NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/1693/2026 C.P. (IB)/294(MB)2025

IN THE MATTER OF
Punjab National Bank … Petitioner
Vs
Damara Gold Private Limited … Respondent

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 07.07.2026

CORAM:
MS. LAKSHMI GURUNG
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:
For the Applicant:

For the RP: PCA Harsh Gupta (VC)

ORDER

IA/1693/2026- The above IA is listed for pronouncement of order. The same is pronounced in open Court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

Sd/-
LAKSHMI GURUNG
Member (Judicial)

//Avdhesh//

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V

IA (IBC) NO. 1693 OF 2026

IN

CP (IB) NO. 294 OF 2025

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

IN THE MATTER OF

Rajil J. Pahuja

Residing at: 12, Ellora Co-op Hsg. Soc. Ltd. 1st Floor, 4th Road, Khar (West), Mumbai, Maharashtra – 400052

Shree Aavad Kruppa Jewellery

Through its partner Heena Dhorda

21 7, C-, Akurli Industrial Premises Estate, Akurii Road, Kandivali East, Mumbai 40010l

… Applicants

Versus

Sumit Shukla

Resolution Professional of Damara Gold Private Limited

B-4/702, Krishna Apra Gardens, Plot No. 7, Vaibhav Khand, Indirapuram, Ghaziabad, UP

… Respondent No. 1/ Resolution Professional

Committee of Creditors of Damara Gold Private Limited
Mid Corporate Centre, Western - 1, PNB Pragati Tower, C-9, G-Block, Ground Floor, Bandra Kurla Complex, Mumbai 400051

… Respondent No. 2

IN THE ORIGINAL MATTER OF
Punjab National Bank

… Financial Creditor

Versus

Damara Gold Private Limited

… Corporate Debtor

Order Delivered on: 07.07.2026

Coram:

Ms. Lakshmi Gurung	Sh. Charanjeet Singh Gulati
Member (Judicial)	Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: - Adv. Rohan Agarwal, Adv. Saurabh Nikalje (PH)

For the Respondent:-

ORDER

IA (IBC) NO. 1693 OF 2026

1. The present Interlocutory Application dated 21.04.2026 has been filed by the Rajil J. Pahuja and Anr. (‘**the Applicants**’) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (‘**IBC/the Code**’) read with Rule 11 of National Company Law Tribunal Rules, 2016 (‘**NCLT Rules’**) with the following prayers:

    i. *Set aside and quash the impugned rejection of the Applicants' Expression of Interest (EOI) communicated by Respondent No. 1 vide email dated 25th March 2026;*

    ii. *Direct the Respondents to include the Applicants in the final list of eligible Prospective Resolution Applicants (PRAs) and permit the Applicants to participate in the Corporate Insolvency Resolution Process of the Corporate Debtor;*

    iii. *Declare that the rejection of the Applicants' EOI on the ground of alleged non-fulfilment of eligibility criteria is arbitrary, illegal and contrary to the process document;*

    iv. *Direct the Respondents to consider the Applicants' EOI afresh, in a fair, transparent and non-arbitrary manner, taking into account the consortium structure and the financial and technical capabilities of the Applicants;*

    v. *Grant such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case, in the interest of justice and equity.*

Particulars of the Parties:

2. The Applicants are consortium of Person where the Applicant No. 1 is the son of Mr. Jagdish Raghunath Pahuja, a member of the Suspended Board of Directors of the Corporate Debtor, and the brother of Mr. Monil Jagdish Pahuja, who is also a member of the Suspended Board of Directors.

3. Respondent No. 1 is Resolution Professional of the Corporate Debtor appointed by this Tribunal vide its order dated 08.12.2025.

4. Respondent No. 2 is committee of creditors of the Corporate Debtor comprising of the Punjab National Bank and the Bank of Maharashtra.

Brief facts as per the Application;

5. The Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor was commenced pursuant to the order dated 08.12.2025 passed by this Tribunal.

6. The Applicants submit that Respondent No. 1 published Form G on 07.02.2026 inviting Expressions of Interest ("**EoI**") from prospective resolution applicants. As per the process document, the last date for submission of EoIs was stipulated as 21.02.2026; the provisional list of Prospective Resolution Applicants ("**PRA**s") was to be issued on 03.03.2026; objections to the provisional list, if any, were to be submitted by 08.03.2026; and the final list of PRAs was scheduled to be issued on 18.03.2026.

7. It is submitted that Applicant No. 1, vide email dated 17.02.2026, requested Respondent No. 1 to grant an extension of 10 days for submission of the EoI. Thereafter, upon a reminder email dated 19.02.2026, Respondent No. 1, vide reply dated 20.02.2026, informed the Applicants that the request for

extension would be placed before Respondent No. 2 for consideration and that the decision taken thereon would be duly communicated.

8. It is submitted that, in the absence of any communication regarding the request for extension and in order to adhere to the prescribed timeline, the Applicants submitted their EoI along with the Earnest Money Deposit ("**EMD**") to Respondent No. 1 vide email dated 21.02.2026.

9. The Applicants received an email dated 03.03.2026 from Respondent No. 1 informing them that the EoI submitted by the Applicants had been marked as defective. The said communication further stated that the defects had been separately intimated and requested the Applicants to cure the same immediately to enable consideration of their EoI.

10. It is submitted that Respondent No. 1, vide email dated 04.03.2026, communicated the deficiencies allegedly existing in the EoI submitted by the Applicants. Pursuant thereto, the Applicants furnished all requisite documents and clarifications for removal of the said defects through emails dated 10.03.2026, 11.03.2026, 12.03.2026, 17.03.2026, and 18.03.2026. Further, Applicant No. 1, vide letter dated 18.03.2026, clarified that the EoI had been submitted as a consortium since Applicant No. 1, in his individual capacity, did not satisfy the turnover requirement prescribed under Form G, and accordingly sought exemption/relaxation in this regard.

11. The Applicants submit that, vide email dated 25.03.2026, Respondent No. 1, acting on the instructions of Respondent No. 2, informed the Applicants that the *"authorities have declined to consider the request of Mr. Rajil Pahuja for grant of exemption/relaxation so as to include him in the final list of eligible PRAs"*.

12. The Applicants submit that Applicant No. 1 is a promoter-shareholder and erstwhile Director of the Corporate Debtor, possessing extensive technical expertise and operational knowledge of the Corporate Debtor's business. It is further submitted that Applicant No. 1 has not only been a shareholder of the Corporate Debtor but has also extended substantial financial assistance thereto by way of loans aggregating to Rs. 4,55,35,116.68/-, which is duly reflected in the books of accounts of the Corporate Debtor. In such circumstances, the contention of the Respondents that Applicant No. 1 lacks the requisite financial capacity or fails to meet the prescribed turnover threshold of Rs. 3 Crores is wholly misconceived, untenable, and contrary to the record, as the advancement of such substantial financial assistance itself demonstrates financial capability well beyond the prescribed eligibility criteria.

13. The Applicants submitted that the rejection of their EoI is arbitrary and contrary to the process document. It is submitted that the Respondents wrongly assessed Applicant No. 1 in isolation, despite the EoI having been submitted as a consortium. The Applicants further submit that any deficiencies were procedural and duly cured within the prescribed timelines. According to the Applicants, the Respondents adopted an unduly technical interpretation of the eligibility criteria, overlooking the consortium's collective capabilities, thereby restricting participation and value discovery in the resolution process.

14. In support of their submission that exemption/relaxation should be granted to the Promoter in regards to the Eligibility criteria and that the Promoter need not compete with other Resolution Applicants, the Applicant relied upon the following judgments of the Hon'ble NCLAT and NCLT:

i. *Saravana Global Holdings Ltd. and Another v. Bafna Pharmaceuticals Ltd. and Others* (2019 SCC Onlie NCLAT 962) (Paragraphs 20-22)

ii. *Mr. C. Raja John v. Mr. R. Raghavendran and ors* (Company Appeal (AT) (CH) (INS) No. 207 of 2021) (Paragraph 29, 32-34)

iii. *Jubin Kishore Thakkar v. Ashutosh Agarwala* ((2026) ibclaw.in 1075 NCLT) (Paragraphs 5.7 to 5.18)

iv. *Hemanth Naga Mumar Nerella v. Rajesh Chillale and Anr* (2023 SCC Online NCLT 57963) (Paragraph 9)

<u>Affidavit in Reply by Respondent Nos. 1 and 2, in brief:</u>

15. Respondents No. 1 and Respondent No. 2 have filed separate reply. However, such replies are similar. In the interest of brevity and to avoid unnecessary repetition, the individual replies are not reproduced herein. Instead, the collective submissions made by the Respondents in brief, are extracted herein below:

16. Respondent No. 1 submits that in the 2nd meeting of the Committee of Creditors ("**CoC**") held on 29.01.2026, the CoC, in exercise of its commercial wisdom, approved the eligibility criteria for Prospective Resolution Applicants ("**PRAs**"). As per the EoI Process Note, Category A applicants, including individuals, body corporates, LLPs, and partnership firms, were required to have a minimum tangible net worth of Rs. 3 Crores and a minimum turnover of Rs. 15 Crores as on 31.03.2025, certified by a practicing Chartered Accountant. The Process Note further stipulated that in the case of a joint venture, consortium, trust, or SPV, each constituent member was required to independently satisfy the applicable eligibility criteria, failing which the PRA would be rendered ineligible.

17. It is submitted that Respondent No. 1 published Form G on 05.02.2026 calling for EoI from eligible PRAs, with 21.02.2026 stipulated as the last date for submission thereof and subsequently, the EoI Process Note was made available to interested applicants upon request.

18. Respondent Nos. 1 and 2 submits that Applicant No. 1, vide email dated 17.02.2026, sought an extension of 10 (ten) working days for submission of the EoI. Respondent No. 1, vide email dated 20.02.2026, informed the Applicant that any extension would be subject to the approval of the CoC and accordingly placed the request before the CoC. However, no extension was granted. In the meantime, the Applicant, without awaiting the CoC's decision, submitted the EoI on 21.02.2026, being the last date prescribed for submission.

19. Respondent No. 1 submits that, vide email dated 03.03.2026, the provisional list of PRAs was issued and the Applicants were informed that their EoI had been found deficient, with directions to cure the defects by 10.03.2026. Thereafter, vide email dated 04.03.2026, a detailed deficiency note was shared identifying the missing documents pertaining to Applicant No. 1 (individually) and Applicant No. 2 (the consortium partner) and also, the consortium documents.

20. It is submitted that the Applicants furnished various documents in support of their EoI between 10.03.2026 and 18.03.2026. During the course of scrutiny, Respondent No. 1, vide emails dated 11.03.2026 and 17.03.2026, sought a defect-wise compliance statement, requisite computations in accordance with the eligibility criteria and noted that the CIBIL Reports were not self-attested. In response, Applicant No. 1, vide letter dated 18.03.2026 addressed to Respondent Nos. 1 and 2, expressly acknowledged that he did not meet the prescribed eligibility criteria in his

individual capacity, his net worth being below Rs. 3 Crores and he having no turnover.

21. Respondent Nos. 1 and 2 submits that the Applicants' request for exemption/relaxation was placed before the CoC for its consideration. The CoC, after due deliberation and in the exercise of its commercial wisdom, declined to grant the exemption/relaxation sought by the Applicants. Consequently, vide email dated 25.03.2026, Respondent No. 1 informed the Applicants that the competent authority had declined their request for exemption/relaxation and, therefore, Applicant No. 1 could not be included in the final list of eligible PRAs.

22. It is further submitted that the financial profile of Applicant No. 1, as disclosed in the documents furnished by him, do not satisfy the eligibility criteria prescribed under the process document. The net worth of Applicant No. 1 as on 31.03.2025 is stated to be Rs. 1,25,25,156/-, which falls substantially below the prescribed minimum threshold of Rs. 3,00,00,000/-. Further, the EoI documents submitted by Applicant No. 1 disclose a turnover of ‘Nil’, as against the minimum turnover requirement of Rs. 15,00,00,000/-. Accordingly, the ineligibility of the Applicant No. 1 does not arise from a shortfall or a technical deficiency as the Applicant No. 1 falls short of both prescribed financial thresholds.

23. Respondent Nos. 1 and 2 submits that the rejection was in accordance with the CoC in its commercial wisdom under the Code approved eligibility criteria as set out in the EoI Process Note and specifically because Applicant failed to meet the minimum net worth and turnover criteria prescribed for a PRA. The belated request to amend the eligibility criteria, which, if allowed, would have been unfair and prejudicial to other

prospective applicants who refrained from submitting their EoI on account of not meeting the prescribed criteria.

24. Respondent No. 1 submits that Applicants submitted an EoI on 21.02.2026. The Applicants have acknowledged and undertook that: (i) the CoC has the discretion to accept or reject any EOI without assigning reasons and without any liability (ii) the determination of eligibility by the Interim Resolution Professional (IRP)/Resolution Professional (RP)/CoC is final and (iii) the IRP/RP/CoC reserve the right to exclude any prospective resolution applicant at any stage. Therefore, the Applicants are bound by the terms and timelines of the Form G as well as EOI process note.

25. It is stated that the statement of the Applicant No. 1 that he is promoter the Corporate Debtor under Section 2(69) of the Companies Act, 2013 ("**the Act, 2013**") of is disputed and liable to strict proof. The Applicant has not placed any material on record to substantiate that he satisfies any of the statutory indicia of a promoter.

26. It is submitted that in the same EoI process note, another PRA in the final list has submitted the EoI which include an entity i.e. Daaraa Advance Manufacturing Solutions Pvt Limited in which mother of Applicant No. 1, Mrs. Deepa Pahuja holds a 95% stake, further till very recent, 50% shares of Daaraa Advance Manufacturing Solutions Pvt Limited were owned by the applicant whereas the other 50% shares owned by applicant's brother who is also one of the directors of the suspended board of the Corporate debtor.

27. The eligibility criteria approved by the CoC are to ensure that only serious, capable, and financially sound PRAs participate in the process. This is

essential to safeguard the objectives of the Code, which mandates that the resolution plan must be feasible and viable under Section 30(2).

28. Respondent No. 2 submits that Mr. Jagdish Pahuja, father of Applicant No. 1 and part of the suspended management, regularly attended CoC meetings and was fully aware of the eligibility criteria and process and no objection was raised at the relevant stage. The challenge to the eligibility criteria has been raised only after rejection of the Applicants' EoI and is therefore an afterthought. Having participated in the process with full knowledge of the eligibility conditions, the Applicants are estopped from challenging the same after failing to meet the prescribed requirements.

29. Respondent No. 2 further submits that the present Application is a continuation of the Applicants' and suspended management's attempts to delay and obstruct the CIRP. Earlier challenges to the CIRP were dismissed by the Hon'ble NCLAT and the Hon'ble Supreme Court, with the Hon'ble NCLAT had specifically observed that the suspended management's conduct was non-cooperative and that its restructuring-related objections were an afterthought and an attempt to derail the CIRP process. The present plea for relaxation of eligibility criteria under the guise of MSME benefits is another belated and opportunistic attempt to delay the CIRP.

Analysis and Findings

30. We have heard the Ld. Counsels for the parties and perused the documents placed on record.

31. Through the present Interlocutory Application, the Applicant seeks to be included in the final list of eligible PRAs and permission to participate in the CIRP of the Corporate Debtor with exemption/relaxation in respect of eligibility criteria. The Applicants contend that Applicant No. 1 is a promoter-shareholder of the Corporate Debtor, which qualifies as an

MSME, and therefore the rejection of the Applicants' EoI is arbitrary, unreasonable, and contrary to the terms of the EoI Process Document. Also that the Applicants had submitted their EoI as a consortium and not as an individual entity, and therefore, the Respondents erroneously assessed the eligibility of Applicant No. 1 in isolation instead of evaluating the consortium as a whole.

32. *Per contra*, Respondent Nos. 1 and 2 contend that the eligibility criteria for PRAs were duly approved by the CoC in the exercise of its commercial wisdom and expressly required each consortium member to independently satisfy the prescribed net worth and turnover requirements. It is contended that the Applicants' request for relaxation/exemption on the ground of being promoters of an MSME was declined by the CoC, following which their EoI was rejected and the Applicants were excluded from the final list of eligible PRAs for failure to meet the prescribed eligibility criteria.

33. Further it is contended that the Applicants have not placed any material on record to establish that Applicant No. 1 qualifies as a promoter under Section 2(69) of the Companies Act, 2013, and that the Applicants participated in the process with full knowledge and acceptance of the eligibility criteria, and any relaxation thereof would be unfair and prejudicial to other PRAs who refrained from submitting their EoIs due to their inability to satisfy the prescribed requirements.

34. Basis the facts of the case and arguments advanced by the Ld. Counsel for the parties, the issues for our determination can be reduced as under:

   i. *Whether in the facts and circumstances of the case, the eligibility criteria of the Applicants could be considered on the basis of their combined Net worth and Turnover?*

ii. Whether in the fact and circumstance of the case, the Applicants qualifies as a promoter of the Corporate Debtor within the meaning of Section 2(69) of the Companies Act, 2013?

iii. Whether in the facts and circumstances of the case the Applicants should be granted relaxation/exemption of Eligibility Criteria despite being rejected by the CoC?

35. In order to address the issue on hand, following relevant and undisputed facts are noted:

i. The Corporate Debtor is a registered Micro, Small and Medium Enterprise ("**MSME**").

ii. The CIRP against the Corporate Debtor was initiated by this Tribunal vide order dated 08.12.2025.

iii. The Applicant No.1 is the son of Mr. Jagdish Raghunath Pahuja, a member of the Suspended Board of Directors of the Corporate Debtor, and the brother of Mr. Monil Jagdish Pahuja, who is also a member of the Suspended Board of Directors.

iv. The CoC, in its 2nd Meeting held on 29.01.2026, in its commercial wisdom approved the eligibility criteria for PRAs under Category A, requiring a minimum tangible net worth of Rs. 3 Crores and a minimum turnover of Rs. 15 Crores as on 31.03.2025, along with the EoI Process Note stipulating that, in the case of a consortium, each constituent participant must independently satisfy the prescribed eligibility criteria.

v. Pursuant thereto, Form G was published on 05.02.2026 inviting EoIs, where the last date for submission of EoI was 21.02.2026. Thereafter, the EoI Process Note was made available to all interested applicants.

vi. Applicant No. 1 sought an extension of 10 (ten) days for submission of the EoI; however, the request was not acceded to, and the Applicants submitted their EoI on 21.02.2026.

vii. Respondent No. 1 communicated the deficiencies observed in the EOI submitted by the Applicants.

viii. Applicant No. 1 acknowledged in his individual capacity that it did not satisfy the minimum net worth requirement of Rs. 3 Crores and turnover requirement of Rs. 15 Crores stipulated under the EoI Process Note.

ix. The Applicant submitted various documents in support of its EOI between 10.03.2026 and 18.03.2026. On 18.03.2026, the Applicant further sought exemption/relaxation from the prescribed net worth and turnover criteria on the ground that the Corporate Debtor was an MSME; however, the said request was not accepted. Consequently, Respondent No. 2 rejected the Applicants' EOI.

<u>Determination as to Issue (i)</u>

36. In order to address this issue, it is imperative to look into corresponding stipulation in the relevant documents. Upon perusal of the documents placed on record, it is observed that Clause 1 (Eligibility) of the Process Note expressly provide as follows:

Clause 1 -

"3. ***In the event the Prospective Resolution Applicant is a joint venture, consortium, trust, or special purpose vehicle***

> ***(SPV) comprising or representing any participant(s) falling under Category A or Category B, each constituent participant shall be required to independently meet and demonstrate compliance with the eligibility criteria prescribed for its respective category.*** *The PRA shall furnish all relevant records, constitutional documents, agreements, and supporting information pertaining to such joint venture, consortium, trust, or SPV, including details of ownership, control, governance arrangements, and the roles and responsibilities of each participant.* ***Failure of any constituent participant to meet the applicable eligibility criteria may render the entire PRA ineligible***."

Further, the eligibility criteria approved by Respondent No. 2 under Category A, prescribed a minimum tangible net worth of Rs. 3 Crores and a minimum turnover of Rs. 15 Crores, both as on 31.03.2025.

37. As per Clause 1, Point 3 of the EoI, the eligibility criteria for a PRA stipulates that, *"In the event the Prospective Resolution Applicant is a joint venture, consortium, trust, or special purpose vehicle (SPV) comprising or representing any participant(s) falling under Category A or Category B, each constituent participant shall be required to independently meet and demonstrate compliance with the eligibility criteria prescribed for its respective category."* In view of the aforesaid stipulation, the contention of the Applicants that the eligibility criteria of the Applicant No. 1 and 2 should be combined because they have applied as a consortium is contrary to the terms of the Process note. The Process note mandates that each constituent member of a consortium must independently satisfy the prescribed eligibility criteria.

38. It is an undisputed fact that Applicant No. 1, in his individual capacity, did not satisfy the eligibility criteria prescribed under the EoI, particularly the minimum tangible net worth of Rs. 3 Crores and turnover of Rs. 15 Crores.

The same was expressly acknowledged by Applicant No. 1 in his mail dated 18.03.2026 addressed to the Respondents. It is also noted that Section 25(2)(h) of the Code mandates that the Resolution Professional shall invite prospective resolution applicants who fulfil such criteria as may be approved by the CoC. The eligibility criteria are designed to ensure that only bona fide and financially capable applicants participate in the resolution process.

39. In view of the facts and circumstances of the present case, the net worth and turnover of Applicant No. 1 and Applicant No. 2 cannot be combined to meet the eligibility requirements under the Process Note. Accordingly, Issue No. (i) is answered in the negative.

Determination as to Issue (ii)

40. In order to address this issue, we would refer to relevant portion of Section 2(69) of the Companies Act, 2013 which is reproduced herein below for the easy reference:

> *"Section 2(69) - "**promoter**" means a person—*
> *(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or*
> *(b) **who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise**; or*
> *(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:*
>
> *Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity."*
>
> ***[Bold for Emphasis]***

41. Upon a plain reading of Section 2(69) of the Companies Act, 2013, a "promoter" essentially means a person who is either identified as a promoter in the company's official records, or someone who exercises direct or indirect control over the affairs of the company, whether as a

shareholder, director, or otherwise. It also includes a person whose advice, directions, or instructions the Board of Directors is accustomed to follow, except where such person is merely acting in a professional capacity. Thus, the provision recognizes not only formally designated promoters but also individuals who, in substance, wield control through the Board of directos over the management and affairs of the company.

42. With regards to the contention of Applicant No. 1 is that he is a promoter-shareholder of the Corporate Debtor, it is undisputed fact that the Applicant No.1 is the son of Mr. Jagdish Raghunath Pahuja, a member of the Suspended Board of Directors of the Corporate Debtor, and the brother of Mr. Monil Jagdish Pahuja, who is also a member of the Suspended Board of Directors and also, holds around 11.5% of the share in the Corporate Debtor. However, a perusal of the Master Data with regards to Company Information and Director/Signatory Details reveals that Mr. Jagdish Raghunath Pahuja is reflected as a Director, while Mr. Monil Jagdish Pahuja is reflected as both Director and Promoter of the Corporate Debtor. Significantly, Applicant No. 1 is not recorded as a promoter in the Master Data of the Company. Therefore, Clause (a) of Section 2(69) of the Companies Act, 2013 is not satisfies by the Applicant No. 1

43. The Applicant contends that he exercised direct or indirect control over the affairs of the Corporate Debtor and consequently falls within the ambit of a promoter as he is related to suspended board of management of Corporate Debtor. In this regard, it is relevant to refer to Section 2(27) of the Companies Act, 2013, which defines the term "control" as follows:

> *"**Section 2(27) – Control** –*
> *"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their*

shareholding or management rights or shareholders agreements or voting agreements or in any other manner."

44. Upon a reading of the said provision, it is clear that the term "control" encompasses any person or group of persons having the right to appoint a majority of the directors or to control the management or policy decisions of a company. Such control may be exercised individually or in concert with others, directly or indirectly, and may arise through shareholding, management rights, shareholders' agreements, voting agreements, or any other arrangement conferring the ability to influence or direct the affairs of the company.

45. The Respondent has raised the issue that the status of the Applicant No.1, as a promoter, is disputed, as no material is placed on record to substantiate that he satisfies the criteria of a "Promoter". Despite the Respondent having categorically raising the issue, the Applicant has neither rebutted the same nor placed on record any material to demonstrate that Applicant No. 1 qualifies the definition/criteria as a promoter by virtue of Section 2(69) read with Section 2(27) of the Companies Act, 2013. However, the Respondent has not denied the status of the Applicant No. 1 as the son and brother of directors/promoters of the Company.

46. We are of the considered view that, even if the Applicant is brother or son of the promoter/director of the Company, he has not demonstrated how he has control over the management of the company. He has not placed any material on record to demonstrate that he has the (i) right to appoint majority of directors of CD; or (ii) he controls the management or policy decisions exercisable by a person or persons individually or in concert or (iii) he has control over the management directly or indirectly by virtue of shareholding or any agreement. Thus, he has failed to demonstrate that he satisfies to be a 'Promoter' under Section 2(69) read with Section 2(27) of

the Companies Act, 2013. Accordingly, the contention of the Applicant No. 1 that he is a promoter is rejected.

47. Further, during the course of hearing, the Applicant contended that he qualifies as a promoter under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. This contention is misconceived. It is pertinent to note that the expression "promoter" and "promoter group" under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SEBI SAST Regulations, 2011**") carries the same meaning as assigned to it under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**SEBI ICDR Regulations, 2009**"). Accordingly, the definitions under the SEBI ICDR Regulations, 2009 are equally applicable for interpreting the terms "promoter" and "promoter group" under the Takeover Regulations. SEBI ICDR Regulations, 2009 are a capital market regulation and specifically designed to govern issuers i.e., companies that are making a public issue or are listed on a recognised stock exchange. In the present case, the Corporate Debtor is an unlisted company, as evident from the records available with the MCA (with regards to Company Information and Director/Signatory Details – Master Data). Consequently, the SEBI ICDR Regulations, 2009 or SEBI SAST Regulation 2011 have no application to the present case, and do no aid the case of the Applicant.

48. In view of the facts and circumstances of the present case and the discussion hereinabove, Issue No. (ii) is answered in the negative.

<u>Determination as to Issue (iii)</u>

49. Ld. Counsel for the Applicant vehemently argues that the Applicant No. 1 being Promoter of the Corporate Debtor ought to have been granted

relaxation/waiver with regards to the eligibility criteria of PRAs. Reliance is placed on cases aforementioned at Paragraph 14.

50. Refuting above contention of the Applicants, Ld. Counsel for Respondent submitted the rejection of the Applicant's EoI was in accordance with the eligibility criteria approved by the CoC, in the exercise of its commercial wisdom under the Code, as set out in the EoI Process Note.

51. In order to address this issue, it is imperative to look into corresponding stipulation in the relevant documents. Upon perusal of the documents placed on record, it is observed that Clause 4 (Other Terms and Conditions) of the Process Note expressly provide as follows:

> **Clause 4 -**
>
> *"2. ... **Further, RP and COC reserve the right to issue clarifications, amendments and modification to the EOI document or to waive or relax any term or condition or its application in any particular case, in each case as they may deem fit in their sole discretion. The COC reserve the right to reject any and all EoIs, in its commercial wisdom, without assigning any reasons; however, the concerned PRA shall be intimated of such decision by the CoC.**"*

52. A plain reading of Clause 4, Point 2, makes it evident that the RP and the CoC has the discretion to issue clarifications, amendments or modifications to the EoI, or **waive or relax any term or condition** as they deem appropriate. Additionally, the CoC has expressly reserved the right, in the exercise of its commercial wisdom, to reject any or all EoI without assigning any reasons. The only obligation cast upon the CoC is to intimate the concerned PRA of such decision.

53. We note that the eligibility criteria were duly approved by the CoC and were uniformly applicable to all PRAs. It is an admitted position that the

Applicants failed to satisfy the prescribed financial thresholds stipulated in Clause 1, Point 3 of the Process Note, as discussed hereinabove. Moreover, the Process note itself entitled the CoC to reject any EoI in the exercise of its commercial wisdom under Clause 4, Point 2. Therefore, we are of the view that the said decision, being one taken in the exercise of the CoC's commercial wisdom and in accordance with the prescribed eligibility criteria, does not warrant interference by this Adjudicating Authority.

54. The Applicant has placed reliance on ***Saravana Global Holdings Ltd. and Another v. Bafna Pharmaceuticals Ltd. and Others*** (2019 SCC Online NCLAT 962) dated 04.07.2019 and ***Mr. C. Raja John v. Mr. R. Raghavendran and Ors***. (Company Appeal (AT) (CH) (INS) No. 207 of 2021) dated 01.12.2021 to contend that exemption/relaxation should be granted to the Promoter of the company being MSME in regards to the Eligibility criteria and that the Promoter need not compete with other Resolution Applicants.

55. In the judgment of the Hon'ble Supreme Court in ***R. Raghavendran v. C. Raja John & Ors***., (2023) ibclaw.in 107 SC, decided on 13.09.2023, wherein the order of the Hon'ble NCLAT in *Mr. C. Raja John* (**supra**) was challenged, the Hon’ble Supreme Court took notice of the *Sarvana Global* (**Supra**) and held that the observations in *Sarvana Global* regarding such exemption apply only in exceptional circumstances, such as before the constitution of the CoC or under Section 12A of the Code, and not as a general rule in following terms:

> “**8**. *We, thus, turn to the relevant portion of the judgment in Bafna’s case passed by the Tribunal as to really appreciate the context in which the observations were made in paragraph 22 of that judgment, it is necessary to see how that judgment proceeded from paragraph 18 to 22;*

"18. Therefore, it is clear that 'I&B Code' envisages maximization of value of the assets of the 'Corporate Debtor' so that they are efficiently run as going concerns and in turn, will promote entrepreneurship. The preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no 'Resolution Plan' or the 'Resolution Plan's submitted are not up to the mark.

19. Admittedly, the 'Corporate Debtor' is a 'MSME' and the promoters are not ineligible in terms of Section 29A of the 'I&B Code'. Therefore, it is not necessary for the 'Committee of Creditors' to find out whether the 'Resolution Applicant' is ineligible in terms of Section 29A or not.

20. The 'Committee of Creditors' is to consider the feasibility, viability and such other requirements as has been specified by the Board. If it proposes maximisation of the assets and is found to be feasible, viable and fulfil all other requirements as specified by the Board, the company being MSME, it is not necessary for the 'Committee of Creditors' to follow all the procedures under the 'Corporate Insolvency Resolution Process'. For example, if case is settled before, the constitution of the 'Committee of Creditors' or in terms of Section 12A on the basis of offer given by Promoter, in such case, all other procedure for calling of application of 'Resolution Applicant' etc. are not followed. If the Promoter satisfy all the creditors and is in a position to keep the 'Corporate Debtor' as a going concern, it is always open to 'Committee of Creditors' to accept the terms of settlement and approve it by 90% of the voting shares. The same principle can be followed in the case of MSME.

21. The Parliament with specific intention amended the provisions of the 'I&B Code' by allowing the Promoters of 'MSME' to file 'Resolution Plan'. The intention of the legislature shows that the Promoters of 'MSME' should be *encouraged to pay back the amount with the satisfaction of the 'Committee of Creditors' to regain the control of the 'Corporate Debtor' and entrepreneurship by filing 'Resolution Plan' which is viable, feasible and fulfils other criteria as laid down by the 'Insolvency and Bankruptcy Board of India'.*

*22. **Therefore, we hold that in exceptional circumstances, if the 'Corporate Debtor' is MSME, it is not necessary for the Promoters to compete with other 'Resolution Applicants' to regain the control of the 'Corporate Debtor'**."*

10.** .... **It is, thereafter, in paragraph 22, penned down, that in "exceptional circumstances" if a corporate debtor is an MSME, it is not necessary for promoters to compete with other resolution applicants to retain control of the corporate debtor.

11. In the impugned judgment, it can hardly be disputed that there is no discussion on the special circumstances other than the reference to judgment in Bafna's case. The impugned judgment is predicated on a broad reasoning as if ipso facto there is no need to call other proposals if it is an MSME. In view of the larger context it would have, we clearly observe and hold that this is not the correct position of law."

[Bold for Emphasis]

56. Upon a careful reading of the aforesaid judgment of the Hon'ble Supreme Court, it is evident that it is not mandatory to grant waiver/exemption/relaxation in all cases of MSME. Any relaxation in favour of the promoter of an MSME Corporate Debtor can be granted in exceptional circumstances of the case and is subject to the commercial wisdom and approval of the Committee of Creditors.

57. Therefore, in view of the judgement of the Hon'ble Supreme Court in ***R. Raghavendran*** (supra), we are of the considered opinion that the decision

of the CoC to reject the Applicant's EoI cannot be said to be arbitrary, unreasonable, or contrary to the provisions of the Code.

58. In view of the facts and circumstances of the present case and the discussion hereinabove, Issue No. (iii) is answered in the negative.

59. For purpose of completeness, we also note the judgments cited by the Applicants. In judgement of NCLT, Mumbai – IV in ***Jubin Kishore Thakkar v. Ashutosh Agarwala*** (2026) ibclaw.in 1075 NCLT), the Tribunal dealt with the issue was whether the request for relaxation had been considered by the CoC in accordance with the directions issued by the Hon'ble NCLAT. Also, judgement of the NCLT, Amaravati Bench in case of **Hemanth *Naga Mumar Nerella v. Rajesh Chillale and Anr*** (2023 SCC Online NCLT 57963), the applicant was admittedly the suspended director and promoter of the MSME Corporate Debtor and had approached the Tribunal seeking consideration of his resolution plan.

60. The present case stands on a different footing and is distinguishable than the above-mentioned judgements of NCLT Benches. Although the Corporate Debtor is admittedly registered as an MSME, however, we have held that Applicant No. 1, who seeks relaxation of the eligibility criteria, does not qualify as a "promoter" within the meaning of Section 2(69) read with Section 2(27) of the Companies Act, 2013, for the reasons discussed hereinabove. Furthermore, the Applicants admittedly failed to satisfy the prescribed eligibility criteria. Consequently, the CoC in the exercise of its commercial wisdom and in accordance with the approved Process Note, rejected the Applicants' EoI Consequently, the said decision is inapplicable to the facts of the present case, and the reliance placed thereon is misconceived.

61. As all the issues framed for determination are answered in negative, the prayer sought in this IA, therefore, cannot be granted. Accordingly, IA No. 1693 of 2026 is **dismissed**.

Sd/-	**Sd/-**
Charanjeet Singh Gulati	**Lakshmi Gurung**
Member (Technical)	Member (Judicial)

Saumya, LRA