(ICSI) INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-477

January18, 2021

Corporate Debtor cannot take the benefit of being an MSME if it did not fall into the category of MSME on the date of being admitted into insolvency.

CASE TITLE	POSCO India Pune Processing Center Pvt Ltd Vs DhavalJitendrakumar Mistry RP For PoggenampNagarshethPowertronics Pvt Ltd[1]
CASE CITATION	IA 514 of 2020 in CP(IB) 268/NCLT/AHM/2018
DATE OF ORDER	06.01.2020
COURT/TRIBUNAL	NCLT, Ahmedabad Bench
CASES REFERRED	*Keshoram v. State of Bombay*
SECTION/REGULATION REFERRED	Section 9, 29A, 240Aof the Code

Brief of the case:

An application was filed against a prayer raised by the creditors that the erstwhile promoters should be disqualified to submit the resolution Plan in respect of Corporate Debtor. The contention raised by the RP was that the disqualification faced by the promoters under Section 29A would not hold as the CD was a MSME under the MSME Act as amended w.e.f. 01.07.2020.

Decision:

Hon'ble NCLT dismissed the applicationas not maintainable and held that,

"It is established principle that parties are governed by law in force at the date when a suit or proceeding is initiated, unless expressly laid down or by necessary implication thereof...the Corporate Debtor at this stage cannot be treated as MSME and cannot take the benefit of MSME, in view of amendment vide notification issued on 01.06.2020, w.e.f.01.07.2020, by having its retrospective effect when admittedly on the date of filing application under Section 9 of the IB Code Corporate Debtor does not fall under the criteria of MSME. Hence, the question of not accepting the Resolution Plan filed by erstwhile promoters' does not arise as the erstwhile promoters' will be ineligible under Section 29A of the IB Code to file the Resolution Plan. "

QR CODE FOR FULL ORDER/JUDGEMENT:

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[1]https://nclt.gov.in/sites/default/files/January2021/final-orders-pdf/FINAL%20IA%20514%20of%202020%20in%20CP%28ib%29%20268%20of%202018.pdf