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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3448/2025 & CM APPL. 16161/2025**
ANUJ GOYALPetitioner
Through: **Mr. Mohit Chaudhary and Mr Prakhar Mittal, Advs.**

versus

UNION OF INDIA & ANR.Respondents
Through: **Mr. Ruchir Mishra, Mr. Sanjiv Kr. Saxena, Mr. Mukesh Kr. Tiwari, Ms. Poonam Shukla, Ms. Reba Jena Mishra and Ms. Harshita Sharma, Advs. Mr. Gokul Kumar, GP.**

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER
% **20.03.2025**

1. Heard learned counsel for the parties.
2. The proceedings of this petition under Article 226 have been instituted challenging the Constitutional validity of Section 29A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') on the ground that it allegedly creates an irrational and artificial distinction by excluding 'Co-obligors' from its ambit while disqualifying 'Guarantors' which in the submission of the learned counsel for the petitioner is violative of Article 14 of the Constitution of India.
3. An alternative prayer has also been made by the petitioner to declare



that Section 29A(h) of the Code includes ‘Co-obligors’ within its scope and further to hold that any ‘co-obligor’ who shares a primary or joint liability for the debts of the borrower and has failed to discharge such liability upon default shall also be disqualified from submitting a resolution plan under the Code.

4. It has been argued by learned counsel for the petitioner that ‘obligor’ and ‘guarantor’ are two phrases/ nomenclature used to connote the same meaning, however, since in Section 29A, the word ‘obligor’ does not appear, the submission made on behalf of the petitioner in the proceedings before the National Company Law Tribunal (NCLT) have not been accepted which has necessitated the petitioner to institute the proceedings of the instant writ petition with the prayers as aforesaid.

5. It has also been brought to our notice that against the order passed by the NCLT, the petitioner has preferred an appeal before the National Company Law Appellate Tribunal (NCLAT), namely Company Appeal (AT) (Insolvency) No. 185 of 2025.

6. When we examine the facts and circumstances in which this writ petition has been filed, what we find is that failure of the argument raised by the petitioner before the NCLT appears to have led the petitioner to institute these proceedings.

7. In any proceedings, acceptance or rejection of any ground or any argument, in our opinion, will give cause of action to challenge the orders passed in such proceedings before the higher appellate forum; which in this case has been done for the reason that the order passed by the NCLT has been challenged by the petitioner before the NCLAT. The arguments raised by the petitioner before the NCLT are yet to be tested as the same are under



consideration before the NCLAT.

8. In our opinion permitting such a challenge which is based on alleged misconceived understanding of a particular provision of the law will not be permissible.

9. In view of the aforesaid view of the matter, we dispose of this petition with the liberty to the petitioner to raise all and every argument or grounds available to it before the NCLAT.

10. We make it clear that all observations made in this order shall not be construed, in any manner, our opinion about the merit of the challenge made herein.

11. Needless to observe that, in case, the petitioner fails even before the NCLAT, it may be open to the petitioner to take recourse to the legal remedy which may be available to it under the law.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

MARCH 20, 2025

N.Khanna