

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT- IV**

**I.A. No. 5392 of 2024**  
**IN**  
**C.P. (IB) No. 3/ND/2020**

**IN THE MATTER OF:**

IDBI Bank Limited

.....Financial Creditor

Versus

Amzen Transportation Industries Private Limited

....Corporate Debtor

**AND IN THE MATTER OF:**

Cosmic CRF Limited

...Applicant

Versus

1. Deepak Maini,

(Resolution Professional Amzen Transportation Industries Pvt. Ltd.)

2. Committee of Creditors of Amzen Transportation Industries Pvt. Ltd

3. UCO Bank

4. Prudent ARC Limited

5. W.L.D Investments Private Limited

.....Respondents

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,**  
**HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 09.01.2025**

**PRESENT:**

- For the Applicant : Sr. Adv. P. Chidambaram,  
Sr. Adv. Arvind Nayar,  
Adv. Anand Verma,  
Adv. Ashish,  
Adv. Akash Agarwal,  
Adv. Akash Joshi,  
Adv. Shubham Pandey,  
Adv. Ayushi
- For the Respondent : Adv. Ankit Singhal,  
Adv. Soumya Swaroop
- For the Non-Applicant : Sr. Adv. Navin Pahwa,  
Adv. Pranav Sachdera,  
Adv. Jatin Bhardwaj,  
Adv. Abhay Nair,  
Adv. Rohit Ram
- For the RP : Mr. Abhishek Anand,  
Adv. Karan Kohli,  
Adv. Palak Kalra
- For the UCO Bank : Adv. Brijesh Kumar Tamber,  
Adv. Prateek Kushwaha,  
Adv. Mudit Rathee

**ORDER**

**PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)**

1. The interlocutory application i.e. I.A.(IBC)/5392/2024 is filed on behalf of Cosmic CRF Limited ('applicant') under Section 60(5) of Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-

- a. Set aside and quash the decision dated October 19, 2024 passed by the Respondents wherein the Applicant has been declared to be ineligible under Section 29 A of the Insolvency and Bankruptcy Code, 2016 and the earnest money deposit of Rs. 1.50 crore declared to be forfeited.
- b. Set aside and quash the letter dated November 4, 2024 issued by the Respondent No. 1 to the Applicant intimating that the Applicant has been declared to be ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016 and the earnest money deposit of Rs. 1.5 crore declared to be forfeited.
- c. Set aside and quash the report dated September 20, 2024 and October 18, 2024 submitted by AHSK & Co. whereby the Applicant has been observed to be ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016.
- d. Set aside and quash the report dated October 18, 2024 submitted by Priyanka Shanna & Associates whereby the Applicant has been observed to be ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016.
- e. Declare that the Applicant is not ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016.
- f. Stay the implementation of the decision dated October 19, 2024 passed by the Respondents wherein the Applicant has been declared to be ineligible under Section 29 A of the Insolvency and Bankruptcy Code, 2016 and the earnest money deposit of Rs. 1.5 crore declared to be forfeited.
- g. Restrain the Respondent No. 1 from taking any action or steps pursuant of the decision dated October 19, 2024 taken by the Respondents;
- h. Restrain the Respondent No. 1 from taking any steps or action pursuant to the letter dated November 4, 2024;
- i. Direct the Respondent No. 1 to initiate the swiss challenge mechanism process from the stage as existed on August 29, 2024

with the participation of eligible resolution applicants including Applicant herein.

- j. Any act, action or steps taken or perpetuated to be taken or caused to be taken pursuant to the decision dated October 19, 2024 be declared as null and void and be set aside and Status Quo ante as prevailing on August 29, 2024 be restored with the participation of the applicant;
- k. Direct that all the decision/discussions in respect of ineligibility of the
- l. Applicant under Section 29A of the Insolvency and Bankruptcy Code, 2016 especially in the meetings of the Respondent No.2 held between August 27, 2024 and November 4, 2024 be expunged from the records of the Corporate Insolvency Resolution Process of the Corporate Debtor.

## **2. AVERMENTS OF THE APPLICANT**

- a. Briefly stated the facts of the present case as averred by the applicant in the application is that the Applicant i.e. Cosmic CRF Limited is one of the Resolution Applicants in the Corporate Insolvency Resolution Process of Amzen Transportation Industries Private Limited. The present application has been filed challenging the decision taken in the meeting of the RespondentNo.2 dated October 19, 2024 wherein it has been decided to declare the Applicant as ineligible under Section 29A (a), (c), (h) and (j) of the IBC and to forfeit the earnest money deposit of Rs. 1.50 crore deposited by the Applicant in terms of clause (c) of the RFRP document dated May 20, 2024.

- b. The Applicant submitted that the Corporate Debtor, was admitted into the Corporate Insolvency Resolution Process (CIRP) on May 4, 2022, following an application under Section 7 of the IBC filed by IDBI Bank Limited in C.P. (IB) 3/ND/2020.
- c. During the CIRP, the RP of the Corporate Debtor (Respondent No. 1) published Form G on April 20, 2024, inviting Expressions of Interest (EoI) for the Corporate Debtor. The Applicant submitted an EoI on May 6, 2024, along with an undertaking affirming eligibility under Section 29A of the IBC and deposited an Earnest Money Deposit of ₹25 lakhs in the Corporate Debtor's CIRP account, as required by the process document.
- d. The Applicant submitted that on May 10, 2024, the RP issued a Provisional List of Prospective Resolution Applicants (PRAs), which included the Applicant's name, noting that EoI documents were still under review. The list specified May 15, 2024, as the deadline for objections and May 20, 2024, as the date for issuing the Final List. After reviewing objections and conducting due diligence, the RP included the Applicant in the Final List of PRAs for participation in the Corporate Debtor's Resolution Process.
- e. The Applicant stated that RP issued a Request for Resolution Plan (RFRP) on May 20, 2024, following which it submitted its Section 29A Affidavit on June 21, 2024, and its Resolution Plan on June 28, 2024, along with an Earnest Money Deposit of ₹1.50 crores.

- f. The RP conducted a Swiss challenge mechanism process involving multiple participants, including the Applicant, with the final round to be held on August 28-29. Prior to this round, a whistleblower, namely, Energy Watchdog, issued a letter dated August 27, 2024, alleging the Applicant's ineligibility under Section 29A of the IBC. The Respondent No. 1 shared this letter with the Applicant via email on August 31, 2024. Notably, the letter was issued after three rounds of the Swiss challenge process had already concluded on August 22, 2024. Upon receiving the letter from Energy Watchdog, the Applicant responded promptly to Respondent No. 1 via a letter dated September 2, 2024, asserting that neither the Applicant nor its Directors, Mr. Aditya Vikram Birla or Mrs. Purvi Birla, have any connection with Cosmic Ferro Alloys Limited ("CFAL") and confirming their eligibility under Section 29A of the IBC.
- g. Subsequently, Respondent No. 1, in consultation with the Committee of Creditors (CoC), engaged a professional agency, namely, AHSK to review the Applicant's eligibility based on the complaint. During this process, AHSK sought additional information, which the Applicant provided via emails on September 2, 2024, September 11, 2024, and September 17, 2024.
- h. AHSK, vide its report dated September 20, 2024, concluded that the Applicant is ineligible under Section 29A(c) of the IBC. The report determined that the former directors, shareholders, and beneficial owners of CFAL are linked to the current directors, shareholders,

and beneficial owners of the Applicant, thus attributing the ineligibility to the Applicant as well.

- i. In its meeting held on 25.09.2024, the Committee of Creditors (CoC) deliberated upon the report dated 20.09.2024 and resolved to issue a Show Cause Notice to the Applicant. Pursuant to the said decision, the Resolution Professional (RP) issued a Show Cause Notice dated 27.09.2024, calling upon the Applicant to respond to the allegations regarding its ineligibility under Section 29A(c) of the Insolvency and Bankruptcy Code, 2016 (IBC). In response, the Applicant submitted its reply to the Show-Cause Notice vide letter dated 30.09.2024, categorically refuting the allegations of ineligibility. The Applicant asserted that neither it nor any connected person associated with it is disqualified under any of the provisions of Section 29A of the IBC, thereby contesting the basis of the proposed disqualification.
- j. The Applicant has submitted that the show-cause notice issued on 27.09.2024 by the Respondent No. 1 was confined to allegations of ineligibility of the Applicant under Section 29A(c) of the relevant statute, with no reference to any other grounds of disqualification. The notice was predicated on the purported final report of AHSK dated 20.09.2024, which concluded that the Applicant was ineligible solely under Section 29A(c) while expressly exonerating them under all other subsections of Section 29A. In response, the Applicant submitted a detailed reply on 30.09.2024, addressing the specific allegation under Section 29A(c).

- k. Accordingly, vide report dated 18.10.2024, AHSK submitted their final/conclusive report declaring the Applicant to be ineligible under Section 29 A of the IBC. Priyanka Shanna & Associates submitted a report declaring the Applicant to be ineligible under Section 29A (a), (c), (h) and (j) of the IBC.
- l. The Applicant issued a letter dated 02.11.2024 to the RP (Respondent No. 1) requesting the Respondent No. 1 to rescind the show-cause notice dated September 27, 2024 and forthwith resume the challenge mechanism process of the Corporate Debtor
- m. The Applicant further has alleged that at the meeting held on 19.10.2024, R2 (COC) declared the Applicant ineligible under Sections 29A(a), (c), (h), and (j) of the Code, which appears to be based solely on two reports dated 18.10.2024, without any independent application of mind, as evidenced by the verbatim adoption of the report's findings. It has further submitted that the Applicant was not informed of any developments after their response dated 30.09.2024 and was not provided an opportunity to address the new grounds of disqualification under Sections 29A(a), (h), and (j). Such conduct constitutes a gross violation of the principles of natural justice, as the Applicant was issued a show-cause notice dated 27.09.2024 limited to Section 29A(c) and was never called upon to respond to the additional grounds for disqualification.

**3. REPLY ON BEHALF OF RESPONDENT NO. 1 i.e. MR. DEEPAK MAINI,  
(RESOLUTION PROFESSIONAL FOR AMZEN TRANSPORTATION  
INDUSTRIES PRIVATE LIMITED)**

- a. The Respondent submitted that this Adjudicating Authority, by its order dated 04.05.2022, admitted Company Petition (IB) No. 3/ND/2020 filed by IDBI Bank Limited under Section 7 of the IBC against the Corporate Debtor, initiating CIRP. Along with declaring the moratorium, the Authority appointed Mr. Deepak Maini as the Interim Resolution Professional (IRP) of the Corporate Debtor.
- b. In accordance with Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP issued a public announcement in Form A on 06.05.2022, with 17.05.2022 as the last date for claim submissions regarding the Corporate Debtor. Pursuant to Section 18(1)(c) of the Code, the IRP was obligated to constitute a Committee of Creditors (CoC), which was duly formed with the following Financial Creditors:
- i. IDBI Bank Limited
  - ii. UCO Bank
  - iii. WLD Investment.
- c. The RP convened the 40th meeting of the Committee of Creditors (CoC), during which the CoC approved the eligibility criteria for

inviting Resolution Plans. Following this, the RP published Form G, as mandated under Regulation 36A (1) of the CIRP Regulations, to invite Expressions of Interest (EOI) from prospective resolution applicants. The public announcement was made on April 20, 2024, through advertisements on Financial Express (English, PAN India), Rozana Spokesman (Punjabi, Punjab) and Jansatta (Hindi, Delhi/NCR).

- d. The 44<sup>th</sup> meeting of the Committee of Creditors (CoC) was convened by the RP on June 15, 2024, where the RP informed the members that he had received multiple emails and phone calls from 12 Prospective Resolution Applicants (PRAs) requesting an extension of the deadline for submitting Resolution Plans. Subsequently, the 45<sup>th</sup> CoC meeting was held on July 3, 2024, during which the RP apprised the members that a final list of 19 PRAs had been prepared. Out of these, 4 PRAs had withdrawn and requested a refund of their Earnest Money Deposits (EMDs). The RP further informed the CoC that out of the remaining 15 PRAs, Resolution Plans had been received from 8 PRAs. It was decided that the representatives of these 8 PRAs would be invited to participate in the process of unsealing/opening their Resolution Plans in their presence.
- e. The 47<sup>th</sup> CoC meeting took place on August 16, 2024, where the RP reported that, during the 46<sup>th</sup> CoC meeting's voting process, the CoC had, by a majority vote, approved a proposal to initiate

negotiations or conduction of challenge mechanism with the resolution applicants in the ongoing round of Resolution Plan submissions.

- f. The RP convened the 48th CoC meeting in three sessions on August 22, 2024, August 28-29, 2024, and September 2, 2024. During the meetings, the Respondent informed the CoC that, as approved in the 47th CoC meeting, the challenge mechanism process was scheduled for August 22, 2024, via online mode. As directed by the CoC, communications were sent to all PRAs to unconditionally accept the terms and conditions of the process and confirm participation. In response, Mr. Amit Mittal and Mr. Jitendra Lohia, representatives of the Consortium of Myotic Trading Pvt. Ltd. and Fortune Global Solutions Limited, unconditionally accepted the CoC-approved Challenge Mechanism Framework. The Respondent also briefed the RAs and CoC members on the framework's key aspects, including the contents of the watchdog's email and related communications.
- g. The Respondent submitted that while the challenge process mechanism was still underway, the RP received an email from Energy Watchdog, a NGO, on August 27, 2024. The email highlighted certain facts and raised allegations against the applicant, Cosmic CRF Limited, asserting that the applicant was non-compliant and, therefore, ineligible under the provisions of Section 29A of the Code. The aforementioned email was also

shared with Myotic Trading Private Limited (One of the PRA's), following which the RP received a response from Myotic requesting a two-week deferment of the bidding process scheduled for August 28, 2024, to allow for a proper inquiry into the recent development.

h. The Respondent submitted that during the 48<sup>th</sup> CoC meeting, the RP sought the views of CoC members on proceeding with the Challenge Process scheduled for August 28, 2024. **UCO Bank** having 53.31% voting share recommended proceeding as planned, highlighting that the professional agency AHSK & Co. had confirmed the Applicant's eligibility on August 22, 2024. While suggesting a re-verification of allegations raised by Energy Watchdog on August 27, 2024, UCO Bank opposed any delay due to the limited CIRP extension period. **Prudent ARC Limited** having 41.12% voting share suggested a 2 to 3 day's deferral to verify the allegations, emphasizing that the CoC's role is commercial, while Section 29A compliance is the RP's responsibility. They requested input from the RP's legal counsel, who was unavailable. The RP later clarified that, as per rulings of the Hon'ble Supreme Court and NCLAT, the CoC determines a Resolution Applicant's (RA) eligibility. While **WLD Investments Pvt. Ltd.** having 5.57% voting share did not attend the CoC meeting.

i. The respondent submitted that following the discussions with the CoC member representing the Corporate Debtor in the 48<sup>th</sup> CoC meeting, allegations against the Applicant were referred to AHSK

& Co. for re-verification of eligibility under Section 29A of the Code, based on new information from the Watch Dog's letter. To facilitate due diligence, AHSK & Co. requested additional information, which the Applicant provided via emails dated 02.09.2024, 11.09.2024, and 17.09.2024. Pursuant to this, AHSK & Co. submitted its final report dated 20.09.2024, concluding that the Applicant is ineligible to submit a Resolution Plan under Section 29A of the Code.

- j. Subsequently, The RP convened the 49th CoC meeting on 25.09.2024, informing members that, as decided in the 48th CoC meeting, AHSK & Co. was tasked with re-verifying allegations made by Energy Watchdog. Following due diligence, AHSK & Co. submitted a revised report dated 20.09.2024, concluding that the Applicant is ineligible under Section 29A(c) of the Code. **Prudent ARC** emphasized the need to clarify the Applicant's eligibility under Section 29A before deciding on the way forward. They highlighted the pending application i.e. **IA/4493/(ND)/2024** in the matter of Myotic Trading Pvt. Ltd. & Fortune Global Solutions Pvt. Ltd, wherein the applicant has raised concerns about the legitimacy of the bidding process, warning that Applicant's ineligibility could prompt legal challenges. They recommended either resetting the challenge mechanism or accepting Myotic's initial highest bid.

**UCO Bank** advocated for considering Myotic Trading Pvt. Ltd. & Fortune Global Solutions Pvt. Ltd.'s last bid of INR 255.28 Crores for final Resolution Plan submission, deeming it fair and

transparent. They proposed finalizing the bid for CoC voting and suggested that procedural matters, if any, be reviewed by the Hon'ble Adjudicating Authority.

**Consensus:** Prudent ARC's Mr. Goel concurred with UCO Bank, supporting the proposal for Myotic Trading Pvt. Ltd. & Fortune Global Solutions Pvt. Ltd. to submit its Final Resolution Plan at the INR 255.28 Crores bid amount for CoC adoption.

- k. In furtherance, the CoC advised the RP to formally conclude the challenge mechanism by declaring Myotic as the winning Resolution Applicant and requesting a final Resolution Plan with an enhanced bid of INR 255.28 Crores. The CoC also directed that the Applicant be informed of their ineligibility and provided with responses to their allegations regarding the bidding process. Whereas, UCO Bank recommended awaiting the Applicant's response to their disqualification before formally declaring Myotic as the winner. They suggested that, if necessary, the CoC could appoint another professional agency for a re-evaluation. Prudent ARC concurred, emphasizing the need for a clear and methodical approach.
- l. In accordance with the CoC meeting decision, the RP issued a Show Cause Notice dated 27.09.2024 to the Applicant, questioning their eligibility under Section 29A(c) of the Code and seeking justification for not declaring them ineligible and forfeiting their EMDs of INR 25 Lakhs and INR 1.50 Crores, as per the EOI Process

Document and RFRP clauses. The notice also included AHSK & Co.'s final report dated 20.09.2024, which found the Applicant ineligible under Section 29A of the Code. The Applicant responded to the Show Cause Notice on 30.09.2024, asserting that neither they nor any connected person is ineligible under Section 29A of the Code. They also claimed that the allegations in Energy Watchdog's letter were false.

m. The Respondent submitted that it convened the 50th CoC meeting in two sessions on 05.10.2024 and 19.10.2024. Members were informed that, as decided in the 49th meeting, a Show-Cause Notice was issued on 27.09.2024, citing the Applicant's ineligibility under Section 29A(c) of the Code. The Applicant challenged the notice and their proposed ineligibility via email on 30.09.2024. In this COC meeting the UCO Bank proposed forwarding the Applicant's response to AHSK & Co. for a final report with specific evidence and disqualification clauses. They also suggested engaging an independent agency for a fresh eligibility review, including all related complaints and reports. Further, Prudent ARC noted that the Applicant's response left key points unaddressed. Mr. Kochar advised treating the Applicant's reply dated 30.09.2024 as their final response, without seeking further compliance. He emphasized that AHSK & Co.'s report should be backed by documented evidence and supported UCO Bank's proposal to engage a new agency for an independent review.

- n. The respondent submitted that in the second session of the 50th CoC meeting on 19.10.2024, it was decided to appoint an independent professional agency to conduct a fresh due diligence on the Applicant under Section 29A of the Code. The RP was authorized to engage the new agency, with costs to be ratified in the next CoC meeting. Priyanka Sharma & Associates were selected as the agency, being the lowest bidder with substantial experience in Section 29A due diligence. It was submitted that that RP/Respondent furnished Priyanka Sharma & Associates with all pertinent documentation, including the Applicant's submissions, the complaint from Energy Watchdog, Myotic's email, legal opinions, AHSK's updated report, the Show Cause Notice, and the Applicant's response.
- o. Subsequently, the RP in the 50<sup>th</sup> CoC meeting presented the resolution to the CoC members pertaining to the Decision of CoC on eligibility/ineligibility of Applicant as per Section 29A of the Code, which was approved with 100% votes in favour of the same and consequentially the Applicant was rendered as ineligible under the provisions of the Section 29A of the Code.
- The decision of the CoC in the 50<sup>th</sup> CoC meeting on the eligibility of Applicant as per Section 29A of the Code is reproduced over-leaf:

**B. Decision of CoC on eligibility / ineligibility of RA- Cosmic CRF Limited as per section 29A of the Insolvency and Bankruptcy Code, 2016**

As deliberated above in item no. A4 of Second session of Part 2 above, the following resolution has been put below for CoC approval-

*"RESOLVED THAT, pursuant to Section 29A (a), (c) (h) & (j) of the Insolvency & Bankruptcy Code, 2016 and on the basis of report of two Independent Professional Agency (AHSK & Co. and Priyanka Sharma & Associates), the proposal to declare Resolution Applicant Cosmic CRF limited as ineligible under section 29A, be and is hereby approved by the members of the Committee of Creditors.*

*Resolved further that the EMD amount of Rs. 1.50 Cr deposited by the said RA Cosmic CRF Limited be forfeited in terms of Clause i(c) of RFRP Document on page 25 and in consultation with legal counsel of the RP.*

*RESOLVED FURTHER THAT, RP may take necessary steps as may be deemed necessary."*

- p. The RP Stated that it convened the 51<sup>st</sup> CoC meeting on 29.10.2024, reminding members of the Challenge Mechanism initiated on 22.08.2024, which was paused after the 15th bidding step due to the Applicant's eligibility confirmation. However, the Applicant had already been declared ineligible under Section 29A of the Code in the 50<sup>th</sup> CoC meeting. The Answering Respondent reiterated the 49<sup>th</sup> CoC meeting's suggestion to conclude the Challenge Mechanism and designate Myotic as the winner. Myotic will be asked to submit its final bid of INR 272.15 Crores (NPV of INR 255.28 Crores) and will be informed of the Applicant's ineligibility and response to allegations against Cosmic. Accordingly, RP vide letter dated 04.11.2024 informed the Applicant regarding the decision of CoC to declare the Applicant as ineligible under Section 29A of the Code. The Applicant responded to this letter on 05.11.2024, stating their intention to seek legal adjudication and protection of their rights regarding the CoC's decision on 19.10.2024. The Applicant also requested that

Respondent No. 1 refrain from taking any actions that may further prejudice them.

**4. REPLY ON BEHALF OF UCO BANK – MEMBER OF COMMITTEE OF CREDITORS**

- a. The Respondent submitted the present Application filed by the Applicant is not maintainable as the same is not maintainable in terms of Section 60(5) of the Code as the Applicant is only one of the prospective Resolution Applicant whose eligibility is hit by Section 29A of the Insolvency and Bankruptcy Code, 2016.
- b. The Respondent submitted that the Applicant participated in the CIRP process, expressed interest in submitting a Resolution Plan, and submitted an affidavit under Section 29A affirming their eligibility. During the CIRP process, a letter dated 27.08.2024 was issued by a NGO namely Energy Watchdog to the Resolution Professional, alleging that the Applicant is ineligible to submit a Resolution Plan under Section 29A due to past affiliations, particularly involving the Managing Director, Mr. Aditya Vikram Birla, and connections with M/s Cosmic Ferro Alloys Limited.
- c. The Resolution Professional shared the letter from Energy Watchdog with the Applicant on 31.08.2024, seeking comments on the allegations. In response, the Applicant clarified on 02.09.2024 that neither the company nor its Managing Director is ineligible under Section 29A of IBC. Given the seriousness of the allegations, the Resolution Professional appointed professionals to assess the

Applicant's eligibility. A report by AHSK Professional Agency, submitted on 20.09.2024, prompted the Resolution Professional and CoC to thoroughly examine the Applicant's compliance with Section 29A. Accordingly, The CoC meeting was convened on 25.09.2024 to deliberate on the Applicant's eligibility under Section 29A of the Code. It was resolved in the meeting to issue a show-cause notice to the Applicant, seeking their comments on the alleged disqualification.

- d. Subsequently, the Applicant responded to the show-cause notice, demonstrating that neither it nor any connected person was ineligible under Section 29A of the Code. Following the Applicant's reply, a CoC meeting on 05.10.2024 decided to appoint Priyanka Sharma & Associates for further evaluation. After reviewing all records, including the Applicant's Section 29A affidavit, Energy Watchdog's letter, and reports from both agencies, the Applicant was declared ineligible under Section 29A(a), (c), (h), and (j). Consequently, the CoC resolved to forfeit the Applicant's Rs. 1.5 Crore earnest money deposit per the RFRP document and the same was informed by the RP to the Applicant via email about their ineligibility to submit a resolution plan under Section 29A of the Code.
- e. The respondent stated that to challenge the CoC's decision taken in its meeting on 19.10.2024 and the reports by AHSK & Co. and Priyanka Sharma & Associates deeming the Applicant ineligible

under Section 29A, the Applicant has filed the present application after reviewing the show cause notice and CoC's approval. The Applicant has objected to a violation of natural justice, alleging inadequate opportunity to defend against the CoC's decision on ineligibility. However, it is submitted that the Show Cause Notice dated 27.09.2024 provided the Applicant with a reasonable opportunity to file a reply and demonstrate its eligibility in response to allegations raised by Energy Watchdog. The Applicant exercised its right, filed its response, and attempted to establish its eligibility, fulfilling the principles of natural justice.

- f. To support its contention, the Respondent has relied upon of **Dilip B Jiwrjka vs. Union of India & Ors (2023 INSC 1018)**. The relevant paragraphs are reproduced herein:

*“62. Having thus analysed the provisions of Part III of Chapter II, we shall now analyse the impact of the requirements of natural justice. It is a well settled principle of law that natural justice postulates two requirements: firstly, audi alterum partem i.e. an opportunity of being heard to a person who is liable to be affected by an investigation, enquiry, proceeding or action; and secondly, nemo judex in causa sua, which means that the person should not be a judge in their own cause.*

**63.** *The principles of natural justice have also been expanded to require that a reasoned order be passed against an individual who is liable to be affected. Though, at one stage, in the evolution of law, a distinction was sought to be drawn between administrative action, on one hand, and judicial or quasi-judicial, on the other, as the law has progressed, that distinction has been substantially watered down, if not obliterated. In other words, the requirement to observe the principles of natural justice arises both in the context of purely judicial or quasi-judicial action as well as administrative action which has an adverse impact on the individual or entity against which action is initiated.*

**64.** *At the same time, it needs to be noted that the principles of natural justice are not to be construed in a straitjacket. The nature of natural justice is liable to vary with the exigencies of the situation. In a given situation, it may extend to a full-fledged evidentiary hearing while, on the other hand, the principles of natural justice may require that a bare minimum opportunity should be given to an individual who is liable to be affected by an action, to furnish an explanation to the allegations or the nature of the enquiry.”*

## **ANALYSIS AND FINDINGS**

5. This Adjudicating Authority has carefully heard the arguments advanced by Learned Counsels for the parties and minutely perused the averments made in the application, reply, and written submissions filed by the parties. The relevant documents annexed with the respective submissions have also been meticulously perused.
6. The issue of contention before this Adjudicating Authority whether the Applicant was provided with a reasonable opportunity to present its case before the CoC prior to being declared ineligible under Section 29A of the Code.
7. During the pendency of the challenge process mechanism, as per submission of the Resolution Professional, purported a whistle-blower operating under the name "Energy Watchdog" issued a letter dated 07.08.2024 to the Resolution Professional (RP), alleging that the Applicant was ineligible to submit a Resolution Plan under Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC). Subsequently, the RP, via email dated 31.08.2024, furnished the Applicant with a copy of the letter dated 27.08.2024 issued by Energy Watchdog. Thereafter, the RP sought specific information from the Applicant through email communications dated 02.09.2024, 11.09.2024, and 17.09.2024 to facilitate a re-verification of the Applicant's eligibility under Section 29A of the IBC. This re-verification was to be conducted by the professional agency, AHSK & Co., in furtherance of the eligibility assessment process.

- 8.** Thereafter, the Resolution Professional (RP) issued a Show Cause Notice to the Applicant, calling upon the Applicant to explain why it should not be declared ineligible to submit a Resolution Plan under Section 29A(c) of the Insolvency and Bankruptcy Code, 2016 (IBC). The Show Cause Notice further proposed the forfeiture of the Earnest Money Deposit (EMD) amounting to Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) and Rs. 1.50 Crores in accordance with the terms and conditions stipulated under the Expression of Interest (EOI) Process Document and the Request for Resolution Plan (RFRP) clauses. In response, the Applicant submitted its reply to the said Show-Cause Notice vide letter dated 30.09.2024, addressing the allegations and contesting the proposed disqualification and forfeiture.
- 9.** On perusal of the record, we find that the Resolution Professional (RP) had received a compliance report under Section 29A of the Insolvency and Bankruptcy Code pertaining to Cosmic CRF Limited from the professional agency AHSK & Co. the report, dated 19th August 2024, stated that Cosmic CRF Limited, as the Prospective Resolution Applicant (PRA), is compliant with and eligible under the provisions of Section 29A of the Code.
- 10.** On perusal of application, IA/4493/(ND)/2024, which is presently pending before this Adjudicating Authority for adjudication, the RP submitted that it had received the letter from one of the Resolution Applicant (Mytotic Trading Private Limited) pertaining to the ineligibility of Cosmic CRF Limited. Subsequently, the RP vide its email replied to Resolution Applicant (Mytotic Trading Private Limited) dated 27 August 2024 at 22:37. The email is reproduced overleaf:

**From:** Amzen CIRP  
**Sent:** 27 August 2024 22:37  
**To:** myotic trading  
**Cc:** 'deepak.maini@insolvencyservices.in'; Rakesh Mishra; Rapaka Sravya  
**Subject:** RE: Email from NGO

Dear Sir,

The undersigned is shocked to see your email wherein you have raised question of eligibility of another PRA i.e., Cosmic CRF Limited.

First and foremost you are requested to confirm from where you have received the information that there is another PRA by the name of Cosmic CRF Limited whose plan is being considered by the CoC as the same is confidential in nature.

Further now coming to your alleged allegation that Cosmic CRF Limited is ineligible as per Section 29A of the Code.

This is to bring to your knowledge that the undersigned had issued the FORM G on 20.04.2024 as per which, the last date of submission of EOI was 06.05.2024 and the date of issuance of provisions list of PRA's was specified as 10.05.2024. Further in pursuance of the same, the undersigned duly published the provisional list of PRA's on 10 May 2024. It is further brought to your kind attention that the last date for submission of objections to the provisional list was 15.05.2024 and the date of issuance of final list of PRA was 20.05.2024.

Thus, as per the FORM G, the last date of submission of objections to any PRA has long passed as way back as on 15.05.2024, however, no challenge was raised by you at the relevant period of time, hence, the same cannot be agitated by you at this stage belatedly.

This is to bring to your kind knowledge that the undersigned as per the provisions of the Code & the underlying Regulations and as duly approved by the CoC had appointed AHSK & Co to conduct due diligence of the PRA's including Cosmic CRF Limited.

This is to further bring to your kind attention that as per the detailed report submitted by AHSK & Co, Cosmic CRF Limited does NOT trigger any ineligibility as contained under Section 29A of the Code. The said factum has been duly disclosed to the members of CoC as well by the undersigned.

In view of the above, your allegations qua ineligibility Cosmic CRF Limited under Section 29A of the Code has no basis.

Further, as held by the Hon'ble Supreme Court in Arcelormittal India Private Limited vs. Satish Kumar Gupta-(2019) 2 SCC 1 and followed by the Hon'ble Appellate Tribunal in Sharavan Kumar Vishnoi vs Upma Jaiswal, Company Appeal (AT) (Insolvency) No. 371 of 2022 the Resolution Professional is not to take any decision regarding ineligibility about any PRA and the same lies within the domain of CoC. The relevant portion of the judgment passed Hon'ble Appellate Tribunal is as under :

"7. The ratio of the judgment of the Hon'ble Supreme Court as is culled out from paras 80 & 81 is that the Resolution Professional is not to take a decision regarding the ineligibility of the Resolution Applicant. It has only to form its opinion because it is the duty of the Resolution Professional to find out as to whether the Resolution Plan is in compliance of the provisions of the Code or not the Resolution Professional can give his opinion with regard to each plan before the CoC and it is for the CoC to take a decision as to whether the plan is to be approved or not. In para 5 of the impugned order, we have noticed that the direction has been issued to the Resolution Professional to place all the Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law. The aforesaid direction clearly indicates that the Resolution Professional is free to submit his opinion with regard

to contravention or otherwise of the various provisions of law. The aforesaid observations take care of the duties and responsibilities of the Resolution Professional. The Resolution Professional can give his opinion with regard to each Resolution Applicants and further steps are to be taken for the CoC as per the direction issued by the Adjudicating Authority.

8. At this stage, we are of the view that, various issues regarding ineligibility or eligibility need not be gone into in this Appeal. It is only after the CoC's decision if any question arise regarding eligibility that can be gone into before the Adjudicating Authority in accordance with the law."

Further, the said Order passed by the Hon'ble Appellate Tribunal has been further affirmed by the Hon'ble Supreme Court in Civil Appeal No. 6191 of 2022.

Thus, in view of the above, it is not the RP but the CoC who has to decide the eligibility or ineligibility of any PRA.

The undersigned being the officer of the court shall place your allegation along with the due diligence report submitted to the RP by AHSK & Co with respect to Cosmic CRF Limited in the CoC proposed to be convened on 28.08.2024 at 11:00 AM.

However, your request of deferment of CoC cannot be acceded to by the undersigned and the same is the prerogative of CoC. But nonetheless your request of deferment shall be placed before the CoC in the meeting scheduled for tomorrow i.e., 28.08.2024

We request you to take note of the same.

Thanks & Regards  
Deepak Maini  
Resolution Professional  
For Amzen Transportation Industries Private Limited  
Email: [deepak.maini@insolvencyservices.in](mailto:deepak.maini@insolvencyservices.in)  
Regd. No. IBBI/IPA-001/IP-P00676/2017 -2018/11149  
AFA Validity: 19.11.2024

11. As per the submission of the Resolution Professional (RP) in its reply in the present application it has been stated that it had purportedly received a letter dated 27.08.2024 from Energy Watchdog, a whistle-blower, alleging ineligibility of the Prospective Resolution Applicant (PRA) Cosmic CRF Limited **through an email**. The relevant portion of the reply as furnished by RP is reproduced over-leaf:

73. That in the interim the Answering Respondent received an email dated 27.08.2024 from Energy Watchdog claiming to be an NGO *inter alia* bringing in kind knowledge of the Answering Respondent certain facts and further levelled allegations upon the Applicant i.e., Cosmic CRF Limited being non-compliant and further rendering the Applicant ineligible under the provision of Section 29A of the Code. (*Ref: Annexure A-8, @Page 186-199 of Application Volume 2*).

- 12.** It appears that the letter was conspicuously issued a day before the scheduled resumption of the Swiss Challenge Mechanism Process, raising concerns regarding its timing and intent. In its reply furnished in IA/4493/(ND)/2024, RP had stated that he had received an email dated 27.08.2024 sent by the Myotic Trading Private Limited alleging receiving a report by an entity named Energy Watchdog claiming itself to be an NGO levelling allegations qua Cosmic CRF Limited being disqualified in terms of Section 29A of the Code. Whereas on perusal of the record, it is found that the RP has not produced any document to substantiate the claim that he had received an email on 27.08.2024 from Energy Watchdog. Whereas in its reply furnished in IA/4493/(ND)/2024, RP had stated that he had received an email dated 27.08.2024 sent by the Myotic Trading Private Limited alleging receiving a report by an entity named Energy Watchdog claiming itself to be an NGO levelling allegations qua Cosmic CRF Limited being disqualified in terms of Section 29A of the Code. Thereby, the mode and timing of the letter's delivery from the Energy Watchdog to the RP remain ambiguous and inadequately explained by the Resolution Professional.
- 13.** Subsequently, AHSK & Co. was directed to re-verify the allegations made by Energy Watchdog. After due diligence, AHSK & Co. submitted a revised report dated 20.09.2024, concluding that the Applicant was ineligible under Section 29A(c) of the Insolvency and Bankruptcy Code, 2016. Based on this report, the Resolution Professional (RP) issued a Show Cause Notice to the Applicant, seeking an explanation for its alleged ineligibility under Section 29A(c).

- 14.** During the 50th Committee of Creditors (CoC) meeting on 5th October 2024, members emphasized the need for AHSK & Co.'s final report to be supported with documentary proof of shareholdings and other facts. They also resolved to appoint a new professional agency for a fresh Section 29A due diligence of Cosmic CRF Limited. Subsequently, Priyanka Sharma & Associates was engaged to conduct the review. On 18th October 2024, AHSK & Co. submitted a report declaring the Applicant ineligible under Section 29A of the IBC. On the same date, Priyanka Sharma & Associates also submitted its report, declaring the Applicant ineligible under Sections 29A(a), 29A(c), 29A(h), and 29A(j) of the IBC.
- 15.** The communication dated 04.11.2024 clearly establishes that the Committee of Creditors (CoC) relied exclusively on the reports submitted by Priyanka Sharma & Associates (PSA) and AHSK, both dated 18.10.2024, to reach its decision of declaring the Applicant ineligible. However, it is evident that the CoC failed to issue a subsequent notice or show cause notice (SCN) to the Applicant, seeking clarifications regarding the findings in these reports before proceeding further. The grounds cited in the earlier SCN were confined to Section 29A(c) of the Code, whereas the latest reports introduced new grounds of ineligibility under Sections 29A(a), 29A(c), 29A(h), and 29A(j). In light of these additional grounds, the CoC was duty-bound to afford the Applicant an opportunity to respond to and clarify the allegations, as a fundamental requirement of the principles of natural justice.
- 16.** The CoC's failure to provide the Applicant an opportunity to respond to the newly raised grounds of ineligibility—under Sections 29A(a), 29A(c), 29A(h),

and 29A(j) constitutes a procedural irregularity and a clear violation of the principles of natural justice. This lapse undermines the fairness and transparency integral to the resolution process, rendering the subsequent actions procedurally flawed. Compounding this procedural breach, the CoC also resolved to forfeit the Applicant's Earnest Money Deposit (EMD) of ₹1.50 crores, further exacerbating the situation. Such an action, taken without affording the Applicant a chance to address the allegations, is not only inequitable but also contrary to the standards of due process expected in insolvency proceedings.

**17.** A critical grievance raised by the Applicant pertains to the violation of the principles of natural justice and an opportunity to present its case before CoC. The Applicant asserts that no opportunity was afforded to it to respond to or contest the contents of the Priyanka Sharma & Associates (PSA) and AHSK report dated 18.10.2024, which formed the basis for the CoC's decision. The Applicant submitted that these reports were made available to it only on 04.11.2024, as enclosures to the communication wherein it declared the Applicant as ineligible for submission of Resolution Plan under section 29A (a), (c), (h) & (j) of the Code.

**18.** It is evident that the Applicant was not afforded a reasonable opportunity to provide its justification or respond to the findings contained in the reports dated 18.10.2024 submitted by AHSK and Priyanka Sharma & Associates. These reports formed the sole basis for the Committee of Creditors (CoC)

decision to declare the Applicant ineligible under Section 29A clauses (a), (c), (h), and (j) of the Insolvency and Bankruptcy Code, 2016.

- 19.** In the interest of upholding the principles of natural justice, it is imperative to provide a fair opportunity for the affected party i.e. Applicant in the present matter. The doctrine of audi alteram partem—a fundamental tenet of natural justice—mandates that no person shall be condemned unheard. Accordingly, before any decision to disqualification is made, the concerned party must be afforded a reasonable chance to respond to the allegations, present evidence, and substantiate their position. Failure to adhere to this principle would render the decision procedurally flawed and susceptible to challenge on grounds of violation of natural justice.
- 20.** In view of the aforesaid discussion and without delving into the merits of the present case, we hereby direct the Resolution Professional (RP) and the Committee of Creditors (CoC) to afford the Applicant/Resolution Applicant a fair opportunity to appear before them and furnish a reply in response to the reports dated 18.10.2024 wherein the Resolution Applicant has been held to be ineligible as per Section 29A (a), (c), (h), and (j) of the Code. This direction is issued in the interest of upholding the principles of natural justice.
- 21.** Accordingly, we are inclined to allow Prayer (a) and Prayer (b) of the Applicant and remand the matter to the Committee of Creditors (CoC) for reconsideration, ensuring adherence to the principles of natural justice and equity. The Applicant shall be afforded an opportunity to provide its justification in light of the latest report on the eligibility criteria.

Consequently, the present application, **I.A. No. 5392 of 2024 in C.P. (IB) No. 3/ND/2020**, is partly allowed and accordingly disposed of.

**Sd/-**

**(DR.SANJEEV RANJAN)  
MEMBER (T)**

**Sd/-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)**