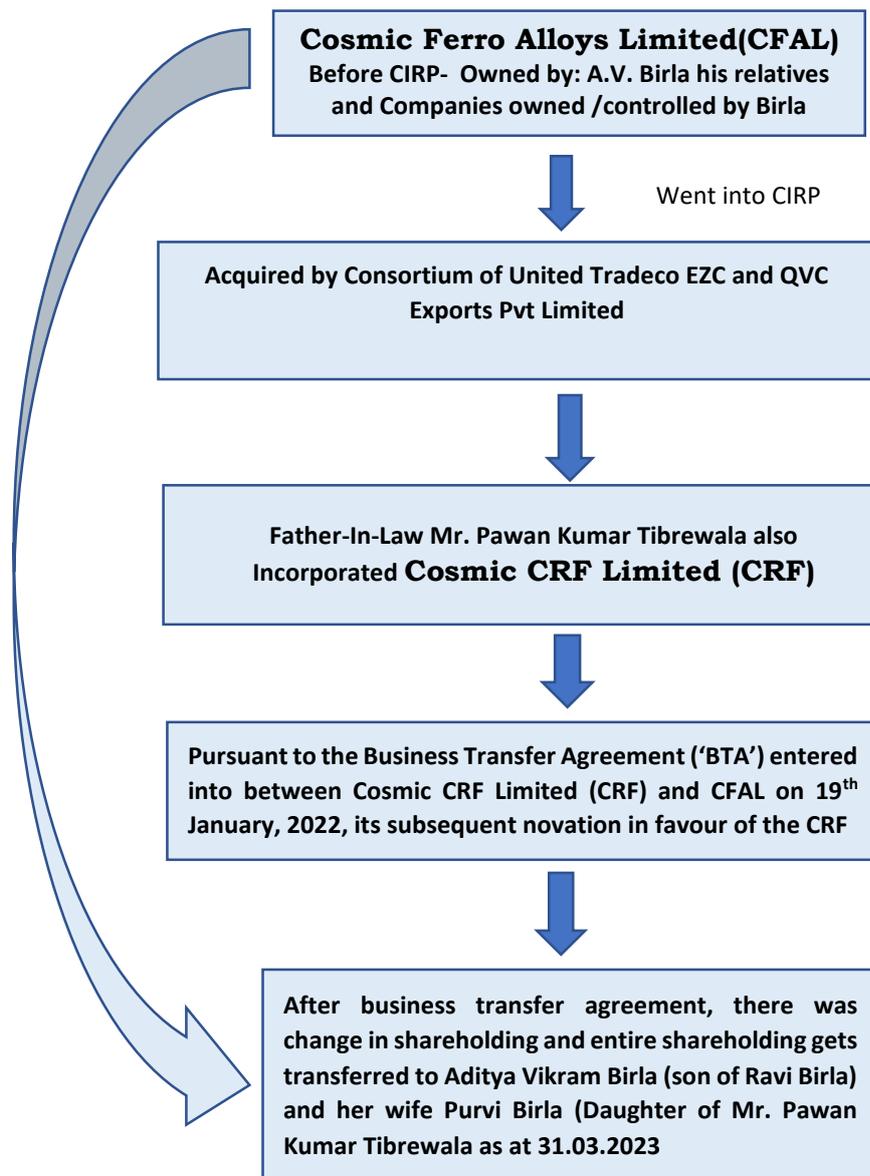
allowing "ineligible persons", including but not confined to those in the management, who have run the company aground, to return in the new avatar of resolution applicant, whether in the CIR proceedings of the same corporate debtor or in the case of some other corporate debtor.

169. We note that a rationale has been advanced that once the resolution plan is approved the erstwhile promoters of the CD are released from the ineligibility as they cease to be the promoter of the Corporate Debtor. On the contrary, Hon'ble Supreme Court in **ArcelorMittal India Private Limited V. Satish Kumar Gupta (2019) 2 SCC 1**, has already clarified as follows:

“The first proviso to sub-clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan. The position in law is thus clear. Any person who wishes to submit a resolution plan acting jointly or in concert with other persons, any of whom may either manage, control or be a promoter of a corporate debtor classified as a non-performing asset in the period abovementioned, must first pay off the debt of the said corporate debtor classified as a non-performing asset in order to become eligible under Section 29A(c).”

170. In this case the dues of the Financial Creditors of the Cosmic Ferro Alloy Ltd., post NPA remained unpaid contrary to the provision laid down in proviso to clause (c) of Section 29A of the code. Even though it is claimed by the applicant that once the resolution of the CFAL is approved their liabilities are extinguished but the provisions are very clear and the judicial

precedent which has been noted by us earlier relating to **Arcelor Mittal (supra)**, we find that the grounds provided by the applicant are unsustainable. We find that at the time of NPA classification and post such classification the promoters and their connected parties were in the management and control of Cosmic Ferro Alloy Ltd. The case can be well captured in the infographic as below:



171. The promoters of resolution applicant Mr. Aditya Vikram Birla, were retained in the operations of assets of Cosmic Ferro Alloy Ltd. post approval of resolution plan. After the resolution plan was implemented, some assets

of Cosmic Ferro Alloy Ltd., were taken over by the promoter by the resolution applicant with Cosmic CRF Ltd. It is to be noted that a total resolution plan was worth Rs. 59 Crore and the assets which were transferred were worth about 49 Crore.

172. The Hon'ble Supreme Court, in **ArcelorMittal (supra)**, has held that eligibility under Section 29A of the Insolvency and Bankruptcy Code, 2016 ("IBC") must be determined on the basis of the de facto position of the persons concerned, rather than their de jure status. For better appreciation, the relevant paragraph is extracted below:

"29. The opening lines of Section 29A of the Amendment Act refer to a de facto as opposed to a de jure position of the persons mentioned therein. This is a typical instance of a "see through provision", so that one is able to arrive at persons who are actually in "control", whether jointly, or in concert, with other persons. A wooden, literal, interpretation would obviously not permit a tearing of the corporate veil when it comes to the "person" whose eligibility is to be gone into. However, a purposeful and contextual interpretation, such as is the felt necessity of interpretation of such a provision as Section 29A, alone governs. For example, it is well settled that a shareholder is a separate legal entity from the company in which he holds shares. This may be true generally speaking, but when it comes to a corporate vehicle that is set up for the purpose of submission of a resolution plan, it is not only permissible but imperative for the competent authority to find out as to who are the constituent elements that make up such a company. In such cases, the principle laid down in *Salomon v. A Salomon and Co. Ltd.* [1897] AC 22 will not apply. For it is important to discover in such cases as to who are the real individuals or entities who are acting jointly or in concert, and who have set up such a corporate vehicle for the purpose of submission of a resolution plan."

173. Furthermore, we note that in the judgment of **Phoenix ARC Pvt Ltd v Spade Financial Services Ltd (2021) 3 SCC 475**, though rendered in the context of exclusion of related-party financial creditors from the Committee of Creditors under Section 21(2) of the Insolvency and Bankruptcy Code, 2016, lays down a broader interpretive principle that is directly relevant to the present issue of ineligibility under Section 29A. The purposive interpretation applied by the Supreme Court in that decision emphasising substance over form and rejecting technical devices designed to defeat statutory intent provides an important analytical framework for examining disqualification under Sections 29A. In **Phoenix ARC Pvt Ltd (supra)**, the Supreme Court authoritatively clarified that the exclusion of related-party financial creditors under Section 21(2) of the Insolvency and Bankruptcy Code, 2016 (IBC) is not to be determined merely by reference to a creditor's present technical status. The Court emphasised that what is decisive is the real, substantive, and enduring nature of the relationship with the corporate debtor. If a creditor restructures, divests, or repositions itself with the sole intention of shedding the "related party" label so as to enter or influence the Committee of Creditors (CoC), such a manoeuvre constitutes a commercial contrivance and cannot be permitted. In reaching this conclusion, the Court drew expressly from its earlier jurisprudence, particularly **Abhay Singh Chautala v CBI (2011) 7 SCC 141** and **R.S. Nayak v A.R. Antulay, (1984) 2 SCC 183**, to reject a narrow or hyper-literal interpretation of statutory expressions such as "is" or provisions framed in the present tense ("in praesenti").

174. Accordingly, even if the Birla/Archana entities have formally ceased to be related parties of CFAL by the time Cosmic CRF submitted its resolution plan in another CIRP, and even if CFAL's account is claimed to be "regularised" at the corporate level, such subsequent restructuring cannot erase the substantive disqualification that arose when the account became NPA and the guarantees remained uncured. As **Phoenix ARC, (supra)** makes clear, ineligibility flows from real relationship, influence, and continuity of control not from present-tense corporate labels. Cosmic CRF's reliance on its separate incorporation date and current shareholding pattern is therefore insufficient to overcome the substance-over-form test, and its disqualification under Section 29A stands justified.

175. Thus we find that in the facts and circumstances of the present case and in the light of the principles laid down above, the Resolution Applicant (RA) and its promoters continued to exercise a de facto control over CFAL even after its purported resolution. Therefore, adopting a purposive interpretation of Section 29A, so as to advance the object of the provision namely, to prevent ineligible persons from regaining control of the Corporate Debtor through a backdoor mechanism—the applicant who is RA in the CIRP M/s Amzen is liable to be held ineligible.

Conclusions

176. We observe that complete facts have not been placed on record, particularly with respect to the status of the CIR proceedings of CFAL. However, even the limited facts were sufficient for us to come to final

conclusion about the ineligibility of the Applicant under Section 29A-A of the Code.

177. As noted in analysis herein, we could not come to a definitive conclusion with respect to ineligibility with respect to clauses (a) and (h) of Section 29-A of the Code mainly due to incomplete information. But we found that the resolution applicant suffers from ineligibility per clauses (c) and (h) of Section 29-A of the Code. It is to be noted that these are disjunctive clauses and the applicant suffers from ineligibility even with ineligibility under a single clause.

178. Furthermore, with the purposive interpretation as has been noted by us earlier, we come to a conclusion that the applicant is ineligible under Section 29-A of the Code. As noted in **ArcellorMittal (supra)** *“The opening lines of Section 29A of the Amendment Act refer to a de facto as opposed to a de jure position of the persons mentioned therein. This is a typical instance of a “see through provision”, so that one is able to arrive at persons who are actually in “control”, whether jointly, or in concert, with other persons.”* In this case we find that the Resolution Applicant (RA) and its promoters continued to exercise a de facto control over CFAL even after its purported resolution. Therefore, adopting a purposive interpretation of Section 29A, so as to advance the object of the provision namely, to prevent ineligible persons from regaining control of the corporate debtor through a backdoor mechanism—the RA is liable to be held ineligible. We find that CFAL was declared NPA for the first time on 09.12.2016 and the CIRP in respect of CFAL commenced on 16.01.2018 at the instance of CITIBANK. The Resolution Plan of CFAL was approved by

the NCLT on 11.10.2018. We also find that at the time of NPA classification and also post such classification, the promoters and their connected parties were in the management/ control of Cosmic Ferro Alloys Limited. Furthermore, the Promoter of Resolution Applicant Mr. Aditya Birla was retained in the operation of assets of Cosmic Ferro Alloys Limited per the resolution plan. WE also find that Cosmic CRF was incorporated separately by same promoters and/or by related parties, which in turn purchased one of the major business units of CFAL alter conclusion of CIR proceedings under Business Transfer Agreement (BTA) dated 19.01.2022 between them (CFAL and Cosmic CRF).

179. We also find that Mr. Ravi Birla (father of Mr. Adilya Vikram Birla) and related parties were holding direct controlling interest in CFAL at the time of commencement of CIRP of CFAL on 16.01.2018. Further, Mr. Aditya Vikram Birla was holding shares in CFAL as promoter and was a Director in several companies who were substantial shareholders of CFAL at the time of commencement of CIRP of CFAL. He is also a major shareholder and Director in CRF. Furthermore, Mr. Anand Mohta and his related parties were classified as the promoters in CFAL prior to its CIRP and are also the holder of 100% preference shares in Cosmic CRF.

180. Separately Archana Impex Pvt. Ltd. had given corporate guarantees for securing the debt of CFAL. M/s Archana Impex was owned and controlled by members of Birla family through corporate shareholders. Mr. Aditya Vikram Birla was also Director in such shareholder Companies of M/s. Archana Impex Pvt. Ltd. We don't have sufficient material information,

which could have helped us to find out the status of invocation of corporate guarantee. From the above noted facts, it's clear that Mr. Aditya Vikram Birla, was not only in the management and control of Cosmic Ferro Alloys Ltd. but also continues to be in the operations and also post slump sale, continues to control and enjoy the assets of NPA entities.

181. Furthermore, any person who wishes to submit a resolution plan acting jointly or in concert with other persons, any of who may either manage, control or be a promoter of a corporate debtor classified as a non-performing asset in the period abovementioned, must first pay off the debt of the said corporate debtor classified as a non-performing asset in order to become eligible under Section 29-A(c) and that has not happened in this case.

182. Thus, we find that Mr. Aditya Vikram Birla & others were the promoters and Directors in many companies, which in turn were shareholders of Cosmic Ferro Alloys Limited with substantial interest, prior to the commencement of CIRP and that entire debt in relation to the said debtor still remains outstanding after its declaration of NPA, with the secured lenders apparently taking huge haircuts in the Resolution Process. Further Mr. Aditya Vikram Birla along with other Birla family members were controlling both majority stakes and management control in Cosmic Ferro Alloys Limited as on the CIRP commencement date. In addition to above Mr. Aditya Vikram Birla along-with its related parties, was also holding direct controlling interest in the Companies that have extended

corporate guarantees towards loan of Cosmic Ferro Alloys Limited and we don't find any records of any payments towards such guarantees.

183. With a purposive interpretation of section 29-A being a "see through provision" we try to arrive at persons, who are actually in control whether jointly or in concert with other persons. A wooden, literal interpretation would obviously not permit a tearing of the corporate veil when it comes to the person whose eligibility is to be gone into. And as noted herein earlier we observe that the applicant to be ineligible under Sec 29A of the Code.

184. Furthermore, we observe that testing of the eligibility under Section 29A is very crucial for resolution process to succeed and it helps both RP and CoC to make an objective and a timely decision. It is important that the undertaking for indicating any ineligibility under Section 29A (under the provision of sub-regulation (7) of Regulation 36 of CIRP Regulations, 2016) provided by the resolution applicant, while submitting the Expression of Interest is not a perfunctory exercise, but it should disclose all the relevant material factors, which could have a bearing on the decision making. In this case when questions were raised about the eligibility of the Applicant, opinion of different legal and experts was sought by the RP/CoC, which could have been averted if the Prospective Resolution Applicant had voluntarily disclosed all material facts relevant in the case in hand. In fact, experts had to depend on information in public domain. To us also full factual information was not made available by the stake holders for giving clarity about CFAL.

185. To know the current state of affairs with respect to CFAL, we extract one of the reports as below:

“18. Status of CFAL as on 31.07.2024: - Present status of CFAL under CIRP is still not known (as per NCLT website the next date of hearing is 04.10.2024) along with the ongoing litigation/outcome/wavier related to Promoter Guarantee, Personal Guarantee & Corporate Guarantee and Application filed under section 43,45,47 & 66 of IBC 2016. (IBBI & NCLT website screenshot attached). Furthermore, we are not been able to track the Company’s official website on google.”

[page 100 of affidavit of R4 filed on 03.02.2026]

186. Few other inconsistencies which don’t square up are as follows:

“Our Company (Cosmic CRF Limited] has no association or connection of any nature with Cosmic Ferro Alloys Limited (CFAL] and the allegations relating to alleged irregularities by our Company during the CIRP of Cosmic Ferro Alloys Limited is false, baseless, unsubstantiated and motivated.”

[Reply sent by Cosmic CRF Limited dated 02.09.2024 to RP]

Such a reply of the RA is inconsistent as the RA-applicant- Cosmic CRF have association or connection in the form of equity shareholding, promoters and relatives being the directors of CFAL before and during the period under which account is declared as NPA.

187. Another significant inconsistency is relating to insufficient information provided by the entities who had given corporate guarantee to CFAL which is noted as below:

“20. As per Audited financial statements of M/s. Archana Impex Private Limited for FY 2018-19, there is nothing mentioned under Contingent Liabilities about the Corporate Guarantees given on behalf of the CFAL and only thing is mentioned about the investment in equity shares made in CFAL. **(Source AFS FY 2018-19 available in public domain MCA).**”

[page 104 of affidavit of R4 filed on 03.02.2026]

188. Had the resolution applicant provided the details in a transparent manner, while submitting its affidavit of eligibility under Section 29-A, the RP, CoC would have been more circumspect. But this has not happened. Such practice of general affidavit under Section 29-A by the resolution applicant needs to be relooked by IBBI.

189. We further note that many other questions remain unanswered - some of them were highlighted by the original complainant. To complete the investigation IBBI is also directed to look into the CIRP process of M/s Amzen which have been noted in the complaint and various other issues particularly the issue of avoidance application and asset transfer and shell company formation, which have been alleged by the complainant.

190. We note that RP has a very important role to play while determining eligibility of the resolution applicant to be eligible under Section 29A. Sub-regulation (8) of Regulation 36A of the CIRP Regulations clearly puts the onus on the RP to verify the eligibility of all resolution applicants. The provision is as quoted below:

"The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-

- (a) the provisions of clause (h) of sub-section (2) of section 25;
- (b) the applicable provisions of section 29A, and
- (c) other requirements, as specified in the invitation for expression of interest."

191. Furthermore, in a recent judgment dated 12.02.2024, in **Greater Noida v. Prabhjit Singh Soni, (2024) 6 SCC 767**, it was observed by the Hon'ble Supreme Court that:

"26. Based on the information memorandum, when a resolution plan is submitted by a resolution applicant, eligible under Section 29-A IBC, the RP is under an obligation to examine whether the resolution plan(s) received by him conform(s) to the conditions referred to in sub-section (2) of Section 30 IBC as elaborated in Regulations 37 and 38 of the CIRP Regulations, 2016."

192. Further in the judgment, dated 03.01.2022, passed in **Canara Bank v. Mamta Binani, (Resolution Professional) & Ors, [2022 SCC OnLine NCLAT 31**, this Tribunal held that it is the duty of the RP to determine as to whether the eligibility criteria of Resolution Applicants prescribed in Section 29A of the IBC are satisfied. Relevant paragraphs of the said judgment are quoted herein-below for reference:

"33. A Resolution Professional has a duty among other things to invite the prospective Resolution Applicant who satisfies the requirements as prescribed by him with the approval of the 'Committee of Creditors' keeping in mind the complexity and scale of operation of the business of the 'Corporate Debtor' and other conditions as may be prescribed by the IBBI to place forward the Resolution Plans, project such plan to the 'Committee of Creditors' etc. He is an Officer of the Court and he is to exercise reasonable and responsible care for the company whose property and affairs are entrusted with him. He has an absolute duty to secure the best prize in the given circumstances and he is not made liable because his perception is wrong, of course, with the rider that unless it is not a reasonable one.

34. As per Section 25(2)(i) of the Code, a duty is cast on the Resolution Professional to scrutinize the Resolution Plan to ensure that it is in accordance with Section 30 of the I&B Code and Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In case, the Resolution Plan is not meeting the requirement of Section 30 of the Code, the Resolution Professional is empowered to refuse to present the Plan to the Committee of Creditors.

35. A Resolution Professional is only to examine and confirm that each Resolution Plan conforms to what is mentioned by Section 32 of the Code. The 'Resolution Professional' shall undertake to project all the Resolution Plans during the Meetings of the 'Committee of Creditors' and as per Section 30(3) of the Code the Resolution Professional shall present to the 'Committee of Creditors' for its approval, such Resolution Plans which confirms the condition mentioned in sub-section (2).

36. A 'Resolution Professional' is to scrutinise 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 I&B Code). 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 not violated.

37. It is the duty of the 'Resolution Professional' to determine as to whether the eligibility criteria of Resolution Applicants prescribed in Section 29-A of the Code are satisfied. He is 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 I & B Code, the Resolution Professional is 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 does not violate any of the provisions of the law for the time being in force.

[
38. A Resolution Plan submitted by the concerned Resolution Applicant on accounts of its confidentiality, cannot be disclosed to any competing Resolution Applicant nor any opinion can be taken or objection can be called for from other Resolution Applicants in regard to one other Resolution Plan."

(emphasis added)

193. Pending further investigations by IBBI, we don't want to pass any comments on the RP's role at this stage as the role of all stake holders have to be seen with the ultimate goal to improve IBC jurisprudence and accordingly we advise IBBI to look into this case.

194. We have also gone through the alleged factual errors raised by the Applicant from pages 29 to 35 referring specifically paras 104, 106, 107, 108, 111, 112, 114, 115, 116, 117 and 118A. R4 – Prudent ARC has also prayed that "The observations in paragraph nos. 112 to 116 with respect to Respondent No.4 be deleted, as the said observations have come without any opportunity being provided to the Respondent no. 4 to meet them." Since we have heard all stakeholders and basis the analysis herein, we have taken a considered view that Cosmic CRF is ineligible under Section 29-A of the Code, therefore, the concerns of both the applicant, R4 and all the stakeholders are being disposed of as per this order. We therefore, dispose of all the claims of the applicants and declare the applicant to be not eligible per Section 29-A.

Orders

195. Basis our analysis as noted herein we do not find any grounds to recall the judgment and order dated 25.07.2025 to the extent that it holds Cosmic CRF Limited to be ineligible under Section 29-A of the Code.

196. We were informed by the resolution professional that they have already received EOIs from four resolution applicants. We direct continuation of the proceedings of the CIRP of the Corporate Debtor i.e. Amzen Transportation Industries Ltd. with immediate effect for further processing and completing the process at the earliest.

197. Further, we direct that IBBI may conduct an independent inquiry into this case without being influenced by our comments, find out the role of various stakeholders with the objective to improve the system of determination of eligibility under Section 29-A of the Code.

198. All related IAs are also disposed of. No orders as to costs

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
March 12, 2026.

Pawan/Ritesh