

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 185 of 2025**

(Arising out of Order dated 17.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No. II, Kolkata in I.A. (IB) No. 2409/KB/2024 in CP (IB) No.26/KB/2023).

**IN THE MATTER OF:**

**GANGA CONSTRUCTION (CONSORTIUM)**

Through its authorized representative Anuj Goyal  
Consortium comprising of Satish Kumar (Lead Member),  
Ashok Kumar, Mohit Garg and Vikas Garg  
Office at: 125, Deepali Enclave, Pitampura,  
New Delhi- 110034.

.... Appellant

Vs

**1. ANIL KUMAR MITTAL**

Resolution Professional,  
Varutha Developers Pvt. Ltd. (In CIRP)  
Office at: 5/99, Sector 2, Rajender Nagar, Sahibabad,  
Distt. Ghaziabad, Uttar Pradesh - 201005  
Also at: C/o: Resurgent Resolution Professionals LLP  
Office at: 7th Floor, Tower-C, The Close South,  
Sector - 50, Gurgaon, Haryana- 122018.

**2. SREI EQUIPMENT FINANCE LIMITED [SREI EQUIPMENT]**

Through its Director/ Authorised Representative  
[Sole member of COC]  
Regd. Office at: 'Vishwakarma', 86C,  
Topsia Road, Kolkata, West Bengal- 700046

**3. SREI INFRASTRUCTURE FINANCE LIMITED [SREI INFRA]**

Through its Director/ Authorised Representative  
Regd. Office at: 'Vishwakarma', 86C,  
Topsia Road, Kolkata, West Bengal- 700046.

**4. NATIONAL ASSET RECONSTRUCTION COMPANY LTD. [NARCL]**

Through its Director/ Authorised Representative  
[SRA of SREI Equipment & SREI Infra]  
Regd. Office at: Birla Centurion, Unit no. 01, 8th Floor,  
Century Mills Pandurang Budhkar Marg, Worli Mumbai – 400030.

Cont'd.../

**5. INDIA DEBT RESOLUTION COMPANY LTD. [IDRCL]**

Through its Director/ Authorised Representative  
Regd. Office at: Birla Centurion, Unit no. 01,  
8th Floor, Century Mills Pandurang Budhkar Marg,  
Worli Mumbai – 400030.

**6. MANGLAM MULTIPLEX PVT LTD**

Through its Director/ Authorised Representative  
[Resolution Applicant]  
Regd. Office at: Cabin-1, LGF, F-22,  
Sushant Shopping Arcade,  
Sushant Lok Phase - 1, Gurgaon, Haryana, 122002.

**7. M3M INDIA PVT. LTD.**

Through its Director/ Authorised Representative  
Regd. Office at: 41st Floor, Tower-1,  
M3M International Financial Center,  
Sector-66, Badshahpur, Gurgaon – 122101.

**8. NEW ERA PROPCON PRIVATE LIMITED**

Through its Director/ Authorised Representative  
Regd. Office at: B-12 & B-13, First Floor,  
Flat No.10 Indra Enclave, Neb Sarai,  
New Delhi, New Delhi- 110068

**9. SWASTIK INFRASOLUTIONS PRIVATE LIMITED**

Through its Director/ Authorised Representative  
Regd. Office at: Triveni Apartment, A-94, Shop No.1,  
Swayam Sewa Group Housing Society,  
Vivek, Vihar, East Delhi, New Delhi- 110095.

**10. ERNST & YOUNG LLP**

Through Mr. Sarang Deshpande  
Regd. Office at: 3rd Floor, Worldmark 1, Aerocity Hospitality,  
New Delhi, National Capital Territory of Delhi -110037.

.... Respondents

**Present:**

**For Appellant:** Mr. Mohit Choudhary, Mr. Prakhar Mithal,  
Mr. Gaurav Raj, Advocates.

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate with Mr.  
Nikhil Pillai, Mr. Shwetank Ginodia, Ms. Malvi  
Dedhia and Ms. Mini Aggarwal, Advocates for  
R-1.

Mr. Krishnendu Datta, Sr. Advocate with Mr. Harsh Gurbani, Mr. Harshit Chaudhary and Ms. Suparna, Advocates for R-2 & 3.

Mr. Arun Kathpalia, Sr. Advocate with Ms. Ruby Singh Ahuja, Ms. Aakriti Vohra, Ms. Roopali Gupta, Ms. Varsha Himatsingka and Ms. Diksha, Advocates for R-6.

Mr. Rajat Juneja, Mr. Anmol Kumar, Advocates for R-8 & 9.

## **J U D G M E N T**

### **ASHOK BHUSHAN, J.**

This appeal by an Unsuccessful Resolution Applicant has been filed challenging the order dated 07.01.2025 passed in I.A. (IB) No. 2409/KB/2024 filed by the Appellant questioning the Letter of Intent issued in favour of Respondent No.6 – Manglam Multiplex Private Ltd. whose Resolution Plan was approved in the CIRP of the Corporate Debtor. Applicant also sought declaration that Respondent No.6 is ineligible under Section 29A of the I&B Code. The application filed by the Appellant was considered and rejected by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No. II, Kolkata by the impugned order. Aggrieved by which order this appeal has been filed.

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

- (i) The Corporate Debtor – Varutha Developers Private Ltd. was declared successful Auction Purchaser of land measuring 9.2625 acres situate in Sector 62, Gurgaon and a Sale Certificate dated 09.08.2019 was issued in favour of the Corporate Debtor.
- (ii) The Corporate Debtor has taken loan from SREI Equipment Finance Ltd. of Rs.300 Crore for purchasing the above asset.
- (iii) Two shareholders of the Corporate Debtor; Vision India Fund (VIF) and Infra Resurrection Fund (IRF) entered into a Share Purchase Agreement dated 17.05.2019 with New Era Propcon Private Limited and Swastik Infr solutions Private Ltd., which are group companies of M3M India Pvt. Ltd. – Respondent No.7 herein.
- (iv) The Enforcement Directorate provisionally attached the land by order dated 04.02.2020. New Era Propcon and Swastik, Respondent No. 8 and 9 herein initiated arbitration proceedings alleging default on part of the shareholders of the Corporate Debtor, in which proceeding a settlement dated 23.01.2021 was entered and an arbitral award dated 19.04.2021 was passed under which steps were to be taken for withdrawal of the attachment. New Era and Swastik were to pay amount of Rs.249 Crore to the SREI Equipment Finance Ltd. against the loan sanctioned to the Corporate Debtor. Shares of the Corporate Debtor were to be transferred in favour of purchaser, New Era Propcon and Swastik. New Era Propcon and Swastik has also

filed an execution application being EXE/2223/2020 before the District Court, Gurugram for enforcement of the arbitral award.

- (v) An application under Section 7 was filed by SREI Equipment Finance Ltd. for default of loan of Rs.300 crore given to the Corporate Debtor before NCLT, Kolkata Bench. By order dated 20.12.2023 of the Adjudicating Authority CIRP process against the Corporate Debtor – Varutha Developers Pvt. Ltd. was initiated. Public Announcement was made on 23.12.2023 inviting claims. The Resolution Professional constituted the Committee of Creditors (CoC). The CoC consist of 100% vote share of SREI Equipment Finance Ltd. Form G was published by the Resolution Professional in July, 2024 in response to which 8 PRAs submitted their Expression of Interest which included the Appellant as well as Respondent No.6 – Manglam Multiplex Private Limited.
- (vi) One Consortium of Sakshi Chandana also gave Expression of Interest.
- (vii) Appellant submitted preliminary Resolution Plan with a proposal of Rs.200 Crore. After submission of the Resolution Plan a challenge mechanism was held under the decision of the CoC. The Resolution Professional vide email dated 07.11.2024 informed all Resolution Applicants that negotiation process shall be now on 11.11.2024 and all Resolution Applicants should submit financial proposal having minimum value of Rs.250 Crore

on or before 10:00 AM on 11.11.2024. Despite having submitted Resolution Plan, the Appellant did not submit the financial bid.

(viii) Appellant was informed by the Resolution Professional vide email dated 11.11.2024 that Appellant has been eliminated from the challenge process and he should submit final Resolution Plan within 7 days. Appellant sent an email dated 14.11.2024 requesting the Resolution Professional and the CoC to undertake further due diligence and provide further information regarding the Corporate Debtor to the Appellant. The Appellant did not submit any Resolution Plan.

(ix) The Resolution Plans submitted by the Resolution Applicants including Respondent No.6 were deliberated in the 16<sup>th</sup> CoC meeting held on 16.11.2024. The CoC by 100% vote share approved the Resolution Plan submitted by the Manglam Multiplex who was declared as Successful Resolution Applicant. The Letter of Intent was issued by the Resolution Professional on 04.12.2024, which was accepted by the SRA on 05.12.2024.

(x) Appellant filed an I.A. No.2409/KB/2024 on 10.12.2024 praying for following reliefs:

*“a) Set aside the Letter of Intent issued in favor of Manglam Multiplex Pvt. Ltd. for being illegal, arbitrary, and in contravention of the provisions of the Insolvency and Bankruptcy Code, 2016 AND/ OR;*

*b) Declare Manglam Multiplex Pvt. Ltd./ Respondent No. 6 as ineligible to be a Resolution Applicant under Section 29A of the Insolvency and Bankruptcy Code, 2016, and direct its disqualification from the CIRP process. AND/ OR;*

*c) Declare the conduct of CIRP, including the Negotiation Process, as illegal, arbitrary, and non-transparent, and direct the re-conduction of the CIRP in a fair and impartial manner, ensuring equal opportunity to all Potential Resolution Applicants (PRAs), including the Applicant. AND/ OR;*

*d) Direct an investigation by an independent authority into the allegations of collusion and favouritism by the RP/ Respondent No. 1, COC/ Respondent No. 2, and Manglam Multiplex Pvt. Ltd./ Respondent No. 6 along with Respondent No. 2 to 9 to determine whether the CIRP process was conducted in a fraudulent or mala fide manner in collusion with each other. AND/ OR;*

*e) Pass an ex-parte ad-interim order thereby restraining the RP/ Respondent No. 1 and COC/ Respondent No. 2 from proceeding with the submission of the Resolution Plan to this Hon'ble Tribunal or any other authority for approval until the issues raised in the present application are adjudicated. AND/ OR;*

*f) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the interests of justice and equity.”*

- (xi) Application filed by the Appellant was heard by the Adjudicating Authority. The Adjudicating Authority considered the

submissions of the Appellant, the Resolution Professional as well as the Successful Resolution Applicant and by the impugned order rejected the application. Aggrieved by which order this appeal has been filed.

- (xii) It is also relevant to notice that by the same order passed by the Adjudicating Authority dated 17.01.2025, I.A. (IB) (Plan) No. 21/KB/2024 filed by the Resolution Professional for approval of Resolution Plan has been allowed and Resolution Plan submitted by Respondent No.6 has been approved.

3. We have heard Shri Mohit Chaudhary and Shri Prakhar Mittal, learned counsels for the Appellant. Shri Abhijeet Sinha, learned senior counsel has appeared for the Resolution Professional. Shri Krishnendu Datta, learned senior counsel has appeared for Respondent No.2 and 3 (CoC). Shri Arun Kathpalia, learned senior counsel has appeared for Successful Resolution Applicant – Respondent No.6 and Mr. Rajat Juneja, learned counsel has appeared for Respondent No. 8 and 9.

4. Learned counsel for the Appellant challenging the impugned order passed by the Adjudicating Authority submits that the entire CIRP process has been engineered by the Respondent No.7 with its group companies to take over the asset of the Corporate Debtor. It is submitted that the Respondent No.7 through its group companies Respondent No. 8 and 9 entered into a Share Purchase Agreement dated 17.05.2024 to purchase 100% shareholding of the Corporate Debtor. Due to shareholding

Agreement, the M3M company has devised a plan to take over the assets of the Corporate Debtor. It is submitted that the CIRP was conducted by the Resolution Professional and CoC in collusion with M3M (Respondent No.7) and its group companies to somehow take away the asset which is land admeasuring 9.2625 acres situate in Section 62, Gurgaon. It is submitted that Manglam Multiplex Private Limited (SRA), Respondent No.6 herein is not eligible to participate in the CIRP of the Corporate Debtor being ineligible under Section 29A of the I&B Code. The entire exercise leading to approval of Resolution Plan of Respondent No.6 is without jurisdiction and is liable to be set aside. Learned counsel for the Appellant submitted that the Corporate Debtor has entered into a Collaboration Agreement dated 13.01.2020 with M3M India under which agreement, M3M has control over the Corporate Debtor. By the Share Purchase Agreement dated 17.05.2019, M3M obtained control over the Corporate Debtor. It is submitted that the SRA is ineligible under Section 29A (c), (j) and (h). The SRA being ineligible, the entire process deserves to be set aside.

5. Learned counsel appearing for the Resolution Professional refuting the submissions of the Appellant contends that the Appellant has no locus to file any application or challenge the Resolution Process. The Appellant initially submitted a Resolution Plan but did not participate in the Challenge Process and did not submit the final Resolution Plan. Appellant having not submitted a final Resolution Plan and opted out from the CIRP process, he cannot be allowed to question the eligibility of the Successful

Resolution Applicant. It is submitted that in the final list of PRAs, name of SRA was also included and no objection was filed by anyone including the Appellant questioning the eligibility of the SRA as per the CIRP Regulations, 2016, hence, the Appellant is stopped from challenging the eligibility of Respondent No.6.

6. Learned counsel for the Successful Resolution Applicant refuting the submissions of learned counsel for the Appellant submits that the submission of the Appellant that SRA is ineligible relying on the Share Purchase Agreement dated 17.05.2019 is baseless. The Share Purchase Agreement dated 17.05.2019 under which the Corporate Debtor's 100% shares were sought to be purchased by the Respondent No.8 and 9; New Era and Swastik has not fructified. The land of the Corporate Debtor was attached by the Directorate of Enforcement in February, 2020. Shares of the Corporate Debtor were never transferred to New Era and Swastik. New Era and Swastik has already filed proceeding for execution of the Arbitral Award, which itself indicates that the Share Purchase Agreement was never honoured. The shares having never transferred to New Era and Swastik, the control of Corporate Debtor never came to Respondent No. 8 and 9 or Respondent No.7. The Respondent No. 8 and 9 themselves have filed an appeal challenging the order passed by NCLT admitting the CIRP against the Corporate Debtor which Appeal came to be dismissed by this Tribunal in Company Appeal (AT) (Ins.) No.246 of 2024 by order dated 16.04.2024, It is submitted that another PRA – Consortium of Sakshi Chandana filed Company Appeal (AT) (Ins.) No.107 of 2025 and Company Appeal (AT) (Ins.)

No.181 of 2025 challenging the order passed by the Adjudicating Authority rejecting their application and approving the Resolution Plan, which Appeals were dismissed by this Tribunal on 11.02.2025 upholding the entire CIRP process leading to approval of Resolution Plan, which order was not challenged any further. It is submitted that SRA is not disqualified under Section 29A. No control through SRA was ever acquired by Respondent No.8 and 9 or Respondent No.7. Share Purchase Agreement having never given effect to, no shares having been transferred the SRA neither having any *de facto or de jure* control on the Corporate Debtor by Respondent Nos.7, 8 or 9, there is no ineligibility attached under Section 29A (c). Other submission of the Appellant claiming ineligibility of SRA is without any basis. The Collaboration Agreement dated 13.01.2020 did not transfer any management right or right for policy decision to M3M, hence, there was no *de facto or de jure* control over the Corporate Debtor. Appellant relying on Section 29A (h) submits that New Era and Swastik being co-obligors needed to be treated as guarantors, is without any basis. New Era and Swastik were to purchase 100% shares of the Corporate Debtor by payment of Rs.1 Crore and Rs.249 Crore to repay the debt of the Corporate Debtor. The Share Purchase Agreement having never fructified and shares having never transferred, they are neither guarantors nor co-obligors. There is no ineligibility attached under Section 29A(i) also. SRA is not connected person with the Corporate Debtor in any manner. Appeal has been filed as an afterthought to delay the implementation of the approved Resolution Plan.

7. Learned counsel for the CoC also refuting the submission of the Appellant submits that the CoC has after examining all aspects of the matter has approved the Resolution Plan with 100% vote share. SRA is fully eligible. Resolution Plan has been approved by the Adjudicating Authority which order has not even challenged by the Appellant. Approval of the Resolution Plan by the Adjudicating Authority has also received affirmance of this Tribunal by judgment dated 11.02.2025 delivered in an appeal filed by another Resolution Applicant – Consortium of Sakshi Chandana.

8. Learned counsel appearing for the Respondent No. 8 and 9 also supported the impugned order and submitted that Respondent No.8 and 9 never became shareholders of the Corporate Debtor. No shares were ever transferred in favour of the Respondent No. 8 and 9. The entire basis of the claim of the Appellant is misconceived.

9 We have considered the submissions of learned counsel for the parties and perused the record.

10. The Appellant is the Unsuccessful Resolution Applicant who although initially has filed a resolution plan but when Challenge Mechanism was communicated and Appellant was asked to participate in the Challenge Mechanism and file a Resolution Plan, Appellant neither participated in the Challenge Mechanism nor has submitted a Resolution Plan. Appellant relies on email by which he communicated that he is ready to increase his financial bid as Rs.250 Crores. It is further relevant to

notice that the entire CIRP process leading to approval of Resolution Plan was challenged in this Tribunal in Company Appeal (AT) (Ins.) No.107 of 2025 and Company Appeal (AT) (Ins.) No.181 of 2025 filed by Consortium of Sakshi Chandana where one of the order under challenge was order approving the Resolution Plan. This Tribunal after considering entire process found that the CIRP process carried out by the Resolution Professional leading to approval of Resolution Plan is in accordance with the Code and the Regulations. This Tribunal noticed that only two bidders were left in the fray i.e. Consortium of Sakshi Chandana and the SRA. On the basis of Challenge Mechanism, the SRA's offer was declared as highest and the Resolution Plan was approved of the SRA. In the context of the challenge by Consortium of Sakshi Chandana, the entire process was examined and it was held that process leading to approval of Resolution Plan of the SRA need no interference. This Tribunal in the aforesaid judgment in Paras 19 to 23 laid down following:

*“19. The CoC in its CoC Meeting held on 26.11.2024, having approved the Resolution Plan of the SRA and the RP immediately issued a LoI dated 04.12.2024 to the SRA, which was brought into the notice of the Court when I.A. filed by the Appellant came for consideration. Adjudicating Authority has extracted the entire LoI dated 04.12.2024 in its Order and noticing the LoI has observed that nothing survives for consideration.*

*20. The Adjudicating Authority while approving the Resolution Plan has noticed the process of Negotiation. As noted above the process of challenge process, it has*

*noticed that all 6 Plans were placed before the CoC for voting and voting was conducted on 04.12.2024 when the Plan of SRA was approved with. In Paragraphs 42 to 45, Adjudicating Authority made following observations:*

*“42. Round 1 of the Negotiation Process was concluded on 11<sup>th</sup> November 2024. Subsequently, round 2 of the Negotiation Process was concluded on 15<sup>th</sup> November 2024 wherein Mangalam was declared as the H1 bidder. After the conclusion of the Negotiation Process, all the RAs were communicated to submit their final Resolution Plans till 21<sup>st</sup> November, 2024. However, the Final Resolution Plan was received from only one RA i.e., Mangalam.*

*43. Accordingly, all six (6) Plans were placed before the CoC for voting and the voting on the Final Resolution Plans was concluded on 04.12.2024. The voting took place and/or was conducted as per Regulation 25(5) read with Regulation 26 of the CIRP Regulations.*

*44. Since, Mangalam Multiplex Private Limited obtained the highest affirmative vote of the CoC, its resolution plan dated 21<sup>st</sup> November 2024 and revised on 26<sup>th</sup> November 2024 was duly approved by the CoC under Section 30(4) of the Code read with Regulation 39(3B) of the CIRP Regulations. Mangalam was declared as the Successful Resolution Applicant and the Letter of Intent dated 4<sup>th</sup> December 2024 was accordingly issued to Mangalam.*

*45. Thereafter, Mangalam submitted unconditionally accepted Letter of Intent on 5<sup>th</sup> December 2024 along with the Performance Security Deposit in the form of a Bank Guarantee amounting to Rs. 62,20,00,000/- in accordance with regulation 36B(4A) of the CIRP Regulations.”*

*21. The CoC having approved Resolution Plan submitted by SRA it being found compliant with provisions, Adjudicating Authority has also relied and*

referred to the Judgement of the Hon'ble Supreme Court in the matter of 'K. Sashidhar' Vs. 'Indian Overseas Bank & Ors.' reported in (2019) 12 SCC 150. Hon'ble Supreme Court in Paragraph 35 has made following observations:

*“35. The stage at which the dispute concerning the respective corporate debtors (KS&PIPL and IIL) had reached the adjudicating authority (NCLT) is ascribable to Section 30(4) of the I&B Code, which, at the relevant time in October 2017, read thus:*

*“30. (4) The Committee of Creditors may approve a resolution plan by a vote of not less than seventy-five per cent of voting share of the financial creditors.”*

*If CoC had approved the resolution plan by requisite per cent of voting share, then as per Section 30(6) of the I&B Code, it is imperative for the resolution professional to submit the same to the adjudicating authority (NCLT). On receipt of such a proposal, the adjudicating authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less. This is explicitly spelt out in Section 31 of the I&B Code, which read thus (as in October 2017):*

*“31. Approval of resolution plan.—(1) If the adjudicating authority is satisfied that the resolution plan as approved by the Committee of Creditors under sub-section (4) of Section 30 meets the requirements as referred to in subsection (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.*

*(2) Where the adjudicating authority is satisfied that the resolution plan does not conform to the*

*requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*

*(3) After the order of approval under sub-section (1)—*

*(a) the moratorium order passed by the adjudicating authority under Section 14 shall cease to have effect; and*

*(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”*

*22. It is now settled law that Adjudicating Authority has very limited jurisdiction in matter of the approval of Resolution Plan. The interference with the commercial wisdom of the CoC is permissible only when the Resolution Plan is not in compliance of Section 30(2) and Section 31 of the IBC. Present is not a case, where any submission is made that Resolution Plan submitted by the SRA is non-compliant of Section 30(2). We having looked into the Process Negotiation Document and the process which was followed for Negotiation in first and second round and having looked into the email exchanged between the Appellant and the RP are satisfied that RP did not commit any error in conduct of the second round of the Negotiation Process. There was no immunity to the Appellant to participate in the second round since only two Bidders were left in the fray which was communicated to the Appellant on 12.11.2024. Further, Appellant has also submitted its revised commercial offer of Rs.263.18 Crores, both offers were looked into while declaring H-1 of the second round the Mangalam Multiplex Pvt Ltd*

*was declared H-1 of second round who had given offer of Rs.265.66 Crores.*

*23. We, thus do not find any violation of the Negotiation Process done by the RP, second round of Negotiation Process was done in accordance with the process negotiation document. The Committee of Creditors had evaluated all Resolution Plan including the Appellant and having approved the Resolution Plan of the Mangalam Multiplex Private Limited with 100% vote shares. We do not find any error in the Order of the Adjudicating Authority approving the Resolution Plan on the submissions which has been advanced by the Appellant.”*

11. As noted above, the Appellant did not submit final Resolution Plan nor participated in the Challenge Mechanism and in the negotiation process only two Resolution Applicants participated. We are of the view that any submission of the Appellant regarding process of CIRP not having conducted in accordance with CIRP Regulations cannot be entertained.

12. The main submission which has been advanced by the learned counsel for the Appellant is ineligibility of SRA to submit a Resolution Plan within the meaning of Section 29A (c), (i), (j) and (h). The submission of the Appellant is based on Share Purchase Agreement dated 17.05.2019 by which the Respondent No. 8 and 9 who were group companies of Respondent No.7 have entered into agreement with two shareholders of the Corporate Debtor – VIF and IRF. It is submitted that by virtue of said Share Purchase Agreement, which also subsequently culminated in an arbitral

award dated 19.04.2021, the Respondent No. 8 and 9 could not plead that they have no control over the Corporate Debtor. Learned counsel for the Appellant to buttress his submission has relied on pleading made by the M3M in an application filed by the Resolution Professional before the Adjudicating Authority for taking possession of the assets of the Corporate Debtor. Learned counsel for the Appellant has also relied on pleadings by Respondent No.8 and 9 before the Delhi High Court where an application was filed by Respondent No. 8 and 9. Learned counsel for the Appellant has relied on the said pleading to contend that Respondent No. 8 and 9 claimed right of shareholding of the Corporate Debtor on basis of Share Purchase Agreement dated 17.05.2019. Submission is that the Corporate Debtor entered into a Collaboration Agreement with Respondent No.8 in the year 2020. Respondent No.7, M3M India devised to take over the assets of the Corporate Debtor through its group companies Respondent No. 8 and 9, who entered into Share Purchase Agreement with two shareholders of the Corporate Debtor.

13. There is no dispute that Respondent No. 8 and 9, who are group companies of Respondent No. 7, entered into Share Purchase Agreement dated 17.05.2019 with two shareholders of the Corporate debtor namely VIF and IRF. After entering into the Share Purchase Agreement on 17.05.2019, the assets of the Corporate Debtor were provisionally attached by the Directorate of Enforcement on 04.02.2020. On 05.03.2020, the Corporate Debtor, VIF, IRF and SREI Infra entered into an Amendment Agreement dated 05.03.2020 to First Amendment Agreement dated

17.05.2019 where it was agreed that New Era Propcon and Swastik would pay Rs.249 Crore to SREI Equipment in respect of the loan facility availed by the Corporate Debtor and arbitration invoked by New Era Propcon and Swastik will also settled on 23.01.2021 where it was agreed that (i) Varutha (Corporate Debtor), VIF, IRF and SREI Infra would take steps for vacation of attachment by ED as well as garnishee order of the High Court of Delhi dated 30.10.2018; (ii) Propcon and Swastik would pay an amount of Rs.249 Crores towards repayment of loan sanctioned to Varutha within 360 days of vacation of attachment by ED; (iii) Shares of Varutha to be transferred in favour of purchasers. Based on the settlement, an arbitral award was passed on 19.04.2021. For execution of said award, proceeding has already been initiated by New Era Propcon and Swastik, which are pending consideration.

14. We have noticed above that challenging the initiation of CIRP against the Corporate Debtor by order dated 20.12.2023, a Company appeal was filed by New Era Propcon and Swastik being Company Appeal (AT) (Ins.) No.246 of 2024. In the said appeal, New Era Propcon and Swastik has referred to Share Purchase Agreement dated 17.05.2019 and all other subsequent events and it was pleaded that the Administrator of the SEFL has already filed an application under Section 66 of the Code for avoiding the loan transaction of Rs.300 crores in favour of the Corporate Debtor, which application is pending. This Tribunal while dismissing the appeal noticed that the Share Purchase Agreement could not be given effect to in

view of attachment of land. In Para 5 of the judgment following has been held:

*“5. We need to first examine the question as to whether the Appellant had locus to challenge the order of admission passed by the Adjudicating Authority. Appellant’s own case is that the Section 7 application was filed by the Administrator of SREI Equipment Finance Limited against the Corporate Debtor for default committed by the Corporate Debtor in repayment of loan of Rs.300 crores extended by the Respondent. The Appellant’s case as set up on the appeal is that the Appellant has entered a Share Purchase Agreement dated 17.05.2019 with two shareholders of the Corporate Debtor namely Vision India Fund (VIF) and Infra Resurrection Fund (IRF). Share Purchase Agreement has been brought on the record by the Appellant which indicate that it was entered with two entities VIF and IRF and the Corporate Debtor was also part of the Share Purchase Agreement entered with two shareholders of the Corporate Debtor. The Appellants could not acquire any shareholding of the Corporate Debtor since according to its own case the Share Purchase Agreement could not be given effect to in view of attachment of land by the Enforcement Directorate (ED) on 04.02.2020. The Appellant has referred to Settlement Award dated 19.04.2021 where it was agreed between the parties that the Appellants would be liable to pay the amounts due towards repayment of the loan amount received by Varutha Developers Private Limited (VDPL) within 360 days of the variation*

*of the ED order, whereunder the Land had been attached by the ED. Provisional attachment has been confirmed by the Adjudicating Authority under the PMLA Act.”*

15. This Tribunal, thus, did not accept the claim of the Respondent No. 8 and 9 claiming right and interest in the assets of the Corporate Debtor and appeal came to be dismissed. It is also relevant to notice that against the judgment of this Tribunal dated 16.04.2024, a Civil Appeal was filed by New Era Propcon and Swastik being Civil Appeal No.6740 of 2024 which came to be dismissed by the Hon'ble Supreme Court on 10.07.2024 by following order:

**“O R D E R**

*We have examined the petition/application under Section 66 of the Insolvency and Bankruptcy Code, 2016, and also the reasoning given in the impugned judgment passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi.*

*We do not find any good ground and reason to interfere with the impugned judgment and, hence, the present appeal is dismissed.*

*Pending application(s), if any, shall stand disposed of.”*

16. The above indicate that the order of this Tribunal holding that the Share Purchase Agreement in favour of New Era Propcon and Swastika was never given effect to has also been affirmed by the Hon'ble Supreme Court.

17. Now, we come to the facts which have been relied by the Appellant to support his submission that claim of Share Purchase Agreement has been pleaded before the NCLT by M3M as well as New Era Propcon and Swastik before Delhi High Court. We need to first notice the reply of M3M filed in I.A. No.1765 of 2024 in C.P. (IB) 26/KB/2023, which reply was filed by M3M opposing the application filed by the Resolution Professional seeking possession of the assets of the Corporate Debtor (subject matter of the CIRP). Learned counsel for the Appellant has relied on pleadings in the said reply filed by M3M. He has referred to Para 4(g) of the reply, which Para 4(g) is as follows:

*“g. The Corporate Debtor was desirous of participating in the said auction process. Accordingly, inter alia, basis the desire of the Corporate Debtor to purchase the Land and as per the understanding between the parties (as detailed below), a Share Purchase Agreement dated May 17, 2019 ("Share Purchase Agreement") was entered into between VIF and IRF on the one side and M/s. New Era Propcon Private Limited and Swastik Infra Solutions Private Limited ("Purchasers") on the other. Under the said Share Purchase Agreement, 100% shareholding of VIF and IRF in the Corporate Debtor was to be purchased by M/s. New Era Propcon Private Limited and Swastik Infra Solutions Private Limited for a consideration of INR 1.00 Crore. M/ s. New Era Propcon Private Limited and Swastik Infra Solutions Private Limited are group companies of the Answering Respondent. It was also agreed by way of Amended and Restated Share*

*Purchase Agreement executed on the same date i.e., on May 17, 2019, title Purchasers would pay an amount aggregating to INR 299 crores towards Loan to be provided by the Associate Company of SREI Infrastructure Finance Limited. It is respectfully submitted that a sum of INR 90.00 Lacs has already been paid from the consideration amount of INR 1.00 Crore. However, no shareholding has been transferred in favour of the Purchasers.”*

18. When we look into the pleadings made in Para 4(g), it is clearly noticed that although Share Purchase Agreement dated 17.05.2019 was entered between Respondent No.8 and 9 and the Shareholders of the Corporate Debtor for purchase of 100% shareholding but no shareholding has been transferred in favour of the Purchasers, which is pleaded in last line of Para (g), as noted above. Thus, the above pleading does not support the submission of the Appellant that shareholding to Respondent No. 8 and 9 has been transferred to give control of the Corporate Debtor to Respondent No. 7, 8 and 9.

19. Now we come to the application which has been filed by the Respondent No. 8 and 9 before the Delhi High Court, which has been brought on record by the Appellant by I.A. No.1499 of 2025, which application was allowed on 08.05.2025 and documents were taken on record. By the Application, the Appellant has brought on record application filed by Respondent No. 8 and 9 in O.M.P (EFA) (COMM.) NO. 6 of 2016, which application is dated 04.02.2023 where Respondent No. 8

and 9 had prayed for amendment/ modification of order dated 30.10.2018.

Prayers made in the application are as follows:

*“a. Modify the order dated 30.10.2018 passed by this (EFA) (COMM.) No. 6 of 2016 in so far as it relates to the immovable assets of M/s. R.S. Infrastructure Private Limited mortgaged and agreed to be transferred to M/s. SREI Infrastructure Finance Limited vide settlement agreement dated 15.03.2018 and subsequently to the Applicants herein;*

*b. Vacate the injunction or stay granted vide order dated 30.10.2018 with regard to the said property in favor of the Applicants herein;*

*c. Pass any such other or further order(s) as this Hon’ble Court may deem fit.”*

20. Learned counsel for the Appellant has relied on Para 12, 17 and 23 of the application, which are as follows:

*“12. Thereafter, M/s. New Era Propcon Private Limited (Applicant No.1 herein), M/s. Swastik Infrsolutions Private Limited (Applicant No.2 herein), M/s. Vision India Fund, M/s. Infrastructure Resurrection Fund, M/s. Varutha Developers Private Limited and M/s. SIFL entered into a Share Purchase Agreement dated 17.05.2019 to sell 100% fully paid equity shares of M/s. Varutha Developers Private Limited for a total consideration of INR 1,00,00,000/- (One Crore Only) by Vision India Fund Infrastructure Resurrection Fund to the Applicants herein.*

*17. That as a result the 100% fully paid equity shares of M/s. Varutha Developers Private Limited along with the title of the said property and its possession was transferred in favor of the Applicants herein.*

*23. That the Applicant is the bonafide purchaser of the said property and rightful owner of the said property by virtue of having purchased the entire shareholding of M/s Varutha Developers Pvt. Limited, who was unaware of the said order dated 30.10.2018 and the Applicant is greatly prejudiced by the said order dated 30.10.2018 passed by this Hon'ble Court in the captioned proceedings and therefore the said order dated 30.10.2018 is liable to be modified to the extent to not include the said property land and the said order dated 30.10.2018 cannot in anyway effect the rightful title of the said property land qua the Applicants herein.”*

21. Learned counsel for the SRA in reply to the above submission has contended that application was filed by Respondent No. 8 and 9 before the Delhi High Court in unrelated proceeding in the proceeding of Daiichi Sankyo Company Ltd. vs. Mr. Malvinder Mohan Singh. The application was filed on 04.02.2023 i.e. ten months prior to Corporate Debtor entering into insolvency. Application was filed claiming to be shareholder on the basis of Share Purchase Agreement dated 17.05.2019 and amendments thereof as well as Execution Petition of the arbitral award. The pendency of the execution petition is the very foundation of the claim that the shares of the Corporate Debtor stood transferred. We have already noticed our

judgment dated 16.04.2024 where we have held that shareholding to Respondent No. 8 and 9 never transferred. The averments made in the application dated 04.02.2023 cannot be read to mean that the said pleading is a conclusive proof of transfer of shareholding. Appellant's reliance on the pleadings put forth by New Era and Swastik in an unrelated proceeding is misplaced.

22. We have already noticed that in the same CIRP of the Corporate Debtor in judgment dated 16.04.2024 by this Tribunal which was Appeal filed by Respondent No. 8 and 9 itself it was held that shareholding in favour of Respondent No. 8 and 9 was never transferred on the Corporate Debtor. We need to reject the submission of the Appellant on the basis of pleadings made by Respondent No. 8 and 9 before the Delhi High Court seeking modification of order of Delhi High Court in an unrelated proceeding.

23. In so far as submission of the Appellant claiming SRA to be ineligible under Section 29A(i), suffice it to say that transfer of shares of the Corporate Debtor to Respondent No. 8 and 9 or 7 never came into effect. Either *de facto* or *de jure* the Corporate Debtor was never under the Control of Respondent Nos.6, 7, 8 or 9.

24. The submission of the Appellant that under the Share Purchase Agreement dated 17.05.2019, the Respondent No. 8 and 9 are co-obligors to the lender hence, they having liability of Corporate Debtor with certain

condition they are related parties and disqualified under Section 29A(h). Section 29A(h) of the I&B Code provides as follows:

*(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];*

25. Sub-section (h) comes into play when a person is not eligible to submit a Resolution Plan if such person or any other person has executed a guarantee in favour of the creditor in support of the Corporate Debtor against which an application for insolvency resolution made by such creditor has been admitted. The Share Purchase Agreement dated 17.05.2019 in no manner can be read to be guarantee to the Creditor. It is further relevant to notice that Share Purchase Agreement was never given effect to due to events as noted above and judgment of this Tribunal dated 16.04.2024 found that under Share Purchase Agreement no shares were transferred in favour of the Respondent No. 8 and 9. The Respondent No. 8 and 9 never gave any guarantee within the meaning of Section 29A(h) in favour of the Creditor. Hence, ineligibility as alleged under Section 29A(h) is non-existent.

26. Learned counsel for the Appellant has also referred to Section 29A(j), which is as follows:

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

*<sup>10</sup>[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):*

*<sup>11</sup>[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 <sup>12</sup>[or completion of such transactions as may be prescribed,] prior to the insolvency commencement date;]*

<sup>13</sup>[Explanation. II.--For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:--

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

*(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;*

*(f) such categories of persons as may be notified by the Central Government.].]*”

27. Section 29A(j) has no applicability since there is no connected person who is not eligible under Clause (a) to (i) with the Corporate Debtor.

28. We, thus, are of the view that submission of the Appellant that SRA is ineligible to submit the Resolution Plan cannot be accepted. As noted above, Appellant is an Unsuccessful Resolution Applicant who after submitting preliminary Resolution Plan did not submit final Resolution Plan and did not participated in the Challenge Mechanism. Further the Resolution Plan of the SRA has already been approved by the order of the same date passed in plan approval application, as noted above, which order was unsuccessfully challenged by another Unsuccessful Resolution Applicant (Consortium of Sakshi Chandana) who had participated in the process and was one of the two Resolution Applicant's whose plans were considered by the CoC. The Appeal filed by the Consortium of Sakshi Chandana challenging the approval of Resolution Plan has also been dismissed by this Tribunal by order dated 11.02.2025, as noted above, and plan approval of the SRA has been affirmed. We, thus, are of the view that above is the another reason for not entertaining the appeal challenging the order rejecting objection raised by the Appellant.

29. In view of the foregoing discussion, we do not find any error in the order impugned rejecting the application filed by the Appellant. There is no merit in the appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Arun Baroka]**  
**Member (Technical)**

**NEW DELHI**

**4<sup>th</sup> November, 2025**

*Archana*