

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 487 of 2026

(Arising out of Order dated 17.02.2026 passed by the Adjudicating Authority (National Company Law Tribunal), Indore Bench, Court No.1 in IA/305(MP)2025 in CP(IB)/49(MP)2024)

IN THE MATTER OF:

Carnet Elias Fernandes

...Appellant

Versus

Jagdish Kumar Parulkar & Anr.

...Respondents

Present:

For Appellant : Mr. Bishwajit Dubey, Mr. Kaustubh Rai, Mr. Shantnu Chaurasia, Mr. Shivendra Pandey, Advocates.

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Aishvary Vikram, Ms. Navya Bhagat, Mr. Lucky Sharma, Mr. Aridaman, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Suspended Director of the Corporate Debtor (“**CD**”) has been filed challenging the order dated 17.02.2026 rejecting IA No.305 of 2025 filed by the Appellant. By the application, the Appellant – Suspended Director sought a declaration that he is not ineligible under Section 29A(e) and 29A(f) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”). The application came to be rejected by the Adjudicating Authority, aggrieved by which order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) The CD – GEI Industries Systems Ltd. has been put to Corporate Insolvency Resolution Process (“**CIRP**”) by an order dated 22.01.2025 by the Adjudicating Authority. The Respondent was appointed as Interim Resolution Professional (“**IRP**”), who was subsequently confirmed as Resolution Professional (“**RP**”). On 21.03.2025, the RP published the Form-G inviting Expression of Interest (“**EoI**”) for the CD. Last date for submitting the EoI was 20.04.2025 and 15.05.2025 was the date for issuance of final list of Prospective Resolution Applicants (“**PRAs**”). On 15.05.2025, final list of PRAs was published, containing names of three Resolution Applicants.
- (ii) In the 4th Committee of Creditors (“**CoC**”) Meeting held on 16.05.2025, the Appellant expressed his desire to submit a Resolution Plan. The CoC approved the request, subject to approval of the NCLT, Indore Bench.
- (iii) Pursuance to the decision taken by the CoC on 16.05.2025, the RP filed an IA No.237 of 2025 seeking approval of the Adjudicating Authority to allow the Appellant to submit a Resolution Plan. The Adjudicating Authority vide order dated 06.06.2025 dismissed the application as withdrawn. The RP took liberty to take steps in accordance with law.

- (iv) After the aforesaid order, the RP asked for a Report from M/s Ujjawal Gupta & Company on the eligibility of the Appellant to submit a Plan. The eligibility Report was submitted, which found the Appellant ineligible under Section 29A(e) and 29A(f) of the IBC. On 11.06.2025, the RP sent an email to the Appellant informing that the Appellant is ineligible to submit a Resolution Plan in view of Section 29A(e) and 29A(f).
- (v) The Appellant's DIN reactivated on 19.06.2025. The Appellant filed an IA No.305 of 2025 seeking permission of the Adjudicating Authority praying to set aside letter dated 11.06.2025 sent by the RP, declaring the Appellant ineligible and further to direct the CoC and RP to consider the Applicant's Resolution Plan.
- (vi) The Adjudicating Authority in IA No.305 of 2025 asked the RP and the CoC to submit a Report. The RP submitted a Report in compliance of the order dated 14.07.2025. The RP in the Report pleaded that under the order issued by SEBI, the Applicant stands effectively barred from accessing security market thereby attracting Section 29A(f) of the IBC and if it was aggrieved by delisting order, it had ample opportunity to file an Appeal. The Appellant has rightly been declared ineligible.
- (vii) The Adjudicating Authority heard the parties and by the impugned order rejected the application filed by the

Appellant, upholding the letter of the RP declaring the Appellant ineligible to submit a Resolution Plan under Section 29A(e) and 29A(f). Aggrieved by which order, this Appeal has been filed.

3. We have heard Shri Bishwajit Dubey, learned Counsel appearing for the Appellant; Shri Abhijeet Sinha, learned Senior Counsel with Mr. Aishvary Vikram, learned Counsel appearing for Respondent.

4. Learned Counsel for the Appellant challenging the impugned order submits that CD is a registered MSME and is wholly owned subsidiary of GEI Industries Systems Ltd. ("**GEISL**") The Appellant is Member of Suspended Board of the CD and GEISL. It is submitted that insofar as deactivated DIN, the Appellant was disqualified to act as Director only till 01.12.2024 and the Appellant DIN status reflecting on the website of the MCA as active. Insofar as the ineligibility Report relying on SEBI Circular, freezing of Promoter shareholding at ISIN level is related to one listed entity and does not amount to a general bar from accessing the securities markets. As a matter of utmost good faith, the Appellant himself has disclosed to the RP that restriction on the Appellant arises not from the ISIN Freeze Circular, but from an order of the Stock Exchange directing compulsory delisting of the shares of GEISL, under a separate SEBI Circular dated 07.09.2016. The copy of the order dated 26.06.2018 was brought on record by the Appellant itself. It is submitted that order dated 26.06.2018 related to GEISL, of which the Appellant was Promoter. Insolvency proceedings against GEISL commenced in the year 2017 and

at that time when order dated 26.06.2018 was issued GEISL was under insolvency and moratorium had been declared. No action could have been taken against GEISL on account of moratorium being in place. The Appellant has informed the Stock Exchange about the initiation of CIRP against GEISL.

5. Learned Senior Counsel appearing for Respondent No.1 refuting the submissions of the Appellant, submits that the Appellant being Promoter of holding Company of the CD was prohibited from dealing with the security. The RP has obtained ineligibility Report, which found the Appellant ineligible under Section 29A(e) and 29A(f). It is submitted that subsequent activation of DIN of the Appellant shall not make the Appellant eligible. The order which was passed by SEBI on 26.06.2018 prohibiting the Promoter to deal with the securities, has never been challenged by the Appellant. The CIRP against the CD has commenced only on 22.01.2025. There was ample time for an aggrieved person to challenge the order dated 26.06.2018. It is further submitted that last date for submission of EoI was 20.04.2025 and the Appellant's name was not included in the final list of PRAs issued on 15.05.2025, the Appellant could not have filed any Resolution Plan. Under the direction of the CoC an application was filed by the RP to permit the Suspended Director to submit a Resolution Plan, which was dismissed as withdrawn by the Adjudicating Authority. Apart from the fact that Appellant being not included in the final list of PRAs, cannot participate in the CIRP, the Appellant is also clearly ineligible in view of Section 29A(e) and 29A(f). It is

submitted that compulsory delisting followed due to continued non-compliance and the Appellant being Promoter, he was debarred for 10 years from accessing the securities markets. Delisting of shares under SEBI laws on account of non-compliance does not violate Section 14 of the IBC, as Section 14(1)(a) applies only to proceedings for enforcement of debts by creditors.

6. We have considered the submissions of learned Counsel for the parties and have perused the record. Learned Counsel for both the parties have placed reliance on various judgments of this Tribunal and the Hon'ble Supreme Court in support of their submissions, which we shall notice hereinafter.

7. We have noted above that the Appellant – Suspended Director of the CD has not submitted any EoI in pursuance of Form-G issued on 21.03.2025. Last date for submission of EoI was 20.04.2025 and 15.05.2025 was the date for issuance of final list of PRAs. The Appellant having never given any EoI, his name was not included in the final list of PRAs. The CoC directed the RP to obtain permission of the NCLT for accepting the Resolution Plan from the Appellant. The RP filed an application - -IA No.237 of 2025, which came to be dismissed as withdrawn on 06.06.2025. However, as per liberty taken by RP while withdrawing the application, the RP proceeded to examine the eligibility of the Appellant and an eligibility Report was obtained by the RP. The RP after considering the eligibility Report obtained, sent a communication to the Appellant on 11.06.2025 informing the Appellant that the Appellant is

ineligible under Section 29A(e) and 29A(f). The letter issued by the RP with respect to ineligibility under Section 29A(e) and 29A(f) states as follows:

“Pursuant to the verification of documents submitted by you and based on information available in the public domain and official records, we wish to inform you of the following observations that render you ineligible to submit a resolution plan in the Corporate Insolvency Resolution Process (CIRP) of GEI Power Ltd.:

1. Ineligibility under Section 29A(e) read with Section 164(2) of the Companies Act, 2013:

It has been observed that your Director Identification Number (DIN: 00054508) stands deactivated. As per the provisions of the Companies Act, 2013, an individual whose DIN is deactivated is disqualified from acting or being appointed as a director in any company. Consequently, by virtue of being ineligible to act as a director under applicable law, you are disqualified under Section 29A(e) of the IBC, which disqualifies any person who is prohibited by law from being a director. Hence, you are ineligible to give Resolution Plan under 29A(e).

2. Ineligibility under Section 29A(f):

It is further noted that, as per the list of frozen accounts published by SEBI as on 30.04.2025 and communication received from the National Stock Exchange (NSE) via email dated 07.10.2016, your accounts stand frozen pursuant to SEBI Circular No. CIR/CFD/CMD/12/2015 dated 30.11.2015. The restriction imposed under the said circular effectively bars you from accessing the securities market. Hence, you are ineligible to give Resolution Plan under 29A(f).

In view of the above, you are disqualified under Section 29A(f) of the IBC, which disqualifies any person who is prohibited by the Securities and Exchange Board of India (SEBI) from trading in securities or accessing the securities market.

In light of the foregoing observations, and after exercising due diligence in accordance with the provisions of the IBC and the relevant regulations, it is hereby concluded that you are ineligible to submit resolution Plan.”

8. It was after communication dated 11.06.2025 that the Appellant filed IA No.305 of 2025. The Appellant itself in its application has brought on record the order dated 26.06.2018 passed by SEBI. Copy of

the order dated 26.06.2018 is on record. The said order was passed after issuing show-cause notice dated 26.04.2018 by the Delisting Committee of BSE Ltd. in the matter of GEI Industrial Systems Ltd. for compulsory delisting under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and all other bye-laws under that. The final conclusion of the order is in Paragraph 4 under Paragraphs 4.1 and 4.2, which are as follows:

“4. Final conclusion:-

- 4.1 The aforesaid findings establish that the Company has satisfied the grounds for compulsorily delisting in terms of Rule 21 of SCRR r/w Regulation 22 (4) of Delisting Regulations and hence, in exercise of powers vested with the Committee under Regulation 22 (2) of Delisting Regulations, all listed equity shares of the Company are hereby compulsorily delisted from the Exchange.
- 4.2 On account of compulsory delisting, the Company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting in terms of Regulation 24 of Delisting Regulations.”

9. It an admitted fact that the Appellant apart from being Suspended Director of the CD was also Promoter of GEI Industrial Systems Ltd. Paragraph 4.2 of the order clearly prohibited the Appellant from directly or indirectly access the securities markets. Section 29A(e) and 29A(f) of the IBC are as follows:

“29A(e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013);

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;”

10. With respect to 29A(e), learned Counsel for the Appellant has submitted that the DIN, which was initially inactive now been activated and relevant extract of website of MCA was placed on record by the Appellant. It was pleaded that the Appellant has completed the requirement in this regard to deactivation, which has now been corrected for DIN and the applicant is now eligible under Section 29A(e). Although, the RP has submitted that subsequent correction shall not make the Appellant eligible to submit a Plan as the last date for submission of Resolution Plan is long over, however, for the purposes of present case, we need to consider the submission of the parties with regard to ineligibility under Section 29A(f).

11. Section 29A(f) makes a person ineligible to submit a Resolution Plan, if such person is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets. The order dated 26.06.2018 has been brought on record by the Appellant itself, which clearly prohibits the Appellant from accessing the security markets. The submission, which has been advanced by the learned Counsel for the Appellant to ignore the order dated 26.06.2018 is that the CIRP of GEI Industrial Systems Ltd. commenced on 20.07.2017 and moratorium was enforced. Any order could not have been passed during

currency of the moratorium. While passing the order dated 26.06.2018, the SEBI overlooked the moratorium. The show-cause notice was replied informing about the moratorium, which was ignored by the SEBI while passing the order dated 26.06.2018. The submission of the Appellant is that order dated 26.06.2018 be ignored in view of the Company being under the CIRP. Hence, the ineligibility under Section 29A(f) will not be attracted. The admitted fact, which may make a person ineligible under Section 29A(f), when he is prohibited by the SEBI from trading or accessing the securities markets. The order of the SEBI, which is in existence, has never been set aside, which is still in operation. Hence, the Appellant cannot be heard in saying that he is eligible to submit a Plan, ignoring the order of SEBI. What makes the Appellant ineligible is prohibition of SEBI. While examining the question of ineligibility of a person to submit a Plan, the Adjudicating Authority is not to examine or adjudicate prohibition order issued by SEBI. When the order stands prohibiting a person from trading in securities or accessing securities markets, the submission of the Appellant that Adjudicating Authority ought to have declared the prohibition as void and held that the prohibition is contrary to moratorium under Section 14, cannot be accepted. The legislative scheme and intendment for prohibition under Section 29A(f) is not to examine the decision taken by SEBI, prohibiting from trade in securities or accessing securities markets, that is not the jurisdiction vested with the Adjudicating Authority. When an order prohibiting the Promoter exists, ineligibility under Section 29A(f) comes into operation and the RP and the Adjudicating Authority have not

observation has been made in Paragraphs 144 and 145, which are as follows:

“144. Even if there had been any possibility of the resolution applicant incurring such a disqualification in terms of Section 164(2)(b) of the Companies Act, because of alleged default of another company, in which he is a Director, to refund the share application money, the same would essentially be a matter of consideration of the Registrar of Companies. Unless a categorical finding was recorded in the competent forum as regards any such default and unless specific order disqualifying the resolution applicant as Director because of such default came into existence, it could not have been taken by way of any process of assumption that the appellant-resolution applicant was disqualified to act as a Director and thereby, was ineligible to submit a resolution plan. It has rightly been pointed out that when DIN status of the appellant was “active compliant”, he could not have been treated as ineligible.

145. Again, it has been too far-stretched on the part of the Appellate Tribunal to refer to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 and then to make a declaration as if the resolution applicant was disqualified in terms of Section 164(2)(b) of the Companies Act. Although, we do not agree with the submissions on behalf of the appellant that such an issue of eligibility could not have been raised before Nclat for the first time because the question of eligibility of the resolution applicant goes to the root of the matter but, we do agree with the other part of the submission in this regard that there is no concept of deemed disqualification under Section 164(2)(b) of the Companies Act.”

14. The above judgment of the Hon’ble Supreme Court in no manner supports the Appellant, since in the present case there is already order by the competent Authority dated 26.06.2018 prohibiting the Promoter from dealing with the securities. Thus, the present is not a case where any

assumption of any disqualifications are made. In the present case, order putting bar on the Appellant was passed by the competent Authority. Hence, the above judgment in no manner supports the submission of the Appellant.

15. Another judgment relied by the learned Counsel for the Appellant is ***Malharshanti Enerprises vs. Naresh Sevantilal Shah and Anr. – Company Appeal (AT) (Ins.) no.2032 of 2025*** decided on 20.03.2026. This Tribunal in the above case was again dealing with disqualification under Section 164(2)(a) and 164(2)(b) of the Companies Act, 2013. This Tribunal followed the judgment of the Hon'ble Supreme Court in ***M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder & Anr. – (2024) 1 SCC 42***. In Paragraphs 63 to 65, on which reliance has been placed, this Tribunal made following observations:

“63. The appellant has relied upon Section 164 (2) (a) and 164 (2) (b) of the Companies Act, 2013 to argue that in accordance with these provisions the Respondent No.1 is disqualified to act as Director of company and therefore ineligible to submit the resolution plan in accordance with Section 29A (e). However, this argument also does not withstand scrutiny, as Section 29A(e) specifically refers to a person who “is disqualified to act as a director under the Companies Act, 2013.” The language of the provision indicates that the disqualification must already exist in law; it cannot be presumed or inferred.

64. In other words, for Section 29A(e) to apply, there must be a formal and operative disqualification under Section 164 of the Companies Act. Such disqualification is determined and declared by the competent statutory authority, namely the Registrar of Companies (RoC) or the Ministry of Corporate Affairs.

65. The Hon'ble Supreme Court in '*M.K. Rajagopalan v. Dr. Periasamy Palani Gounder*' CIVIL APPEAL NOS. 1682-1683 OF 2022 (2024) had held that there is no concept of "deemed disqualification" under Section 164(2) of the Companies Act, 2013, and that such disqualification cannot be presumed. The Hon'ble Supreme Court clarified that disqualification of a director must be formally declared by the competent authority such as the Registrar of Companies or the Ministry of Corporate Affairs, and cannot be inferred by a tribunal. In the present case, no material has been placed on record to show that Respondent No.1 has been formally declared disqualified under Section 164 by the competent authority. In the absence of such declaration, the ineligibility under Section 29A(e) of the Code cannot be presumed. Accordingly, the reliance placed by the Respondents on the said judgment supports their contention."

16. We have already noticed the judgment of the Hon'ble Supreme Court in **M.K. Rajagopalan** and has taken the view that the said judgment does not help the Appellant, since there is a specific order which attaches disqualification under Section 29A(f) on the Appellant. This Tribunal also took the view that there must be a formal and operative disqualification under Section 164 of the Companies Act. The judgment of this Tribunal in **Malharshanti Enterprises** also does not come to any aid of the Appellant in the facts of the present case.

17. Learned Counsel for the Appellant has relied on judgment of this Tribunal in **Ms. Anju Agarwal, Resolution Professional for Shree Bhawani Paper Mills Ltd. vs. Bombay Stock Exchange & Ors. – Company Appeal (AT) (Ins.) No.734 of 2018**. In the above case, this Tribunal came to consider Section 28A of the SEBI Act, 1992, which

relates to recovery of amounts. Section 28A has been noticed by this Tribunal in its judgment in Paragraph-15. In Paragraphs 19, 20 and 21, following have been observed:

“19. Section 28A of the ‘SEBI Act, 1992’ being inconsistent with Section 14 of the ‘I&B Code’, we hold that Section 14 of the ‘I&B Code’ will prevail over Section 28A of the ‘SEBI Act, 1992’ and ‘Securities Exchange Board of India’ cannot recover any amount including the penalty from the ‘Corporate Debtor’. The ‘Bombay Stock Exchange’ for the same very reason cannot take any coercive steps against the ‘Corporate Debtor’ nor can threaten the ‘Corporate Debtor’ for suspension of trading of shares.

20. The ‘Bombay Stock Exchange’ deals with the shares. The shares of the ‘Corporate Debtor’, if listed with the ‘Bombay Stock Exchange’, can be dealt with by the ‘Bombay Stock Exchange’. However, in view of Section 18 of the ‘I&B Code’, the ‘Interim Resolution Professional’ while taking control and custody of any asset including the tangible and intangible assets, cannot sell the shares of the ‘Corporate Debtor’ during the period of ‘Moratorium’ except in accordance with the provisions of the ‘I&B Code’ and with the approval of the ‘Committee of Creditors’. Therefore, dealing with the shares of the ‘Corporate Debtor’ by the ‘Bombay Stock Exchange’ during the period of ‘Moratorium’ normally does not arise. The shares can be transferred only in the manner prescribed under the ‘I&B Code’ and following requirements framed under the ‘SEBI Act, 1992’ and the ‘Companies Act, 2013’.

21. At this stage, we may mention that in the case of **“Pr. Director General of Income Tax (Admn. & TPS) vs. M/s. Synergies Dooray Automotive Ltd. & Ors. etc.— Company Appeal (AT) (Insolvency) No. 205 of 2017** etc.”, this Appellate Tribunal held that the statutory dues i.e. the dues to Central Government or the State Government arising under any law for the time being in force and payable come within the meaning of ‘Operational Debt’. If penalty is imposed or amount is payable to the ‘Securities

Exchange Board of India' in such case, it may claim as an 'Operational Creditor' but cannot recover the same during the 'Resolution Process'.

The impugned order dated 10th September, 2018 stands modified and clarified to the extent above. The appeal stands disposed of with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.”

18. In the facts of the said case, this Tribunal held that Section 14 of the IBC shall prevail over Section 28A of the SEBI Act, 1992 and Securities and Exchange Board of India cannot recover any amount including the penalty from the CD. There can be no quarrel to the proposition laid down by this Tribunal in the above case.

19. Learned Counsel for the Respondent has also submitted that against the order of this Tribunal in **Ms. Anju Agarwal's** case, the SEBI has also filed an Appeal in the Hon'ble Supreme Court being **Civil Appeal Diary No(s).2827 of 2019 in Securities and Exchange Board of India vs. Anju Agarwal** and the same is still pending. The order in the present case prohibiting the Promoter from accessing securities markets cannot be counted as any order for recovery of any amount from the CD. The judgment of this Tribunal in **Ms. Anju Agarwali**, thus, does not come to any aid of the Appellant.

20. Learned Counsel for the Respondent has placed reliance on judgment of this Tribunal in **Bohar Singh Dhillon vs. Rohit Sehgal (IRP) and Ors. – Company Appeal (AT) (Ins.) No.665 of 2018**, where

this Tribunal in Paragraph-8 has held that till the period of Moratorium continues, the SEBI cannot recover any amount. However, the RP has to act in compliance with the requirements under SEBI Act and Regulations.

In Paragraph-8 of the judgment, following was held:

“8. In view of the aforesaid position of law, we hold that the application under Section 7 is maintainable and till the period of ‘Moratorium’ continues, the ‘Securities and Exchange Board of India’ cannot recover any amount nor can sell the assets of the ‘Corporate Debtor’ during the ‘Moratorium’ period.

Though we have held that the application under Section 7 is maintainable while step has been taken by the ‘Securities and Exchange Board of India’ the ‘Resolution Professional’ is required to act in terms of Section 17(2) (e) of the ‘I&B Code’ for complying with the requirements under the ‘Securities and Exchange Board of India Act’ and Regulations framed thereunder as well as the guidelines issued by the Regulatory Authority. It is also made clear that the ‘Securities and Exchange Board of India’ is however entitled to take action against individual including the former Directors and Shareholders of the ‘Corporate Debtor’.”

21. The above judgment is also under consideration before the Hon’ble Supreme Court in ***SEBI vs. Rohit Sehgal (IRP) and Ors., Civil Appeal Diary No.19613 of 2019.***

22. We are of the considered opinion that while examining the eligibility of the Resolution Applicant under Section 29A sub-section (f), the Adjudicating Authority is not to enter into correctness or validity of order of the SEBI, prohibiting a person from dealing with securities markets. The submission of the Appellant cannot be accepted that the said order

was required to be ignored by the Adjudicating Authority, it having passed during moratorium of the holding Company. It is also relevant to notice that the said order was passed on 26.06.2018, which was never challenged before any appropriate Forum by the Appellant. The Appellant, who has never challenged the said order before any competent Forum, cannot be heard in asking the Adjudicating Authority to ignore the order dated 26.06.2018.

23. In view of our foregoing discussions, we are of the view that the Adjudicating Authority has rightly held the Appellant not eligible to submit a Resolution Plan. We do not find any error in the order dated 17.02.2026 rejecting IA No.305 of 2025 filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Indevar Pandey]
Member (Technical)**

NEW DELHI

20th April, 2026

Ashwani