

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

**Company Appeal (AT) (Insolvency) No. 355 of 2018**

**IN THE MATTER OF:**

**J.R. Agro Industries Pvt. Ltd.**

**...Appellant**

**Vs.**

**Resolution Professional**

**Swadisht Oils Pvt. Ltd.**

**...Respondent**

**Present: For Appellant: - Mr. Arvind Kumar Gupta, Ms. Purti Marwalia Gupta and Ms. Henna George, Advocates.**

**ORDER**

**11.07.2018**— This appeal has been preferred by M/s. J.R. Agro Industries (P) Ltd., one of the ‘Resolution Applicants’ whose ‘Resolution Plan’ was not entertained by the ‘Resolution Professional’ amounting to rejection of the ‘Resolution Plan’. It has been rejected on the ground that the Appellant is disqualified in terms of Section 29A(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”).

2. Learned counsel appearing on behalf of the Appellant submits that M/s. J.R. Agro Industries (P) Ltd. has no direct connection with the ‘Corporate Debtor’ namely— ‘Swadisht Oils Pvt. Ltd.’. Further, it is also submitted that M/s. J.R. Agro Industries (P) Ltd. is not an associate Company of the M/s. J.R. Organics Limited.

3. According to learned counsel, it is one of the ‘Operational Creditors’ who supplied raw material to the ‘Corporate Debtor’ except that it had

no other connection for which it can be treated to be a 'connected person' or 'related party' as per *explanation* below Section 29A of the 'I&B Code'.

4. We have heard learned counsel for the Appellant and perused the impugned judgment dated 31<sup>st</sup> May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad. In the said judgment, a detailed discussion has been made as to how M/s J.R. Agro Industries (P) Ltd. is disqualified under clause (e) read with clause (j) of Section 29A on the ground that Y.K. Jhunjhunwala, who is 'connected person' of M/s J.R. Agro Industries (P) Ltd. is disqualified to act as Director. The reasons for his disqualification has been recorded by the Adjudicating Authority, which reads as follows:

***“13. JR Agro is disqualified under clause (e) read with clause (j) of Sec. 29A since Y.K. Jhunjhunwala, who is “connected person” of JR Agro is disqualified to act as director for the following reasons***

- (I) *In the Annual Returns (MGT-7) filed by JR Agro with ROC, Y.K. Jhunjhunwala is being regularly shown as a promoter, and his shareholdings [self and HUF] are being shown as 4,05,000 shares constituting 15% of the paid up capital of JR Agro which is evident from following documents:*

- (i) In annual A/C for FY 2016-17 – Application Page 31/ at page 45- Number of shares held by YKJ is 2,55,000 (9.44%) and by his HUF – 1,50,000 shares (5.56%), Total comes to 4,05,000 shares constituting 15%. In annual return (MGT-7) for FY 2014-15 (Page 83/ at 97) shares held by self 2,55,000 and HUF 1,50,000 shares. **At page 101-102, names of Y K Jhunjhunwala and his HUF are included at serial no. 7 and 8 in the List of Promoters.**
- (ii) In annual return (MGT-7) for FY 2015-16 (Page 105/ at 111-112) under ‘**Shareholding Pattern – Promoter**’- it is stated that **26,98,900 shares constituting 99.96% of total share capital (which comprise of 27,00,000 shares) is held by promoters. In other words, only 0.04% shares are held by non-promoters.** At page 119 complete list of shareholders is given. In this List, Y K Jhunjhunwala and his HUF have been shown as holders of 2,55,000 and 1,50,000 shares, i.e. 4,05,000 i.e. **15% of the total share capital which is shown as 27,00,000 shares. Since his shareholdings is 15%, he and his HUF are admittedly included in the Promoters shareholdings given on page 111-112. In this Return separate “List of Promoters” is not given as per practice followed in earlier Return filed for the FY 2014-15.**
- (iii) **In annual return (MGT-7) filed for FY 2016-17 on 25.12.2017 (at page 121 of Application) At page 128 promoters’ shareholdings is now reduced to**

**70% whereas in the List of shareholders on page 135 – shareholdings of YK Junjhunwala and his HUF remain the same, i.e. 4,05,000 shares.**

**This change in the above Annual Return appears to be a manipulation to escape from the rigors of section 29A. It is relevant to point out that Section 29A came into force on 23.11.2017 and the above Annual Return was filed soon after that on 25.12.2017. there has been no change in management and no change in shareholding pattern. The list of shareholders year after year is the same. Hence, there can be no justification to delete the name of YK Jhunjhunwala and his shareholdings from the Promoters' List.**

**Given the fact it is clear that V K Jhunjhunwala is promoter of JR Agro, he becomes 'connected person' of JR Agro, he becomes 'connected person' of JR Agro defined 'connected person' given in Explanation to section 29A.**

**Clause (i) of this Explanation of Sec 29A reads as under:**

**“connected person” means**

- i) any person who is promoter or in management or control of the resolution applicant; or  
 .....

**Since Sri Y K Jhunjunwala has been disqualified to act as director.** His name appears in the list of persons disqualified to act as director as notified by the Registrar of Companies (Application Page 136 – Name of Y K Jhunjunwala appears at Sl. No. 12 and his disqualification period is 01.11.2016 to 31.10.2021).

**Section 29A (e) provides that a person shall not be eligible to submit a resolution plan, if such person is “disqualified to act as director under the Companies Act, 2013”. Clause (j) of Sec. 29 extends the above disqualification to Cases where ‘connected person’ of resolution applicant is “disqualified to act as director” Since Y K Jhunjunwala is “connected person” of JR Agro and he is disqualified to act as director, JR Agro is hit by clause (e) read with clause (j) and is not eligible to submit a resolution plan.**

*It is further contended that corporate person, JR Agro, is a separate entity, but it is also disqualified under section 29A(c) read with clause (j) of I & B Code.*

**Sec 29A (c) of IBC provides that a person shall not be eligible to submit a resolution plan if such person has an account of a corporate debtor under the control and management of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of RBI and atleast 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. However, such a person shall be eligible to submit resolution plan if such person makes payment of all overdue amounts with interest thereon and other charges before submission of resolution plan.”

5. The ‘Resolution Professional’ also brought to the notice of the Adjudicating Authority that M/s. J.R. Agro Industries (P) Ltd. is also disqualified under clause (e) read with clause (j) of Section 29A for the ground as recorded and reads as follows:

“14. The RP further contends that JR Agro is also disqualified under clause (e) read with clause (j) of Sec. 29A on the ground that J.R. Agro holds 43% shares in JR Organics Ltd. Balance Sheet of JR Agro for **FY 2016-17** – Page 31 at 49 – shows that 5,31,350 shares are held by JR Agro in JR Organics Ltd. Extract of B/S of JR Organics downloaded from MCA website proves that JR Agro holds 5,31,350 shares in JR Organics Ltd., and **percentage is shown at the bottom as 43%**. Given above shareholding of JR Agro in JR Organics Ltd, JR Organics becomes **“associate company”** of JR Agro as per definition of **‘associate company’** given in **section 2(6) of Companies Act, 2013**, which reads as under –

**“associate company” in relation to another company, means a company in which that other company has a significant influence, but which is**

**not a subsidiary company of the company having such influence and includes a joint venture company.**

*Explanation – For the purposes of this clause –*

- (a) *expression “significant influence” means control of at least twenty percent of total voting power, or control of or participation in business decisions under an agreement.*

*Thus JR Agro, being an associate company of JR Organics Limited falls within the definition of “**connected person**” under Explanation (iii) to Section 29A. Since JR Organics Ltd. has availed credit facility from PNB, and its account is NPA for the last several years which is evident from PNB Letter dated 05.03.2018 (Page 14 of Rejoinder), The Credit Report which is at Page 205 at 207 shows that JR Organics has availed loan amounting to Rs. 6.94 Cr. And its account is **classified as “doubtful.”***

*Clause (j) of Section 29A extends the above disqualification to cases where ‘connected person’ of resolution applicant is “disqualified” under clauses (a) to (i). As shown above, J R Organics is a ‘connected person’ and disqualified under clause (e), as its account with PNB is NPA since long and has not been paid before submitting the resolution plan. **Hence, JR Agro is hit by clause (e) read with clause (j) and is not eligible to submit a resolution plan.”***

6. The fact as taken into consideration by the Adjudicating Authority in relation to holding of the shares and the relationship between the

parties being not disputed, we hold that the Adjudicating Authority has rightly appreciated the law and held that the Appellant is disqualified in view of Section 29A(c), (e) & (j) of the 'I&B Code'.

7. In absence of any merit, the appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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