



**THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. I, KOLKATA**

***I.A.(IB) No. 624/KB/2025  
In C.P.(IB) No. 203/KB/2021***

***An Application under section 60(5) read with Section 29A of the  
Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the  
National Company Law Tribunal Rules, 2016;***

**IN THE MATTER OF:**

**Jagdamba Industries Limited.**

**....Corporate Debtor**

***And***

**IN THE MATTER OF:**

**Tech Nirman Ispat Private Limited, a Company within the meaning of the Companies Act, 2013, bearing CIN: U45400WB2013PTC195929 and having its registered office at SRMB Pinnacle, Premises No. 16-0360, DH-6/9, Action Area- 1D, Newtown, North 24 Parganas - 700156, West Bengal.**

**....Applicant**

***Versus***

- 1. Aditya Kumar Tibrewal, Resolution Professional of Jagdamba Industries Limited, having IBBI Registration No. IBBI/IPA-001/IP-N00743/2017-18/12249, having his office at Hastings Chambers, 7C, Kiran Shankar Roy Road, Basement, Kolkata - 700001, West Bengal.**

***And***

- 2. Punjab National Bank, a Banking Company within the meaning of the Banking Regulation Act, 1949, having its office at Plot No. 4, Sector -10, Dwarka, New Delhi-110075.**

***And***

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3. **CFM Asset Reconstruction Private Limited, 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, bearing CIN: U67100GJ2015PTC083994 and having its office at Block No. A/1003, West Gate, Near YMCA Club, Sur No. 835/13, S. G. Highway, Makarba, Ahmedabad 380051, Gujarat.**

*And*

4. **SREI Equipment Finance Limited, a Non-Banking Financial Company within the meaning of Section 45-IA of the Reserve Bank of India Act, 1934 bearing CIN: U70101WB2006PLC09898 and having its registered office at Vishwakarma, 86C, Topsia Road, Kolkata Bengal. 700046, West Bengal.**

*And*

5. **Rashmi Metaliks Limited, a Company within the meaning of the Companies Act, 2013, bearing CIN: U27109WB2004PLC097737 and having its registered office at 39, Shakespeare Sarani, 6th Floor, Kolkata - 700017 West Bengal.**

...Respondents

**Date of Pronouncement: 24<sup>th</sup> day of November, 2025**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**CMDE SIDDHARTH MISHRA, MEMBER (TECHNICAL)**

**APPEARANCE:**

Mr. Joy Saha, Sr. Adv.

] For RP

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Mr. Shaunak Mitra, Adv.

Mr. Siddhartha Sharma, Adv.

Mr. Rishav Dutt, Adv.

Mr. Arjun Asthana, Adv.

Mr. Aman Kataruka, Adv.

Mr. Aditya Kumar Tibrewal

] Resolution Professional

Jagdamba Industries Ltd.

Mr. Siddhartha Dutta, Adv.

] For Rashmi Metalics Ltd.

Ms. Suhani Dwivedi, Adv.

Mr. Deepanjan Dutta Roy, Adv.

Ms. Sanjukta Ray, Adv.

Mr. Hansraj Jaria, PCS

Mr. Aditya Chakraborty, Adv.

Ms. Prerna Shaha, Adv.

Ms. Namrrataa Basu, Adv.

] For CoC

**ORDER**

**Per Bidisha Banerjee, Member (Judicial):**

1. The Court congregated through hybrid mode.
2. Ld. Counsels for the parties were heard *in extenso*.

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3. The application has been essentially preferred to seek stay in the approval in the approval of the Resolution Plan of the Respondent No. 5 filed by the Respondent No. 1 in I.A. (IBC) (PLAN) No. 15/KB/2024 till the final adjudication by the MSME authorities on the MSME certification on the basis of which Respondent No. 5 claims eligibility to submit a Resolution Plan under Section 29A of the Code.
  4. It is submitted by Ld. Sr. Counsel Mr. Jishnu Saha leading Mr. Rishav Banerjee that the Respondent No. 5 is ineligible to submit a Resolution Plan under Section 29A of the Code, since the Respondent No. 5 also indirectly holds shares in the Corporate Debtor and belongs to the promoters group.
  5. It is the contention of the applicant that the Corporate Insolvency Resolution Process in respect of the Corporate Debtor was initiated on 22<sup>nd</sup> day of August, 2023. While MSME certificate was obtained on 25.08.2023 which is after the CIRP commencement date. The Applicant thus claims that the entire process of CIRP is vitiated by material irregularities as it is the sole intention of allowing a related party to submit Resolution Plan in respect of the Corporate Debtor despite being ineligible under Section 29A of IBC that a fresh MSME
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Registration/ MSME Certificate was obtained after the CIRP commencement date.

6. It is further submitted that the applicant carried out its due diligence to find out that the factory of the Corporate Debtor has been shut for several years as electricity has been disconnected in the factory of the Corporate Debtor. Moreover, there were no plant and machineries in the factory of the Corporate Debtor.
7. It is further submitted that the applicant immediately filed an application with the MSME authorities asking the MSME authorities to investigate into the affairs of the Corporate Debtor and investigate regarding the false and/or wrongful status of the Corporate Debtor as MSME.

It is averred that a writ petition has been filed before the Hon'ble High Court at Calcutta praying for cancellation of the illegal and/or unlawful MSME Certificate dated 25<sup>th</sup> day of August, 2023, which was unlawfully and fraudulently obtained by the Corporate Debtor by misrepresenting the facts and/or falsely stating the facts before the MSME authorities by giving self-declaration.

8. It is the contention of the applicant that the MSME authorities by a letter dated 4<sup>th</sup> day of April, 2025 addressed to the Corporate Debtor has clearly stated that there was misrepresentation of facts in the
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Udyam Registration Certificate No. UDYAM-WB-23-00280499 dated 25<sup>th</sup> day of August, 2023 and so cancellation of Udyam Registration Certificate of the Corporate Debtor has been sought for. That the MSME authorities had clearly stated on physical verification of the unit of the Corporate Debtor by DIC, Paschim Bardhaman at its factory address that it has been found out that the unit of the Corporate Debtor is closed for several years and all plant and machineries have been dismantled and there were no employees or workers employed in the unit premises and that the above facts had not been reported by the Corporate Debtor and the existing Udyam Registration clearly demonstrates misrepresentation of actual facts and the current status of the unit.

- 9.** Further, the misrepresentation on the part of the Resolution Professional, Respondent No. 1 is clear and evident from the fact that in the Information Memorandum prepared by the Respondent No.1, he had misstated that there was plant and machineries in respect of the Corporate Debtor. However, on a mere inspection by the MSME authorities, it has been found that there does not exist any plant and machinery in respect of the Corporate Debtor and all plant and machineries have been dismantled. This itself shows fraudulent misrepresentation on the part of the Respondent No. 1 in
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the Information Memorandum of the Corporate Debtor, which clearly vitiates the CIRP of the Corporate Debtor. The entire CIRP of the Corporate Debtor is thus vitiated by fraud and/or material irregularities for which the entire CIRP of the Corporate Debtor is required to be set aside and the Respondent No. 1 required to be replaced.

**10. Per contra the respondent RP would state as under:**

**10.1** The MSME registration of the CD of 25.08.2023 Certificate is a re-registration under Udyam Postal and not a fresh registration.

**10.2** The R5 is not a related party to the Corporate Debtor.

**11 Contentions of Tech Nirman Ispat Private Limited.**

**11.1** The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor being Jagdamba Industries Limited (CD) commenced on 22 August, 2023 and the Resolution Professional (RP), being the Respondent No. 1 (R1) was appointed vide the same Order of the Hon'ble NCLT, Kolkata Bench dated 22nd August, 2023.

**11.2** The R-1 issued the Information Memorandum on 03.11.2023 and that two Resolution Applicants (RA), first being the

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Applicant (Tech Nirman) and the Respondent No. 5 (R5) submitted their Resolution Plans.

**11.3** The Committee of Creditors (CoC) and the RP deliberately rejected the Resolution Plan submitted by the Applicant and approved the Resolution Plan submitted by R5, being a related party ineligible to submit the said plan under Section 29A of the Code.

**11.4** The COC and the RP have not conducted the challenge mechanism as per clause 2.9 of the RFRP in order to fulfill their ulterior motive to favour the R5, a related party to the CD.

**11.5** The Applicant, being aggrieved, filed the I.A. (IBC) No. 2092/KB/2024 and requested R1 to R4 to recall the rejection of its Resolution Plan, halt the declaration of the successful Resolution Applicant being the R5 and conduct a challenge mechanism as per clause 2.9 of the RFRP.

**11.6** The Applicant further filed I.V.N.P (IBC) No. 39/KB/2024 and I.A. (IBC) No. 624/KB/2025 was filed by the Applicant before the Hon'ble NCLT to intervene and put a stay on the Resolution Plan Application being I.A. (IBC) (Plan) No. 15/KB/2024. The Applicant has specifically highlighted the

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following irregularities with respect to the CIRP conducted by the R1.

**12 Allegation of Tech Nirman Ispat Private Limited:**

**To circumvent the ineligibility of the related party and Section 29A of IBC, 2016, the respondent have fraudulently relied upon a fraudulently procured MSME certificate after initiation of CIRP which cannot be allowed by the Adjudicating Authority and the Resolution Applicant cannot take benefit of Section 240A of IBC, 2016:-**

- 12.1** The SRA is Rashmi Metaliks.
- 12.2** Priyanka Kedia is the daughter of P.K. Kedia, the director of Jagdamba, the Corporate Debtor.
- 12.3** Priyanka had given loan of Rs. 16 lakhs to the CD. She had been paid back in preference to them but no PUFEE has been filed by RP against her.
- 12.4** Afsar India is a shareholding of Rashmi, its shareholding 4.3% all 46 shareholders of Rashmi are Promoters of Rashmi. Priyanka is the relative of CD.
- 12.5** Hence Rashmi is related to Jagdamba, bar under Section 5(24) A (j) gets attracted.
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- 12.6** It is alleged that the MSME certificate dated 25th August, 2023 is a product of fraud and is a certificate which has been obtained fraudulently to circumvent the ineligibility under Section 29A.
- 12.7** It is a settled principles of law that a-certificate-which-has been obtained by fraud is null and void and no benefit can be obtained on the basis of a certificate which has been fraudulently obtained.
- 12.8** CIRP was initiated in respect of the Corporate Debtor on 22nd August, 2023. The RP has time and again repeatedly admitted in open court be it before this Hon'ble Adjudicating Authority or before the Hon'ble High Court at Calcutta that the RP has never applied for obtaining a MSME certificate after initiation of CIRP.
- 12.9** It is an admitted fact that as on the date of initiation of CIRP, i.e. 22nd August, 2023, the Corporate Debtor was admittedly not an MSME, which will be evident from the affidavit/report filed by the MSME authority dated 01st August, 2025 before the Hon'ble High Court on the basis of which the Hon'ble High Court was pleased to record such a submission in its order dated 06th August, 2025.
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**12.10** Under Section 17 of IBC, 2016 : The powers of the board of directors of the Corporate Debtor remains suspended immediately upon initiation of CIRP of the Corporate Debtor. Except the Resolution Professional nobody could have applied for the MSME certificate after initiation of CIRP of the Corporate Debtor. Admittedly, the MSME certificate has been obtained on 25th August, 2023 upon a self-declaration being made by the promoters of the Corporate Debtor in collusion and connivance with some of the employees of the Corporate Debtor without there being any authorisation on the part of the Resolution Professional/Interim Resolution professional. The MSME declaration form does not even contain the name of the IRP and not even the signature of the IRP, which itself shows that the certificate has been obtained fraudulently de hors the mandatory provisions of Section 17 of IBC, 2016 read with Section 18 and Section 25 of the IBC, 2016. The fraud that has been perpetrated is explicitly evident. The Resolution Professional is supporting such illegal and unlawful action on the part of the suspended board of directors in fraudulently obtaining the MSME certificate of the Corporate Debtor.

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**12.11** On one hand, the RP is stating that he has never applied for MSME certificate and on the other hand, is acting contrary to the provisions of the Code by not taking measures against a fraudulently obtained MSME certificate, which has been obtained behind his back against/de hors the provisions of Section 17 of the IBC, 2016.

**13 Submissions of SRA**

**On the conduct of Tech Nirman, the Unsuccessful RA to delay the process:**

**13.1** The Corporate Debtor Jagdamba Industries Limited was admitted into CIRP on 25.08.2023. After collation of claims, constitution of the CoC and other formalities Form G was issued on 08.12.2023.

**13.2** In compliance with sub-Regulation 36(A) of the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016, a list of prospective resolution applicants was published by the Resolution Professional on 4<sup>th</sup> January, 2024.

**13.3** Regulation 36(A) (10) (11) of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process Regulations, 2016 prescribe a statutory timeline of 5 days

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to respond to any objection. No objection was raised within the said 5 days.

**13.4** The Resolution Professional by email dated 10<sup>th</sup> July 2024 had requested all prospective resolution applicants to submit their resolution plan within 7 days.

**13.5** On 17<sup>th</sup> July, 2024 Rashmi Metaliks (RML) submitted its resolution plan before the Resolution Professional. Tech Nirman thereafter submitted its resolution plan to the Resolution Professional.

**13.6** The final resolution plan of RML and the Applicant were put up for vote by the CoC on 19<sup>th</sup> September, 2024 and by a vote of 80.96%, the resolution plan of RML stood approved by the CoC.

**13.7** On 3<sup>rd</sup> October, 2024, the Resolution Professional filed the application for approval of resolution plan of RML under Section 31 of the IBC before this Adjudicating Authority.

**13.8** The plan approval application was reserved for order on 22.07.2025.

**13.9** Meanwhile, Inv. P. 39/KB/2024 & 2092/KB/2024 seeking to set aside the CoC's rejection of the Applicant's resolution plan was preferred by the Unsuccessful Resolution

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Applicant, Tech Nirman without impleading RML as a party to the applications but challenging its eligibility under Section 29A of the IBC.

**13.10** Inv. P. 39/KB/2024 was filed by the Application, approximately 11 months after the initial publication of the list of PRAs, although it was fully aware of RML's participation in the CIRP from its inception. The Applicant had never raised any objection at the voting stage.

**13.11** On 21<sup>st</sup> March 2025, the Applicant filed a writ petition before the Hon'ble High Court at Calcutta inter alia seeking cancellation of MSME certificate dated 25<sup>th</sup> August 2023, this writ was numbered as WPO 206 of 2025, was disposed of an MSME to issue notice to the Corporate Debtor and thereafter MSME would recommend for amendment or recommend for cancellation of the MSME certificate of the Corporate Debtor.

**13.12** Consequently, Tech Nirman prayed for an adjournment of Inv 39/KB/2024 and plan approval application IA (Plan) No. 15/KB/2024 on 4<sup>th</sup> April 2025. The matters were adjourned till on 7<sup>th</sup> April 2025 for conclusion of submission.

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**13.13** The Applicant Tech Nirman on 16<sup>th</sup> April 2025 filed the instant application being IA No. 624/KB/2025 *inter alia* seeking stay on the plan approval application (IA(Plan) No. 15 of 2024) till final adjudication by MSME and to pass an interim order holding RML to be a related party of the Corporate Debtor. As a result, Plan approval application numbered IA (Plan) No. 15/KB/2024 and Inv 39/KB/2024 stood adjourned on 22<sup>nd</sup> April 2025, till 14.05.2025.

**13.14** On 10<sup>th</sup> June 2025, the Applicant preferred another writ petition before the Hon'ble High Court at Calcutta seeking cancellation of MSME certificate dated 25<sup>th</sup> August, 2023, numbered as WPO 413 of 2025. As a result IA (Plan) No. 15/KB/2024, Inv 39/KB/2024 and IA No 624/KB/2025 stood further adjourned in 18<sup>th</sup> June 2025 at the request of Tech Nirman in view of pendency of the second writ petition.

**13.15** IA (Plan) 15/KB/2024 was reserved for order on 17.09.2025 but Inv 39/KB/2024 and IA No. 624/KB/2025 stood adjourned once again on 22<sup>nd</sup> July 2025 at the request of Tech Nirman in view of pendency of the second writ petition. These were further adjourned from time to time at the request of Tech Nirman.

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Finally, vide Order dated 6<sup>th</sup> August, 2025, the Hon'ble Court at Calcutta disposed WPO 413 of 2025 recording that *“on the day the CIRP proceeding was initiated, the unit did not have proper Udyam Registration Certificate for being treated as an MSME. It has been brought to the notice of the Court that a proceeding before NCLT is pending. The Tribunal will proceed taking note of the above.”*

**13.16** On 18<sup>th</sup> August, 2025, the Applicant preferred an appeal before the Hon'ble High Court at Calcutta impugning the order dated 6<sup>th</sup> August, 2025 which is yet to be disposed of. Consequently, Inv. P. 39/KB/2024 and IA No. 624/KB/2025 stood adjourned on 19<sup>th</sup> August, 2025 at the request of Tech Nirman.

**13.17** On 1<sup>st</sup> September, 2025, IA (Plan) No. 15/KB/2024 was listed for certain clarifications whereafter it was finally reserved for order.

**13.18** Again on 12<sup>th</sup> September, 2025, Tech Nirman prayed for adjournment in view of pendency of the writ appeal before the Hon'ble High Court.

**13.19** Finally, after 10 adjournments, Tech Nirman concluded its submissions on 17<sup>th</sup> September, 2025 in Inv. P. 39/KB/2024

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and IA No. 624/KB/2025 and both applications were heard and reserved for order.

**On the eligibility of SRA to give a Plan**

**13.20** The limited point raised by the unsuccessful resolution applicant at this stage is that Rashmi Metaliks Limited (RML) being the successful resolution applicant (SRA) was not eligible under Section 29A of the IBC due to a blood relationship between one of the promoters' wife with the promoter of the Corporate Debtor. In order to support its argument, the unsuccessful resolution applicant, relied upon two facts: Firstly, Mrs. Priyanka Patwari and Mr. Sanjib Patwari are promoters in the companies which hold majority shares in the successful resolution applicant. Secondly, Mrs. Priyanka Patwari "who is a shareholder and director of several companies owning the shares of Respondent No.5, also indirectly holds shares in the Corporate Debtor under the name of "Priyanka Kedia" through multiple layers of investment companies." Therefore, it is the case of the Applicant that RML is not eligible to be a resolution applicant in terms of Section 29A of the IBC.

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**13.21** As regards the first limb of the argument, there is no dispute that Mrs. Priyanka Patwari nee Kedia was one of the notional shareholder (as stated in paragraphs 5 herein below) of various investment companies which in turn held shares in RML. On the second limb of the argument by the Applicant, the allegation made by the unsuccessful resolution applicant is very wide and sweeping without any particulars.

**13.22** The shareholding of Mrs. Priyanka Patwari has been shown as 0.07% direct holding in a company named Jawala Steel Ltd (pg. 146 of Inv 39/KB/2024) which Jawala Steel Ltd in turn holds 6.74% in a company named Trinity Resources Pvt Ltd (pg. 97-108 of Inv 39/KB/2024), which in turn holds approximately 24% in Panchsheel Commercial Ltd (pg. 95 of Inv 39/KB/2024). Ultimately, Panchsheel Commercial Ltd holds 19.67% and Trinity Resources Pvt Ltd holds 2.54% shareholding of Jagadamba Industries Ltd (pg. 77 of Inv 39/KB/2024).

**13.23** It has been suppressed by the Applicant that Mrs. Priyanka Patwari is a fourth removed individual shareholder of Jawala Steel Ltd. Mrs. Priyanka Patwari is neither a director nor a shareholder of Jwala Steel Limited, Trinity Resources Pvt Ltd

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and the Corporate Debtor. Accordingly, the entire pivot of the unsuccessful resolution applicant's argument is based on two elements:

13.23.1 Firstly, Mrs. Priyanka Patwari is the daughter of Mr. Pradip Kedia and sister of Mr. Rahul Kedia, both suspended directors of the Corporate Debtor.

13.23.2 Mrs. Priyanka Patwari holds 0.07% shareholding in a fourth removed entity named Jwala Steel Limited which through various other investment vehicles holds shares in the Corporate Debtor.

13.23.3 The mere fact that she happens to be relative of the Director of SRA cannot be good enough reason to oust the SRA from becoming a resolution applicant. Mere blood relationship is not the test under Section 29A of the IBC, various other tests have been laid down by the Hon'ble Supreme Court which have to be applied before attracting the bar under Section 29A of the IBC, as clearly held in **Swiss Ribbons Pvt Ltd and Anr v. Union of India and Ors-(2019) 4 SCC 17: Para 108, 109 and in Eva Agro Feeds Pvt Ltd v. PNB and Anr. (2023) 10 SCC 189: Para 86, 87.**

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13.23.4 The shareholding of Mrs. Priyanka Patwari (nee Kedia) of 0.07% in Jwala Steel Ltd is insignificant and cannot be considered as cogent evidence of the persons connected with the Corporate Debtor acting jointly or in concert with the successful resolution applicant [**Arcelormittal India Pvt Lid v. Satish Kumar Gupta and Ors-(2019) 2 SCC** 1-para 32 and **Swiss Ribbons Pvt Ltd and Anr v. Union of India and Ors(2019) 4 SCC 17**: Para 110 and **in Eva Agro Feeds Pvt Ltd v. PNB and Anr-(2023) 10 SCC 189**: Para 88.

13.23.5 There is no evidence that the Corporate Debtor's suspended directors have any connection, whatsoever, with the business activity of the successful resolution applicant. In the absence of evidence, mere allegation, that the suspended director is connected with the business activity of the resolution applicant, the successful resolution applicant, cannot be disqualified under Section 29A(j) of the IBC.

13.23.6 In terms of Explanation I clause ii to Section 29A(j) of the IBC, a person is to be disqualified is the person who is in management and control of the

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business of the corporate debtor during the implementation of the resolution plan is in any way connected with the resolution applicant. No such allegation or evidence or assertion has been made in the application that the persons who were in control of the Corporate Debtor during the implementation of the resolution plan of the successful resolution applicant would remain in control or gain control of the Corporate Debtor after the implementation of the resolution plan. **Swiss Ribbons Pvt Ltd and Anr v. Union of India and Ors (2019) 4 SCC 17, para 109, 110).**

13.23.7 The basic ingredients of Section 29A (c) or (j) of the IBC is not attracted to the present case as evident from the pleadings/documents filed with the application and the resolution plan of RML, which has been approved by the CoC.

13.23.8 Mere blood relationship between Mrs. Priyanka Patwari nee Kedia is not sufficient to attract and bar under Section 5 (24) (j) given the fact that the Ms. Patwari nee Kedia holding 0.07% in Jwala Steel

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Limited amongst a bundle of 31 shareholders of Jwala Steel Limited) (pg.146 of Inv 39/KB/24) is complete red-herring and of no consequence.

13.23.9 The unsuccessful resolution applicant-Tech Nirman has filed the application Inv 39/KB/2024 on 14 November 2024 after participating in the entire CIRP process (22 August 2023 to 19 September 2024) along with RML as another resolution applicant and after it failed in the voting by the CoC on 19 September 2024 by a vote of 80.96% by the CoC rejecting the resolution plan of Tech Nirman Ispat Ltd.

13.23.10 The final resolution plans were filed on 17 July 2024. After the expiry of the statutory period of 330 days, Inv 39/KB/24 was filed. The unsuccessful resolution applicant has been using legal proceedings to delay the implementation of the resolution plan.

13.23.11 The filing of these application i.e. Inv 39/KB/2024 and IA 624/KB/2025 amounts to abuse of process, and is only a dilatory tactic to delay the approval of the resolution plan.

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**13.24** The aforesaid multiple legal proceedings and forum shopping by Tech Nirman after the application for approval of resolution plan was filed by the RP, is not only mischievous but also completely tangential. This Hon'ble Adjudicating Authority has to examine the record to see whether the resolution processional or the CoC has duly gone through the process of Section 29A verification.

**13.25** In this case, during the entire CIRP process, the participation of RML was known to all parties including Tech Nirman. The issue whether the Corporate Debtor is an MSME or not has not been projected as a matter in issue for the first time after approval the resolution plan by the CoC.

**13.26** The unsuccessful resolution applicant Tech Nirman has the burden to firmly establish the ineligibility on the basis of Section 29A of the IBC applied to RML. Instead of discharging its legal obligation to maintain a challenge, the unsuccessful resolution applicant has been filing multiple legal proceedings challenging the status of the Corporate Debtor as a MSME. This is only a tactical method of delaying the resolution plan approval by this Hon'ble Adjudicating Authority.

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**13.27** No credible case under Section 29A of IBC was made out despite numerous opportunities before the Hon'ble Adjudicating Authority. No case was made out as to how the ratio of Swiss Ribbons Pvt Ltd and Anr v. Union of India and Ors-(2019) 4 SCC 17 and Eva Agro Feeds Pvt Lid v. PNB and Anr- (2023) 10 SCC 189 supports the case of the unsuccessful resolution applicant. Therefore, IA 624/KB/2025 being frivolous be dismissed.

**Analysis and Findings:**

**14 Issues:**

**14.1** Whether R5, the SRA is a relative party of the Corporate Debtor and as such whether Bar under Section 29A is attracted.

**14.2** Whether MSME Certificate can be relied upon in the event Section 29 A gets attracted.

**15 Discernible facts:**

**On MSME status of the Corporate Debtor**

**15.1** It is quite discernible that Corporate Debtor was already registered as an MSME since 25.05.1993, as a small enterprise. Long thereafter it was admitted into CIRP. The

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certificate of 25.08.2023 is practically a re-registration under Udyam Portal. The previous certificate obtained in 1993 (Annexure D) is as under:

W

**Udyog Aadhaar Registration Certificate**  
MS236000097  
JAGDAMBA INDUSTRIES LIMITED

SAI	Floor/Door/Block No.	Name of Premises/Building Village	Road/Street Lane	Area, Locality	City	Pin	State	District
1	BIGHAN COMM. COMPLEX	DURGAPUR	NEAR MARGATE	BESIDE BHARAT KANTA	DURGAPUR	713001	WEST BENGAL	PASCHIM BANGALURAM

Official Address of Enterprise: JAGDAMBA INDUSTRIES LTD., BIGHAN COMMERCIAL COMPLEX, DURGAPUR NEAR MARGATE, BESIDE BHARAT KANTA, PASCHIM BANGALURAM, DURGAPUR, WEST BENGAL, PIN-713001. Mobile No: 9723961000. Email: durgapur\_jagamb@rediffmail.com

Date of commencement: 25-08-1993  
Major Activity: MANUFACTURING  
Enterprise Type: Small

SAI	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit Code	Activity Type
1	23	2394 - Manufacture of cement, lime and plaster	23942 - Manufacture of Portland cement, sulphate cement, slag cement and other hydraulic cement	Manufacturing

ACKNOWLEDGEMENT  
Date of Filing: 06/07/2022  
Date of Posting: 28/10/2024  
Disclaimer: This is computer generated statement, no signature required.  
Printed from udyogaadhaar.gov.in

**This Udyog Aadhaar Memorandum(UAM) Certificate is Valid Till 30/06/2022.**

**15.2** Thus post admission registration in Udyam Portal on 25.08.2023 is not the start date of its MSME status as wrongly indicated by Tech Nirman. The subsequent certificate No. UDYAM-WB-23-0028049 of 2023 which is subject matter of challenge in Writ extracted hereunder for clarity:

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**Certificate**

Registration Number : UDYAM-WB-23-0028049

**5**

Type of Enterprise	SMALL	Major Activity	Manufacturing
Type of Organisation	Public Limited Company	Name of Enterprise	M/S JAGDAMBA INDUSTRIES LIMITED
Owner Name	M/S JAGDAMBA INDUSTRIES LIMITED	PAN	AAACJ6843R
Do you have GSTIN		Mobile No.	7872888000
Email Id	jil.steels@gmail.com	Social Category	General
Gender	Male	Specially Abled(DIVYANG)	No
Date of Incorporation	05/05/1993	Date of Commencement of Production/Business	05/06/2001

**Bank Details**

Bank Name	IFS Code	Bank Account Number
ICICI BANK LTD	ICIC0001927	192705001711

**Employment Details**

Male	Female	Other	Total
40	0	15	55

**Investment In Plant and Machinery OR Equipment (In Rs.)**

SNo.	Financial Year	Enterprise Type	Written Down Value (WDV)	Exclusion of cost of Pollution Control, Research & Development and Industrial Safety Devices	Net Investment In Plant and Machinery OR Equipment[(A)-(B)]	Total Turnover (A)	Export Turnover (B)	Net Turnover [(A)-(B)]	Is ITR Filled?	ITR Type
1	2023-24	Small	232190071.00	0.00	232190071.00	14879293.00	0.00	14879293.00	Yes	ITR - 3, 5, 6
2	2022-23	Medium	273166715.00	0.00	273166715.00	48382503.00	0.00	48382503.00	Yes	ITR - 3, 5, 6
3	2021-22	Medium	321375816.00	0.00	321375816.00	23197046.00	0.00	23197046.00	Yes	ITR - 3, 5, 6

**Unit Details**

SN	Unit Name	Flat No	Building	Village/Town	Block	Road	City	Pin	State	District
1	M/S JAGDAMBA INDUSTRIES LIMITED	Plot No-85	Sagarbhanga	Durgapur	-	Mouja Gopinathpur	-	713211	WEST BENGAL	PASCHIM BARDHAMAN
2	M/S JAGDAMBA INDUSTRIES LIMITED	-	BIDHAN COMM. COMPLEX	Durgapur	-	-	Durgapur	713203	WEST BENGAL	PASCHIM BARDHAMAN



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Official address of Enterprise

Plot No./Block No.	Plot No-85	Name of Premises/ Building	Sagarbhanga
Village/Town	Durgapur	Block	-
Street/Lane	Mouja Gopinathpur	City	-
State	WEST BENGAL	District	PASCHIM BARDHAMAN , Pin : 713211
Mobile	7872888000	Email:	jil.steels@gmail.com

National Industry Classification Code(S)

SN.	Nic 2 Digit	Nic 4 Digit	Nic 5 Digit	Activity
	Other manufacturing	Other manufacturing n.e.c.	32909 - Manufacture of other articles n.e.c.	Manufacturing

Are you interested to get registered on Government e-Market (GeM) Portal	No
Are you interested to get registered on TReDS Portals(one or more)	No
Are you interested to get registered on National Career Service(NCS) Portal	No
DIC	Paschim Bardhaman
VISME-DI	KOLKATA
Date of Udyam Registration	25/08/2023



**15.3** By way of its letter dated 12.03.2025 Tech Nirman has alleged that the RP has fraudulently obtained certificate on 25.08.2023. The letter dated 12.03.2025 in full is extracted hereunder for clarity:

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**TOPTECH  
TMT BAR**

Dated: 12.03.2025

✓  
The Asst. Director-in-Charge,  
Branch MSME-DFO in Durgapur,  
RA-39 (Ground Floor), Urvashi (Phase-II),  
Bengal Ambuja, Tarashankar Sarani, City Center,  
Durgapur-713216, West Bengal.

Recipient / Dispatcher  
Branch Micro, Small & Medium Enterprises  
Development & Facilitation Office,  
Ministry of Micro, Small & Medium Enterprises  
Govt. of India  
RA-39 (Ground Floor), Urvashi (Phase-II), Bengal Ambuja  
Tarashankar Sarani, City Centre, Durgapur-713216

Ref: Letter dated 28-02-2025 requesting for cancellation of MSME Registration of Jagdamba Industries Limited

Sub: Request for cancellation of MSME Registration of Jagdamba Industries Limited (UDYAM-WB-23-0028049) obtained by virtue of misrepresentation of facts and documents.

Dear Sir,

We refer to our previous letter dated 28-02-2025, wherein we had requested for cancellation of the MSME Registration of Jagdamba Industries Limited (Corporate Debtor), bearing registration no. UDYAM-WB-23-0028049, a Company under Corporate Insolvency Resolution Process ("CIRP") commencing from 22-08-2023. The reasons for this request are detailed in our earlier correspondences, which is self-explanatory in nature. Additionally, we have also lodged an online grievance with the MSME Champions on 28.02.2025, who have already referred this matter to your esteemed office.

We would like to state that there exist no machineries, plants and equipments at the site of Jagdamba Industries Limited (Corporate Debtor), which are required to carry on the manufacturing activities. All the machineries, plants and equipments have been disposed of. Therefore, the Corporate Debtor is not eligible to obtain / renew the aforesaid MSME registration. The Resolution Professional ("RP") on behalf of the Corporate Debtor has fraudulently obtained the Udyam Registration on 25-08-2023 by suppressing material facts and documents i.e. post initiation of the CIRP of the Corporate Debtor. A copy of the Udyam Registration Certificate of the Corporate Debtor is attached and marked as "Annexure - A".

We urge your good office to conduct an immediate inspection of the plant of Jagdamba Industries Limited (Corporate Debtor) and take an appropriate action at the earliest to prevent any misuse of the MSME registration.

registered Office Shifted to (w.e.f. 27.01.2025)  
SMB PINNACLE  
Premises No.-16-0360  
DH-03, Action Area-ID  
Newtown, Kolkata-700156

TECH NIRMAN ISPAT PVT. LTD.  
46, B. B. Ganguly Street, 5th Floor, Kolkata-700016  
CIN: U45400WB2013PTCIS929

www.toptechnirman.com

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In addition to above, the electricity supply to the premises of the Corporate Debtor was disconnected on 08-08-2023 i.e. before initiation of the CIRP of the Corporate Debtor on 22-08-2023, thereby making the plant non-operational.

We are enclosing herewith an order dated 06-10-2023 of the Hon'ble NCLT, Kolkata which states that the Respondents i.e. WSEDCL has initiated the dismantling of equipment from the site which proves that there were no operation continuing at the site and Electricity Board has already started dismantling of the electrical equipment and we further state that till date, the electricity has not been restored at the site. A copy of the order is attached herewith as "Annexure - B".

The Resolution Professional ("RP") has fraudulently obtained the Udyam Registration on 25-08-2023, inspite of the fact that the Corporate Debtor was not eligible to obtain the said registration. The sole purpose of obtaining the MSME registration was to provide the benefit to the Rashmi Metaliks Limited, a related party to the Corporate Debtor, in submitting the resolution plan for the Corporate Debtor.

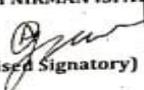
Furthermore, we wish to bring to your attention that the RP of the Corporate Debtor has made a misleading attempt to approach to the Hon'ble NCLT for approval Resolution Plan submitted by **Rashmi Metaliks Limited** for the sale of the Corporate Debtor to them, by way of acceptance of the Resolution Plan as placed by them. It is pertinent to mention that Rashmi Metaliks Limited, is not eligible to be a Successful Resolution Applicant as they are the related party to the Corporate Debtor.

In light of these facts, we urge your good office to conduct an immediate inspection of the plant of the Corporate Debtor and take an appropriate action by cancelling the MSME registration obtained by them fraudulently at the earliest to prevent any misuse of the MSME registration.

We appreciate your prompt attention to this matter and look forward to your swift action.

Thanking You,

For **TECH NIRMAN ISPAT PRIVATE LIMITED**

(Authorised Signatory)  

Registered Office Shifted to (w.e.f. 27.01.2025)  
**SKMS PAVNACLE**  
Premises No.-16-0360  
DH-6/9, Action Area-ID  
Newtown, Kolkata-700156

Copy To:

1. **The Joint Director & Head of Office,  
The MSME - Development & Facilitation Office,  
B.T. Road, Kolkata-700035.**



Enclosures: As above

**TECH NIRMAN ISPAT PVT. LTD.**  
45, B. B. Ganguly Street, 5th Floor, Kolkata- 700012 ☎ 033 6600 6600 🌐 www.toptechtmt.com  
CN: 246400-IP2014PTC195592

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It is evident that basic thrust of allegation of Tech Nirman, the unsuccessful resolution applicant, vide the letter is that the Successful Resolution applicant (**Rashmi Metaliks Limited**) is not entitled to give a plan as it is a related party to the Corporate Debtor which is not an MSME. Tech Nirman has alleged that the RP on behalf of the Corporate Debtor has fraudulently obtained an MSME registration for the CD on 25.08.2023 at the commencement of CIRP for the sole purpose of allowing Rashmi Metaliks a related party to give a Resolution Plan. But the allegation that the certificate was obtained by the RP is not proved. Moreover, the earlier certificate was never mentioned which clearly shows CD as a “Small Enterprise since 1993.

**15.4** It is alleged that the RP has suppressed material facts and documents post commencement of CIRP. That the WBSEDCL has dismantled equipment from the sites which proves that there is no operation without mentioning which site, whereas the CD operates from two sites Communication from the Asst. Director MSME DFO, Kolkata reads as under:

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"ANNEXURE - K"

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एमएसएमई - डेवेलोपमेंट एवं  
फसिलिटेशन कार्यालय  
सूक्ष्म, लघु एवं मध्यम उद्यम मंत्रालय  
भारत सरकार  
111 व 112 बी टी  
रोड, कोलकाता-  
700108



MSME DEVELOPMENT &  
FACILITATION OFFICE  
Ministry of Micro, Small & Medium  
Enterprises  
Government of India  
111 & 112, B.T. ROAD  
KOLKATA - 700108

F.No. 44 /EI/UAM/SD/2024-25

Date: 04.04.2025

To,  
M/s Jagadamba Industries Limited  
Plot No.85,  
Mouza-Gopinathpur, Sagarbhanga,  
Durgapur  
Dist-Paschim Bardhaman  
Pin-713211

Sub:- Misrepresentation of facts in the Udyam Registration Certificate No UDYAM-WB-23-00280499 dtd 25.08.25 & cancellation of UR-reg

Sir,

This has reference to your Udyam Registration Certificate No UDYAM-WB-23-00280499 dtd 25.08.23 (attached herewith) wherein the unit M/S Jagadamba Industries Limited factory address Plot No.85, Mouza-Gopinathpur, Sagarbhanga, Durgapur Dist-Paschim Bardhaman Pin-713211 is reported as a medium unit (in 2024-25) engaged in manufacturing.

However, on physical verification of your unit by DIC, Paschim Bardhaman at its factory address, it has been found that the unit is closed for several years, all machineries have been dismantled and there are no employees or workers employed in the unit premises.

The above facts have not been reported by you and the existing UR clearly demonstrates misrepresentation of actual facts and the current status of the unit.

Hence you are advised to apply to the following link [https://udyamregistration.gov.in/Udyam\\_Login.aspx](https://udyamregistration.gov.in/Udyam_Login.aspx) for cancellation of Udyam Registration. The same will be done at our end on receipt of your application.

The matter may be treated as Most Urgent.

This issues with approval of the competent authority.

Yours faithfully,

*Rina Chakraborty*  
Rina Chakraborty  
Assistant Director(EI)  
For Joint Director & HoO  
MSME-DFO, Kolkata

Encl:As above

Phone: 033-2577-0595/0597/0598 (EPABX) 033 2577 5531 (Direct) | Fax: 033-2510-0524 | E-Mail: [dccl-kolkata@dcmse.gov.in](mailto:dccl-kolkata@dcmse.gov.in)



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The communication evidently is in regard to the Sagarbhangra Unit, whereas CD has two Units; one at Sagarbhangra and the other at Bidhan Commercial Complex, Durgapur, of which one is said to be operational and is not disproved. The Unsuccessful RA is conspicuous by its silence on the operational unit.

**15.5** It is evident that a writ petition has been preferred by the unsuccessful resolution Applicant Tech Nirman seeking cancellation of MSME certificate of the Corporate Debtor dated 25.08.2023. The Certificate is however yet to be cancelled.

**15.6** It is further alleged that the Information Memorandum prepared on 15.02.2024 does not mention CD as MSME.

**16 Revelations:**

**On Validity of MSME Certificate**

**16.1** An MSME certificate evidently was obtained in 1993 by Corporate Debtor, long before the commencement of CIRP and the registration certificate of 25.08.2023 is yet to be cancelled.

**16.2** Certificate obtained on 25.08.2023 post CIRP is a re-registration under Udyam Portal and not a start date for

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MSME status for the Corporate Debtor. Hence it is wrong to say or suggest that the MSME registration certificate post CIRP was obtained to avoid the bar under Section 29A.

**16.3** The challenge before the Hon'ble High Court is the later re-registration certificate under Udyam Portal.

**16.4** However, the registration Certificate of 25.08.2023 has not been cancelled as yet.

**16.5** Hon'ble NCLAT in **Ramesh Shah in Consortium with Masitia Capital Services Pvt. Ltd. Vs. Canara Bank of India & Ors.** while referring to **Haribabu Thota in Civil Appeal No. 4433 of 2023 (2024) Comp Cas1** has held:

*“The law declared by the Hon'ble Supreme Court in above judgment is crystal clear in that not having MSME status at the time of commencement of the CIRP proceedings does not disqualify the Corporate Debtor from being a resolution applicant under Section 29A of the IBC as long as his status is attained well before the submission of the resolution plan.”*

XXX

XXX

XXX

*In terms of the **Hari Babu** judgment, the SRA was squarely entitled to submit the resolution plan by claiming MSME status and take advantage of Section 240A of IBC.”*

Further, Hon'ble NCLAT while referring to **Haribabu Thota in Civil Appeal No. 4433 of 2023 (2024) Comp Cas1** has held:

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*“The MSME Act as it stands clearly does not provide any supervisory role on the Adjudicating Authority to revise/modify/revoke/interfere with MSME registration at its level. Clearly the notification framed thereunder also does not bestow upon the Adjudicating Authority with any such authority to hold an MSME registration certificate to be null and void on its own. Even if Adjudicating Authority was suo motu convinced or persuaded to believe that there were errors in the calculation of the WDV in the grant of MSME status, to our minds, before embarking on any exercise of unilaterally undertaking calculation of the WDV as its own level, the Adjudicating Authority ought to have asked itself the question as whether the Parliament while framing the MSME Act intended to bestow any such authority on it. In the exercise of summary jurisdiction by the Adjudicating Authority under IBC, the Adjudicating Authority is not expected to go into details of accounts and examination of certificates issued by the competent authority under MSME Act and notification issued thereunder. The MSME registration can only be revoked by the competent authority and the Adjudicating Authority cannot arrogate this jurisdiction upon itself to modify/revise/revoke or interfere in any manner with the MSME registration granted by the competent authority. We are of the considered opinion that the MSME status of the Corporate Debtor as granted by the competent authority continues to subsist and could not have been disregarded by the Adjudicating Authority unilaterally.*

Thus in view of the aforesaid authoritative pronouncement of the Hon’ble Apex Court, this Adjudicating Authority can neither delve into the validity of, nor revoke the MSME registration Certificate of the CD or cancel the MSME registration of the Corporate Debtor.

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The certificate being not revoked / cancelled / rescinded by Competent Authority has to be deemed as subsisting and valid and cannot be disregarded by us.

**17 Whether SRA is related to the CD**

Coming to the other issue, we note as follows:

**17.1** Section 5(24) of the Code defines the expression “**related party**” in relation to a Corporate Debtor and reads as under:

*“related party, in relation to a Corporate Debtor, means:-*

*“(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;*

*(b) xx*

*(c) xx*

*(d)xx*

*(e)xx*

*(f) xx*

*(g)xx*

*(h) any person on whose advice, directions or instructions, a director, partner or manager or the corporate debtor is accustomed to act;*

*(i) a body corporate which is a holding, subsidiary or any associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;*

*(j) any person who controls more than twenty per cent of voting rights in the corporate debtor on account of ownership or a voting agreement;*

*(k) any person in whom the corporate debtor controls more than twenty per cent of voting rights on account of ownership or a voting agreement;*

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- 
- (l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;*
- (m) any person who is associated with the corporate debtor on account of –*
- i. Participation in policy making process of the corporate debtor; or*
  - ii. Having more than two directors in common between the corporate debtor and such person; or*
  - iii. Interchange or managerial personnel between the corporate debtor and such person; or*
  - iv. Provision of essential technical information to, or from, the corporate debtor;”*

The daughter of the promoters of the CD, Ms. Priyanka Patwari (nee Kedia) is married to the family of Patwari's who control the SRA. Hence, it is urged that CD and SRA are related parties other than being a “relative” of a director of CD (Kedia's), none of the above qualifications get attracted here in case of SRA (Patwari's)

**17.2** Clause (a) of Section 5(24), says that a Director or partner of the corporate debtor or a relative of a Director or partner of the corporate debtor would be a related party Likewise, as per clause (e) of Section 5(24), "related party" in relation to a corporate debtor would mean a private or public company in which a Director, partner or manager of the corporate debtor

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is a Director and holds along with relatives more than two per cent of its share capital or paid-up share capital, as the case may be.

**17.3** Section 5(24-A) defines "**related party**" in relation to an individual which is as follows:

*"5. Definitions- In this Part. unless the context otherwise requires-  
[(24-A) "**related party**", in relation to an individual, means-)  
(a) a person who is a relative of the individual or a relative of the spouse of the individual.*

XXX

XXX

XXX

**Explanation** For the purposes of this clause-  
(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely  
(i) members of a Hindu undivided family,  
(ii) husband.  
(iii) wife,  
(iv) father.  
(v) mother,  
(vi) son,  
(vii) daughter,  
(viii) son's daughter and son,  
(ix) daughter's daughter and son,  
(x) grandson's daughter and son,  
(xi) granddaughter's daughter and son.  
(xii) brother.  
(xiii) sister.  
(xiv) brother's son and daughter.

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*(xv) sister's son and daughter.*  
*(xvi) father's father and mother.*  
*(xvii) mother's father and mother,*  
*(xviii) father's brother and sister.*  
*(xx) mother's brother and sister, and*  
*(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included:*  
**84. From the above, it is evident that a person who is thus a relative of the individual or a relative of the spouse of the individual would be a "related party" in relation to that individual. That apart, a private company or a public company in which the individual is a Director and holds along with relatives more than two per cent of its share capital or paid-up share capital, as the case may be, would be a "related party" in relation to an individual. Further, as per the Explanation, both maternal and paternal uncles would be covered within the definition of "related party".**

**17.4** Section 29-A of the Code mentions persons not eligible to be a resolution applicant. Section 29-A reads as follows:

*"29-A. Persons not eligible to be resolution applicant-A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-*  
*(a) is an undischarged insolvent;*  
*(b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);*  
*(c) [at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking*

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*Regulation Act, 1949 (10 of 1949) (or the guidelines of a financial sector regulator issued under any other law for the time being in force.) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan [Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.*

**Explanation 1.** *For the purposes of this proviso, the expression b "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 for completion of such transactions as may be prescribed.] prior to the insolvency commencement date.*

*Explanation 11. For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code. then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code:1*

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*[(d) has been convicted for any offence punishable with imprisonment- resolution plan by the Adjudicating Authority under this Code:*

*[(d) has been convicted for any offence punishable with imprisonment-*

*(i) for two years or more under any Act specified under the Twelfth Schedule; or*

*(if) for seven years or more under any other law for the time being in force:*

*Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:*

*Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation 1.]*

*(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 1:]*

*is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;*

*(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken*

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*place and in respect of which an order has been made by the Adjudicating Authority under this Code:*

*[Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;]*

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

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

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

*Xxx*

*xxx*

*xxxx*

Tech Nirman, the unsuccessful RA has failed to show how Section 29A is getting attracted.

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**17.5** As per Section 29-A(g), a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with such person has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the adjudicating authority. No such PUFEE application is noted. Hence, the said clause is also not attracted to create a bar under Section 29A.

**17.6** Merely, because Ms. Priyanka Patwari (nee Kedia), the daughter of R.K. Kedia, the Suspended Director of CD has inappreciable shareholding in the CD, that itself would not attract the bar under Section 29A (g) & (j) as alleged. A bar under Section 29A cannot be attracted only by virtue of a blood relationship or marital alliance.

**17.7** Further, the shareholding of Priyanka Patwari (nee Kedia) in the Corporate Debtor is too insubstantial (.007% through multiple layers) to exert any control in the Board or its affairs

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and Management of CD or to attract the bar under Section 5(24) (j) of the Code which requires more than twenty percent of voting rights in the CD.

**17.8 In Arcelormittal India Pvt Lid v. Satish Kumar Gupta and Ors-(2019) 2 SCC, the Hon’ble Apex Court observed that**

*“ The opening lines of Section 29-A of the Amendment Act refer to a de facto as opposed to a de jure position of the persons mentioned therein. This is a typical instance of a "see-through provision", so that one is able to arrive at persons who are actually in "control", whether jointly, or in concert, with other persons. A wooden, literal, interpretation would obviously not permit a tearing of the corporate veil when it comes to the "person" whose eligibility is to be gone into. However, a purposeful and contextual interpretation, such as is the felt necessity of interpretation of such a provision as Section 29-A, alone governs. For example, it is well settled that a shareholder is a separate legal entity from the company in which he holds shares.”*

The insignificant shareholding of Ms. Priyanka Patwari (nee Kedia) in Corporate Debtor cannot identify her with the CD itself, in absence of any concrete evidence of her participation in the affairs of the CD or even of the SRA.

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**17.9** In **Swiss Ribbons** (supra), the Hon'ble Apex Court has expounded the term related party in the context of Section 29A as under:

*“We are of the view that persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, **all the categories of persons mentioned in Section 5(24-A) show that such persons must be "connected" with the resolution applicant within the meaning of Section 29-A(j).** This being the case, the said categories of persons **who are collectively mentioned under the caption "relative" obviously need to have a connection with the business activity of the resolution applicant. In the absence of showing that such person is "connected" with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29-A(j).** All the categories in Section 29-A(J) deal with persons, natural as well as artificial, who are connected with the business activity of the resolution applicant. The expression **"related party", therefore, and "relative" contained in the definition sections must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant.**”*

**17.10** It has thus been sufficiently held that the term “relative” occurring in Section ‘5 (24-A), has to be read as a “relative” who is connected with the business activity of the Resolution Applicant. The unsuccessful RA, Tech Nirman failed to

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establish SRA's ineligibility under Section 29A due to marriage alliance between promoters of SRA and the CD and miniscule shareholding of the daughter of promoter of SRA in the CD.

**17.11 Further, in *Eva Agro Feeds Pvt Ltd v. PNB and Anr.* (2023) 10 SCC 189**, the Hon'ble Apex Court while explaining the true import of "related party" has held that the following:

*"85. Section 29-A of the Code mentions persons not eligible to be a resolution applicant. Section 29-A reads as follows:*

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

*(a) is an undischarged insolvent:*

*(b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10) of 1949);*

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

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

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

*Explanation I. For the purposes of this proviso, the expression b "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 for completion of such transactions as may be prescribed.] prior to the insolvency commencement date.*

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

*[(d) has been convicted for any offence punishable with imprisonment-*

*(i) for two years or more under any Act specified under the Twelfth Schedule; or*

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*(ii) for seven years or more under any other law for the time being in force:*

*Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment: Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation 1:]*

*(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:*

*(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:*

*[Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction:]*

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

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

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

*Explanation [1]. 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 (7) and (ii)."*

*86. Thus, as per Section 29-A(j), a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with such person has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the adjudicating authority. Clause (1) says that a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with such person has a connected person not eligible under clauses (a) to (i). As per Explanation (1), the expression "connected person" means (1) any*

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*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 the management or control of the business of the corporate debtor during the implementation of the resolution plan, etc,*

*87. The expression "related party" appearing in Sections 5(24) and (24-A) suffering ineligibility under Section 29-A has received considerable attention of this Court. In *Swiss Ribbons (P) Ltd. v. Union of India*, a constitutional challenge was made to Section 29-A(j) of the Code read with the definition of related party" as defined under Sections 5(24) and 5(24-A). While repelling the challenge, this Court held as follows: (SCC p. 107. paras 109-10).*

*"109. We are of the view that persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, all the categories of persons mentioned in Section 5(24-A) show that such persons must be "connected" with the resolution applicant within the meaning of Section 29-A(j). This being the case, the said categories of persons who are collectively mentioned under the caption "relative" obviously need to have a connection with the business activity of the resolution applicant. In the absence of showing that such person is "connected" with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29-A(j) All the categories in Section 29-A(j) deal with persons, natural as well as artificial. who are connected with the business activity of the resolution applicant. c The expression*

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*"related party", therefore, and "relative" contained in the definition sections must be read noscitur a socius with the categories of persons mentioned in Explanation 1. and so read, would include only persons who are connected with the business activity of the resolution applicant*

*110. An argument was also made that the expression "connected d person" in Explanation 1, clause (ii) to Section 29-A(j) cannot possibly refer to a person who may be in management or control of the business of the corporate debtor in future. This would be arbitrary as the explanation would then apply to an indeterminate person. This contention also needs to be repelled as Explanation I seeks to make it clear that if a person is otherwise covered as a "connected person", this provision would also cover a person who is in management of control of the business of the corporate debtor during the implementation of a resolution plan. Therefore, any such person is not indeterminate at all, but is a person who is in the saddle of the business of the corporate debtor either at an anterior point of time or even during implementation of the resolution plan. This disposes of all the contentions raising questions as to the constitutional validity of Section 29-A(j)"*

*88. An issue of interpretation in relation to the first proviso of Section 21(2) is whether the disqualification under the proviso would attach to a financial creditor only in praesenti, or if the disqualification also*

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*extends to those financial creditors who were related to the corporate debtor at the time of acquiring the debt.*

*89. In Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd. 21, this Court noted that the expression "related party" is defined in Section 5(24) in relation to a corporate debtor and Section 5(24-A) provides a corresponding definition in relation to an individual. Thereafter, it has been observed as under: (SCC p. 520. para 88)*

*"88. An issue of interpretation in relation to the first proviso of Section 21(2) is whether the disqualification under the proviso would attach to a financial creditor only in praesenti, or if the disqualification also extends to those financial creditors who were related to the corporate debtor at the time of acquiring the debt."*

There is nothing on record to show that the “**related party**” under Section 5(24) and 5 (24) A which Tech Nirman is highlighting suffers ineligibility under Section 29A Clauses ‘a’ to ‘j’.

There is nothing on record to suggest that disqualification under Section 29A (j) is in any manner attracted. That Patwaris of Rashmi Metaliks were connected with the business activity of the CD or Priyanka Patwari the daughter of the R.K. Kedia was in active management or control of business of CD is also not established.

**17.12** Familial relationship between the promoters of the CD and SRA is not sufficient to attract bar under Section 29A.

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**17.13** It appears that the bar contemplated under Section 29A of the IBC can be attracted by blood relationship only if such relative is potentially ineligible under Section 29A and if the blood relative also falls under disqualification criteria himself (or herself) or through his (or her) connection, and not otherwise, i.e. such blood relative connected to the original disqualification promoter is himself or herself debarred under Section 29A of the Code.

**17.14 Section 240A** of the Code reads as under:

***“Application of this Code to micro, small and medium enterprises.-***

*(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process [or pre-packaged insolvency resolution process] of any micro, small and medium enterprises.*

XXX

XXX

XXX

***Explanation.*** *For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)”*

The Provision explicates the benefit of wiping out bar under Section 29A of the Code in case of CIRP of an MSME enterprise. The provision allows a “**related party**” of an MSME to give a Resolution Plan for the MSME Corporate Debtor.

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Such being the position, the MSME registration certificate of the Corporate Debtor which is still valid, will wipe out all disabilities, if any existing in terms of Section 29A of the Code. Consequently, the present SRA cannot be held ineligible to submit a Resolution Plan for the Corporate Debtor.

**18** Further an elaborate order has been passed to Tech Nirman Ispat Private Limited's application vide IA (IB) NO. 2092/KB/2024.

**19 Conclusion:**

In view of the discussion supra, we do not find any infirmity with the approval of the SRA's Plan.

**20** Consequently, **IA (IB) No. 624/KB/2025 is dismissed.**

**21** No order as to costs.

**22** The Registry is directed to send e-mail copies of orders forthwith to all the parties inclusive of the Counsel.

**23** Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

**Siddharth Mishra  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**Signed on this, the 24<sup>th</sup> day of November, 2025**

s.c.(steno) / M. Jana (P.S.)

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