



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT - IV**

**IA(IB) No. 1366 OF 2025 &
IA(IB) No. 3401 OF 2025
IN
C.P. (IB) NO. 40/MB/2022**

*[Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
the National Company Law Tribunal Rules,
2016]*

In the matter of:

1. Jubin Kishore Thakkar
(Lead Member of the Consortium)
2. Miloni Bhavin Thakkar
3. Amzel Infotech Pvt. Ltd.
4. Boral Infotech Pvt. Ltd.
5. Tanjore Tradeplace Pvt. Ltd.
6. Pre-fab Dwelling (India) Pvt. Ltd.
7. Santoor Impex Pvt. Ltd.
8. Kish Realty Pvt. Ltd.

...Applicants

V/s.

**Ashutosh Agarwala
(RP of Colour Roof (India) Ltd.)**

...Respondent

In the matter of

Phoenix ARC Private Limited

...Financial Creditor

V/s.

Colour Roof (India) Limited

...Corporate Debtor

Pronounced: 13.04.2026

CORAM:

**SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**SHRI K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**

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Appearances : **Hybrid**

For Applicants : Adv. Shyam Kapadia a/w Adv. Aditya Trivedi
and Adv Vidhi Sharma.

For Respondent/RP : Adv. Rohit Gupta a/w Adv. Pulkitesh Dutt
Tiwari and Adv. Anjali Chauhan.

COMMON ORDER

Per: Anil Raj Chellan, Member (Technical)

1. These applications, IA No. 1366/2025 and IA No. 3401/2025 are filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC/Code), read with Rule 11 of the National Company Law Tribunal Rules, 2016 by a consortium of persons, including the erstwhile promoters (Applicants) in relation to the Corporate Insolvency Resolution Process (CIRP) of Colour Roof (India) Limited (Corporate Debtor).

2. Background and Facts

2.1 The Colour Roof (India) Limited (Corporate Debtor) was admitted into CIRP by an order dated 24.02.2023, passed by this Tribunal in CP (IB) No. 40 of 2022 filed by Phoenix ARC Private Limited. Mr. Ashutosh Agarwal (Respondent) was appointed as the Resolution Professional (RP) of the Corporate Debtor.

2.2 A consortium of eight members who are the Applicants in IA. No. 1366/2024 submitted an Expression of Interest (Eol) dated 14.03.2024 to the Respondent/RP in response to the invitation for Eol). The Respondent published the provisional list of Prospective Resolution Applicants (PRAs) without the names of those Applicants. Aggrieved by their exclusion, the Applicants filed IA No. 4414 of 2024 before the Tribunal, which *vide* order dated 25.09.2024, granted liberty to the Applicants to approach the RP

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and directed the RP to consider the Applicant's request for inclusion in the list of PRAs.

- 2.3 As allowed by the order dated 25.09.2024, the Applicants approached the RP *vide* email dated 14.10.2024 and thereafter exchanged several emails on the issue of relaxation of eligibility criteria for the promoters of MSME and inclusion of names of the Applicants in the list of PRAs. At the 10th meeting of the Committee of Creditors (CoC), the Applicants' request to include in the final list of eligible PRAs was denied. Aggrieved by the above decision, the Applicants filed another application, being IA. No. 5798/2024 before this Tribunal, which came to be dismissed on 12.12.2024. The appeal filed against the said order dated 12.12.2024 was disposed of by the Hon'ble NCLAT *vide* order dated 21.02.2025, directing the RP to convene a meeting of the CoC for consideration of the claim of the Applicants for relaxation, and the CoC may, after taking a decision, proceed further with the CIRP.
- 2.4 Pursuant to the said directions, the RP convened the 11th CoC meeting on 06.03.2025, where the Applicants were also present. After deliberation, the CoC decided that the Applicants' request for relaxation of the eligibility criteria cannot be accepted, as it lacks merit at this advanced stage of CIRP. Accordingly, the Applicant's name cannot be included in the final list of PRAs, which was released on 25.04. 2024, and hence remains ineligible to submit a resolution plan.
- 2.5 Subsequently, in the 13th CoC meeting held on 24.04.2025, the CoC approved a resolution plan submitted by one of the PRAs. The RP thereafter filed IA (Plan) No. 62 of 2025 seeking approval of the resolution plan.
- 2.6 In the present IAs, the Applicants are challenging, *inter alia*, the decision of the CoC rejecting the inclusion of the name of the Applicants in the final list of PRAs in IA No. 1366/2025, and also challenging the approval of the

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resolution plan submitted by another Resolution Applicant and for directions to provide the copy of the approved resolution plan in IA. No. 3401/2025.

2.7 The Applicants seek the following reliefs in IA(IB) 1366 of 2025:

- “a. quash and set aside the minutes of meeting of CoC dated 06th March2025 (11th meeting);*
- b. direct the Respondent to include the name of the Applicant No. 1 or the Consortium in the list of eligible PRAs after considering the relaxation of networth criteria sought by the Applicants based on prevalent judicial precedents;*
- c. direct that the voting on the resolution plans of the Corporate Debtor be stayed pending the hearing of this Application; and*
- d. pass any other orders or directions as this Hon’ble Tribunal deems fit, in the interest of justice.”*

2.8 The Applicants seek the following reliefs in IA(IB) 3401 of 2025

- “a. quash and set aside the minutes of the meeting of CoC dated 24 April2025 (13th Meeting);*
- b. quash and set aside the proposed resolution plan and direct fresh voting on the Resolution, only after inclusion of the Applicant in the PRA list and only after considering the Resolution Plan to be proposed by the Applicant;*
- c. to direct the RP to provide the copy of the Resolution Plan approved by the CoC along with the copy of the IA to the Applicant;*
- d. Dismiss the I.A. No. 62 of 2025 filed by the RP, seeking approval of this Hon’ble Tribunal to approve the Resolution Plan, approved in the 13th CoC meeting dated 24 April2025; and*
- e. pass any other order or direction as this Hon’ble Tribunal deem fit and necessary in the interest of justice.”*




2.9 Both these Applications arise from the same set of facts, and the reliefs sought in the Applications are interconnected. We, therefore, consider it appropriate to dispose of both these Applications by this Common Order.

3 Submissions of Applicants

3.1 The Applicants submit that the Corporate Debtor is an MSME and that the Applicants are the promoters of the Corporate Debtor. There are judgments of various Tribunals wherein it is specifically stated that in respect of MSME, network criteria can be relaxed. There is no determination based on the judicial precedents, including those relied upon by the Applicants.

3.2 The CoC and RP are required to consider the relaxation sought by the Applicants de hors the provisions of Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). These provisions have been explicitly and extensively relied upon by the Respondent before the Hon'ble NCLAT, and after hearing the Respondent on this point, the Hon'ble NCLAT directed the CoC and RP to consider the relaxation. Therefore, the Hon'ble NCLAT clearly restrained the Respondent from resorting to Regulation 36A of the CIRP Regulations for dismissing the request of the Applicants. However, the CoC and the RP continue to rely on the same provision to reject the Applicants' request to submit the resolution plan.

3.3 The Applicants had submitted their EoI much before the finalisation of the list of PRAs. However, the names of the Applicants were not included in the list only because of the net worth criteria, which were required to be considered in the 11th CoC meeting held on 06.03.2025. However, the CoC, instead of considering the criteria, rejected the request of the Applicants on the grounds of 'belated application'. Thus, despite the specific directions of this Tribunal and the Hon'ble NCLAT, the RP and



the CoC failed to meaningfully consider the Applicants' request and rejected the same by mechanically relying upon Regulation 36A of the CIRP Regulations.

- 3.4 While the application challenging the decision of CoC taken in the meeting held on 06.03.2025 is pending, the CoC and RP proceeded with approving another resolution plan and submitted it for approval of the Tribunal.
- 3.5 It is further submitted that the CIRP has been conducted against the interests of the Corporate Debtor and its stakeholders. This is evidenced by the fact that the Corporate Debtor was not maintained as a going concern, which adversely affected the operations. The debt owed to an operational creditor, KLT Automotive and Tubular Products Ltd., was not considered, and another claim to the extent of Rs. 56,53,50,750/- was treated as contingent on account of treating certain transactions as fraudulent. A copy of the resolution plan was not provided to the suspended directors. The RP has not examined the ineligibility criteria specified in Section 29A of the Code with respect to the Successful Resolution Applicant (SRA) in a fair and transparent manner. The CIRP has not been completed within the stipulated period of 330 days, and on the expiry of such period, the CoC has no power to approve the resolution plan. Thus, there are material irregularities in the conduct of the CIRP.
- 3.6 The Applicants sought dismissal of the application filed for approval of the Resolution Plan and sought directions to include the name of the Applicants in the list of PRAs so that they can also submit their resolution plan for the resolution of the Corporate Debtor for the benefit of all stakeholders, achieving the objectives of the Code, and meet the interests of justice.



4. **Contentions of Respondent/RP**

- 4.1 The Respondent/RP submitted that all allegations and averments made in the Application are denied. It is submitted that the CoC's decision at its 11th meeting, whereby the inclusion of the Applicants in the final list of PRAs was declined, was made in accordance with the law.
- 4.2 It was submitted that, at the 11th CoC meeting, the RP placed before the CoC the order dated 21.02.2025 passed by the Hon'ble NCLAT. The Applicant No. 1 was permitted to make his submissions regarding the request for relaxation of the eligibility criteria. The Applicant submitted that, in his understanding, the Hon'ble NCLAT had directed the CoC to independently consider the relaxation of eligibility criteria applicable for MSME promoters. The CoC noted that any such request had to be made formally by the promoters at the appropriate stage, and that consideration of the same after the issuance of the final list of PRAs would not be in consonance with the CIRP Regulations.
- 4.3 The Respondents submit that, after due deliberation, the CoC decided not to grant relaxation of the eligibility criteria, *inter alia*, on the grounds that resolution plans from eligible PRAs had already been received; that granting relaxation at such an advanced stage would necessitate restart of the process from the stage of publication of Form G and issuance of fresh invitation for EoI; that fresh process would negate the entire process undertaken since February 2024; that such relaxation may be perceived as conferring undue advantage upon erstwhile promoters/directors and prejudice PRAs already in the final list; that existing PRAs may challenge such inclusion or withdraw their resolution plans to the detriment of the interests of the Corporate Debtor; and that the relaxation sought was solely on the basis of MSME status and reduced net worth, despite the issue not having been raised earlier.

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- 4.4 The Respondent/RP contends that the Applicants, despite enough opportunities, never raised their objections before the RP or CoC, but approached the Tribunal when the resolution plans were considered by the CoC. When the settlement discussions with the CoC did not materialise, the Applicants raised the objection. The Applicant No.1 was present in the 11th CoC meeting and was granted the opportunity to present his case.
- 4.5 The Respondent submits that the allegation that the CoC's decision was based solely on Regulation 36A of the CIRP Regulations or that the order dated 21.02.2025 passed by the Hon'ble NCLAT was not complied with, is incorrect. It is submitted that Applicant No. 1 was afforded an opportunity to make a detailed presentation before the CoC, and that the issue was deliberated at length prior to the decision.
- 4.6 It is submitted that the eligibility criteria for PRAs were discussed and approved at the 2nd CoC meeting held on 09.02.2024, which was attended by Applicant No. 1. The Respondent submitted that Applicant No. 1 was aware of the eligibility conditions and raised no objection thereto. Thereafter, on 11.03.2024, Applicant No. 1 sought details regarding the submission of EoI, which were provided by the RP. In fact, Applicant No. 1 has participated in all COC meetings of the Corporate Debtor and has not once raised any request for special concessions.
- 4.7 The Respondent submitted that Applicant No. 1, through a consortium, submitted the EoI on 14.03.2024. On 10.04.2024, the RP shared the net worth computation and sought the Applicant's response, including through telephonic clarification. No response was received. Consequently, the provisional list excluding the Applicants on account of net worth ineligibility was issued and communicated, with an opportunity to raise objections by 15.04.2024. No objection was raised, and the final list of PRAs was issued on 25.04.2024.

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- 4.8 It was submitted that on 26.07.2024, after becoming aware that resolution plans had been received from third parties, certain actions were taken by the Applicants which disrupted the CIRP, including requiring the RP to vacate the office premises and discontinuation of essential IT services, which led the RP to file an application under Section 19(2) of the Code that was allowed. It was submitted that no objection to exclusion was raised until 30.07.2024, and the Application came to be filed on 27.08.2024, despite Applicant No. 1 having participated in the CoC meetings and having access to confidential information.
- 4.9 As far as the Resolution Plan filed for approval of the Tribunal is concerned, the Respondent submits that the Applicants have no *locus standi* to challenge the decision of the CoC approving a Resolution Plan at its 13th meeting. It is submitted that, as settled law, once a resolution plan is approved by the CoC, the erstwhile management of the Corporate Debtor has no right to challenge it. It is further submitted that the IBC envisages a shift from a 'debtor-in-possession' regime to a 'creditor-in-control' framework, wherein shareholders have a limited role and are only required to cooperate with the Resolution Professional in terms of Section 19 of the Code.
- 4.10 The Respondent submits that the reliefs sought by the Applicants are mutually inconsistent. While under one prayer, the Applicants seek inclusion in the list of PRAs, under another, they seek a copy of the Resolution Plan already approved by the CoC. It is submitted that the Applicants are attempting, on the one hand, to reset the Resolution Process and participate therein, and on the other, to obtain access to a competing Resolution Plan, thereby bypassing the competitive process.
- 4.11 It was submitted that the Hon'ble NCLAT, in its order dated 21.02.2025, has expressly recorded that it has not expressed any opinion on the merits of the Applicants' claims and has left the matter to the commercial

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decision of the CoC to be taken in accordance with law. The Respondent submits that the Applicants' contention that the Hon'ble NCLAT mandated grant of net worth relaxation or inclusion of the Applicant in the list of PRAs is incorrect.

- 4.12 The Respondent submits that the decision taken by the CoC at its 11th meeting was an exercise of its commercial wisdom and, as such, is not amenable to judicial review at the instance of the Applicants.
- 4.13 It is submitted that the Applicants cannot seek a copy of the Resolution Plan while simultaneously asserting their intent to participate in the CIRP as Resolution Applicants and submit a resolution plan of their own.
- 4.14 The Respondent submitted that the allegation regarding non-adherence to the timelines prescribed under Section 12 of the Code is incorrect. It was submitted that the RP conducted the CIRP strictly in accordance with the IBC and applicable regulations, and that extensions of the CIRP period were duly sought and obtained from the Adjudicating Authority.
- 4.15 It was submitted that the allegation that JSW Steel Coated Products Limited, the SRA, is ineligible under Section 29A of the Code is baseless and the Applicants have failed to state the specific sub-section of Section 29A that is attracted in the case of SRA. The Respondent submits that mere prior financial transactions with the Corporate Debtor do not render an entity ineligible under Section 29A and that the Applicants have failed to demonstrate which specific provision of Section 29A is attracted.
- 4.16 The Respondent further submits that, on the contrary, the Applicants themselves may be hit by Section 29A(g) of the Code, in view of alleged preferential, undervalued, extortionate, or fraudulent transactions during the tenure of Applicant No. 1 as promoter/management of the Corporate Debtor. It is submitted that an application in this regard, being IA No. 515 of 2025, has been filed by the RP and is pending adjudication.



4.17 It is further submitted that the Applicants have failed to make out any irregularity in the conduct of CIRP, or any ground for setting aside the decisions of the CoC. The promoters of MSMEs cannot get relaxation with respect to the net worth criteria as a matter of right. These Applications are filed with the ulterior motive of derailing the resolution of the Corporate Debtor as the effort to settle the matter with the creditors failed. For the above reasons, the Respondent/RP sought dismissal of the Applications.

5. **Analysis and Findings**

- 5.1 We have heard the Ld. Counsel appearing for the parties and perused the documents on record.
- 5.2 From the record, it emerges that CIRP in respect of the Corporate Debtor was initiated on 24.02.2023, with the Respondent being appointed as RP. The Applicants, a consortium led by the erstwhile promoter of the Corporate Debtor, submitted their EoI on 14.03.2024, in accordance with the invitation for EoI. However, the RP published the provisional list of PRAs on 10.04.2024, which did not include the Applicants' names. A time for raising objections to the provisional list of PRAs was given up to 15.04.2024. The Applicants did not file any objections. Subsequently, the RP issued the final list of PRAs on 25.04.2024. Two resolution plans were also received from the PRAs appearing in the final list, which were opened in the presence of financial creditors on 03.07.2024.
- 5.3 At this juncture, the Applicants filed IA. No. 1404/2024 before this Tribunal, wherein they were granted liberty to approach the RP. However, during the 10th meeting of the CoC, the Applicants' request for inclusion in the final list of PRAs was denied. Consequently, the Applicants filed another application, IA No. 5798/2024, which came to be dismissed on 12.12.2024. On appeal against the said order, the Hon'ble NCLAT passed the following order on 21.02.2025:



*“The RP was well aware that the appellant is praying for relaxation of net worth for the MSME since the MSME does not fulfil the net worth which was already finalised by the CoC. The email which we have extracted above clearly indicate that the RP vide email dated 14.10.2024 itself indicated that “we would be shortly holding the CoC meeting to consider the relaxation of the eligibility criteria and granting permission for submission of Resolution Plan”. The minutes of the 10th CoC meeting does not indicate that the CoC has considered the claim of the appellant for relaxation in the eligibility criteria. The present is the case where appellant has submitted expression of interest after issuance of Form-G and the question of relaxation of net worth criteria has not been adverted to and gone into by the CoC which is apparent from the 10th CoC meeting. The Ld. Counsel for the RP submits that two plans have been submitted but voting has not yet commenced. In facts of present case we are of view that **it is in the interest of justice** that RP may convene the meeting of the CoC **for consideration of the claim of the appellant for relaxation as intimated** and **CoC may after taking a decision** proceed **further with the CIRP Process**. The said meeting may be held by the RP at an early date.*

*7. We make it clear that **we are not expressing any opinion on merits of the claim of the appellant, it is for the CoC to take a decision** and proceed thereafter in accordance with law.” (Emphasis added)*

- 5.4 Accordingly, the RP convened the 11th meeting of CoC on 06.03.2025 to discuss and decide, *inter alia*, on the request for relaxation of the eligibility criteria for submission of the resolution plan by the consortium led by Mr. Jubin Thakkar, Applicant No.1. The relevant portion of the minutes of the said CoC is extracted below:

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“Thereafter, the RP requested the members of the CoC that in order to ensure due compliance with the NCLAT’s order dated 21st February 2025, the CoC should discuss and decide on whether or not to grant relaxation of the eligibility criteria to the consortium led by Mr. Jubin Thakkar at this stage, to enable them to submit the resolution plan through belated inclusion in the final list of the PRAs, after examination of the merits of their request.

*Consequently, the members of CoC requested Mr. Jubin Thakkar to present his submissions regarding the request for relaxation of the eligibility criteria for allowing the consortium led by him to submit a resolution plan. Accordingly, Mr. Jubin Thakkar presented his case by reiterating the facts and arguments previously raised in his appeal before the Hon’ble NCLAT and stated that, as per his interpretation, the Hon’ble NCLAT has directed the CoC to independently consider relaxation, of the eligibility criteria for the promoters of MSME without examining its current legal and other merits. Also, Mr. Jubin Thakkar specifically emphasized that the request for relaxation of the eligibility Criteria was delayed as he was ignorant of the legal position at that stage but, in any case, the relaxation should have been proactively provided by the CoC on their own accord even if there was no formal request from his side, as the Corporate Debtor is an MSME. The member of the CoC explained that **the obligation of making formal request at the right time for consideration of CoC was of the erstwhile promoters/ directors based on their assessment but accepting such a request after the issuance of the final list of PRAs shall violate provisions of the CIRP Regulations.***

*In pursuance to the NCLAT order dated 21 February 2025, the **CoC is required to consider the "Claim of Consortium led by Jubin Thakkar for relaxation** of eligibility criteria and **then to take decision**". Hence,*

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during the discussions in the Meeting, the member of the CoC recounted the facts and observed as below:

- 1) Relaxation sought by the Consortium led by Jubin Thakkar is only on grounds that they are the promoters of MSME and hence a lower net worth of Rs. 3.00 crores should be considered even if the issue was not raised by them in time.
- 2) Considering the request at this juncture will be against provisions of Regulation 36A. The objections to eligibility criteria not made by the promoters at appropriate time during the CIRP:
 - a) 09.02.2024: when eligibility criteria of PRA were decided in 2nd CoC
 - b) 13.02.2024: when Form G was published along with the eligibility criteria
 - c) 29.03.2024: when RP sought clarification on net worth calculation
 - d) 15.04.2024: when RP excluded Consortium led by Jubin Thakkar from the provisional list of PRAs on grounds of eligibility
- 3) Request for **relaxation of criteria at this belated stage cannot be considered** now as the final list of PRAs has been issued and Resolution plans by eligible PRA's have been submitted.
- 4) High possibility of the PRA, who are in the final list, questioning/challenging relaxation of criteria and such relaxation as sought will again require the entire process of calling the Expression of Interests to be redone. Entire period from February 2024 i.e. last 1 year will be negated.
- 5) In the matter of relaxation of eligibility criteria, the Consortium led by Jubin Thakkar:
 - a) Never raised objections before the RP or CoC; directly approached NCLT in August 2024
 - b) Raised objections only as Resolution Plans of PRAs in the final list were being finalised

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- c) *Raised the matter only because settlement talks with CoC members failed*
- d) *Seeks proactive consideration of CoC without having made a formal request to RP/CoC for considering relaxation at the right time.*

*In view of the facts that the request of Consortium led by Jubin Thakkar is made after considerable delay of almost 1 year i.e. from 9^o February 2024, when the eligibility criteria was decided in the 2nd meeting of the CoC, despite having various occasions to raise the same under various instances available under Regulation 36A as well as the fact that the process for finalising of Resolution plan is already at the advanced stage, the CoC decided that the request for consideration of claim of Consortium led by Jubin Thakkar **for relaxation of eligibility criteria cannot be considered and hence stands rejected.***

The RP informed that in view of the above decision of the COC rejecting the request for relaxation of eligibility criteria, the Expression of Interest submitted by the Consortium led by Jubin Thakkar does not qualify under provisions of Reg. 36A(4)(a) and hence cannot be accepted and included in the final list of PRAs. The RP further stated that as per Regulation 39(1), only the PRAs included in the final list are eligible to submit a resolution plan and Regulation 39(1B)(b) explicitly restricts the CoC from considering any resolution plan from any person that is not part of final list.

*Given the clear legal position and constraints, the members of CoC decided that the **request for relaxation of the eligibility criteria made by the Consortium led by Jubin Thakkar cannot be accepted as it does not have merit** in this advance stage of CIRP. Accordingly, the name of Consortium led by Jubin Thakkar cannot be included in the final*



list of PRAs which was released on 25.04.2024 and hence remains ineligible to submit a resolution plan.” (Emphasis added).

- 5.5 The Applicants assert that promoters of MSMEs are entitled to a fair opportunity to participate in the resolution process, and it is a settled legal principle that certain procedural and financial eligibility criteria, including net worth, may be relaxed in appropriate cases. However, it is contended that the CoC and RP failed to independently consider the relaxation of eligibility criteria sought by the Applicants, who are promoters of the Corporate Debtor being an MSME, despite the order passed by the Hon’ble NCLAT on 21.02.2025. Furthermore, it is contended that the Applicants’ request was turned down on the grounds of delay, the absence of a formal request at the right time, and the ramifications of accepting a request at this belated stage for the submission of the resolution plan.
- 5.6 Conversely, the RP contends that there is no statutory exemption for an MSME corporate debtor, except in respect of clauses (c) and (h) of Section 29A of the Code. Pursuant to the orders dated 25.09.2024 of NCLT and Hon’ble NCLAT dated 21.02.2025, a meeting of CoC was convened on 06.03.2025, during which the Applicants were also given an opportunity to present their case. The order of Hon’ble NCLAT had granted discretion to the CoC to decide upon the relaxation of the eligibility criteria for the Applicants. By no stretch of imagination can it be interpreted that the Hon’ble NCLAT mandated the RP or CoC to accept the EoI submitted by the Applicants. It is further contended that the CoC has exercised its commercial wisdom in rejecting the Applicants’ request to submit a resolution plan, which is non-justiciable.
- 5.7 In *Saravana Global Holding Ltd. v. Bafna Pharmaceuticals Limited and Ors* [(2019) SCC Online NCLAT 962], the Hon’ble NCLAT held that in exceptional circumstances, if the ‘Corporate Debtor’ is an MSME, it is not necessary for the promoters to compete with other ‘Resolution

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Applicants' to regain control of the 'Corporate Debtor'. However, the Hon'ble Supreme Court in *R. Raghavendran v. C. Raja John and Ors* [(2023) SCC Online SC 1207] observed that the decision in *Bafna* (supra) is predicated on a broad reasoning as if ipso facto there is no need to call other proposals if it is an MSME. In view of the larger context, it would have, the Hon'ble Supreme Court held that this is not the correct position of law.

- 5.8 The Applicant has also relied on the decisions of the Co-ordinate Benches at Hyderabad in *Haridas Krishna Kumar & Another v. G. Kalpana* and the Amravati Bench in the matter of *Bluepark Seafoods Private Limited between Hemanth Naga Mumar Nerella v. Rajesh Chillale and SBI* [(2023) SCC Online NCLAT 57963 to state that an opportunity should be given to the promoters who are inclined to run the corporate debtor as a going concern.
- 5.9 In the present case, the focus is not on whether the Applicants, as promoters of the Corporate Debtor, are entitled to any relaxation regarding the eligibility criteria. Rather, the question is whether the request for such relaxation of criteria was duly considered by the CoC in accordance with the order dated 21.02.2025 passed by the Hon'ble NCLAT.
- 5.10 When we look at the orders, we find that the Adjudicating Authority *vide* order dated 25.09.2024 granted the Applicants the liberty to approach the RP and directed him to consider the Applicants' request. Furthermore, the Hon'ble NCLAT directed that, in the interest of justice, the RP may convene a meeting of the CoC for consideration of the claim of the Applicants for relaxation as intimated, and CoC may, after taking a decision, proceed further with the CIRP. Though the RP convened a CoC meeting on 06.03.2025 to consider the Applicants' request, the minutes do not indicate any discussion on the eligibility criteria of the Applicants. Instead, the minutes enumerated reasons for the inability to

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consider the merits of the request. It is pertinent to note that the order dated 21.02.2025 was passed by the Hon'ble NCLAT after taking cognisance of the fact that two resolution plans had already been received, though voting on those plans had not yet been commenced. Consequently, the order of the Hon'ble NCLAT clearly indicates that the relaxation of criteria sought by the Applicant was to be considered by the CoC, irrespective of any delays in submitting the request and the present status of the CIRP. However, the minutes of the 11th CoC meeting dated 06.03.2025 reflect that the CoC has not rejected the Applicant's claim of relaxation criteria on merits, after due consideration of the claim. There is no discussion in the CoC regarding the eligibility criteria. No other reason for rejecting the claim of the Applicant as MSME is seen recorded in the CoC minutes.

- 5.11 Thus, we are of the considered opinion that CoC has deliberately chosen not to examine the request regarding relaxation of eligibility criteria made by the Applicants and take a decision on the merits, in spite of a direction of the Hon'ble NCLAT, and proceeded with the CIRP.
- 5.12 Another contention raised by the Respondent is that the decision to forgo consideration of relaxation is a commercial decision that is non-justiciable. There can be no quarrel with the proposition of law laid down by the Hon'ble Supreme Court and reiterated in many judgments that the commercial decision is non-justiciable. However, we cannot ignore the fact that not all decisions made by the CoC are strictly commercial. When compliance with the directions of an order comes under examination, the parties cannot invoke the principle of commercial wisdom to evade adherence to those directions in both form and substance.
- 5.13 This brings us to the next relief sought by the Applicants to provide a copy of the resolution plan, along with a copy of the IA, to the Applicants. Relying on the decision of the Hon'ble Supreme Court in *Vijay Kumar Jain v. Standard Chartered Bank and others*, it is argued that the

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suspended directors of the corporate debtor are entitled to get a copy of the resolution plans submitted by resolution applicants.

- 5.14 Per contra, the Respondent contended that the copy of the resolution plans submitted by other PRAs cannot be shared with the suspended directors. It is asserted that the Applicants are not entitled to seek a copy of the Resolution Plan while simultaneously asserting their intent to participate in the CIRP as Resolution Applicants and submit a Resolution Plan of their own.
- 5.15 The Hon'ble NCLAT, New Delhi in *Yashdeep Sharma v. Tara Chand Meenia, Resolution Professional and others* [[\(2024\) ibclaw.in 815 NCLAT](#)] held as under:

“17. At this juncture, we would like to add that we have no quarrel with the proposition of law laid down by the Hon'ble Apex Court in Vijay Kumar Jainsupra that the suspended management has a right to participate in the CoC meetings and entitled to documents including resolution plan since Regulation 35 of CIRP Regulations recognises the vital interest of the suspended management in a resolution plan. This judgment of the Hon'ble Supreme Court which has been relied upon by the Appellant is however not applicable in the facts of the present case since here in light of the distinguishing fact that suspended management had also staked their claim as a Resolution Applicant. In the present case, when it is an admitted fact that the Appellant was also a competing Resolution Applicant, no copy of the resolution plan of other PRAs could have been shared in advance with the Appellant as it would have triggered conflict of interest. Even though the resolution plan of the Appellant had been rejected, since the Appellant was admittedly in the fray until 22.05.2024, it cannot be ruled out that an element of bias would arise while considering the resolution plan of another competing Resolution Applicant.”

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- 5.16 The decision in *Yashdeep Sharma* (supra) relied on by the Respondent is squarely applicable to the Applicants. The Applicants wish to be part of the PRAs and submit a resolution plan in respect of the Corporate Debtor. It is an established position that the resolution plan contains commercial sensitive information that is confidential in nature. Sharing a copy of the resolution plan with other competing resolution applicants would undermine their competitive position in the process. Further, the suspended directors cannot seek a copy of the resolution plans if they have triggered a conflict of interest. Therefore, a copy of the resolution plan submitted by other PRAs cannot be provided to the Applicants.
- 5.17 In view of the above findings, the consideration of other submissions is rendered unnecessary.
- 5.18 As a result of the aforesaid discussions, we arrive at a conclusion that, notwithstanding the explicit directions from the Adjudicating Authority and Hon'ble NCLAT to take a considered decision on the request of the Applicants for relaxation of criteria on merits, the CoC has circumvented the directive by harping on certain factors that the Adjudicating Authority and the Appellate Tribunal had already taken into account prior to issuing the directions. There are no adequate grounds shown or material placed on record by the Respondent to demonstrate that the order passed by the Hon'ble NCLAT, 'in the interest of justice', was adhered to before advancing further in the process. In the circumstances, we are satisfied that a direction needs to be issued to meet the ends of justice, to include the Applicants in the final list of PRAs, and allow them to submit their resolution plan within 15 days from the date of this Order. Should a complaint resolution plan be received within this timeframe, the CoC is directed to consider all resolution plans afresh and take a decision within 30 days. It is further made clear that the present Applicants are not entitled to get a copy of the resolution plans submitted by other resolution applicants. Further, it is clarified that all resolution applicants are at liberty

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to revise their financial plans upward, but they are prohibited from withdrawing them. Consequently, we hereby grant a 45-days' extension of the CIRP period from the date of this Order.

5.19 Consequently, **IA No.1366/2025 and IA No. 3401/2025** are **partly allowed** on the aforesaid terms and **disposed of**. No order as to costs.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Siddhi, LRA

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)