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Ministry of Corporate Affairs

In exercise of powers conferred by Section 67(1) of the Limited Liability Partnership Act, 2008 (“**LLP Act 2008**”) Central Government vide Notification dated February 11, 2022 directed that the provisions of Section 90¹, Section 164², Section 165³, Section 167⁴, Section 206(5)⁵, Section 207(3)⁶, Section 252⁷ and Section 439⁸ which were earlier applicable only to Companies registered under the Companies Act 2013 (“**CA 2013**”) now will also be applicable to Limited Liability Partnership (“**LLP**”) firms also. However, the said sections of CA 2013 shall apply to the LLPs only with the modifications as specified below:

1. In Section 90 of CA 2013, the words ‘shares’, ‘company’ and ‘members’ shall be substituted by the words ‘contribution’, ‘limited liability partnership’ and ‘partner’ respectively.
2. Modifications made to Section 164 of CA 2013 are as follows:
 - (1) In Section 164 (1) which speaks about eligibility of a person to be appointed as a director shall apply to designated partners of LLP also. However, the words ‘for appointment’, ‘director’ and ‘company’ shall be substituted by ‘to become’, ‘designated partner’ and ‘limited liability partnership’ respectively;

¹Register of significant beneficial owner in the company

²Disqualifications for appointment as director

³Number of directorships

⁴Vacation of office of a director

⁵Power to call for information, inspect books and conduct inquiries

⁶Conduct of inspection and inquiry

⁷Appeal to National Company Law Tribunal

⁸Offences to be non-cognizable



- (2) Section 164 (2) has been substituted by,
- “No person who is or has been a director of the company or designated partner of a LLP as the case maybe which
- (a) has not filed financial statements or Statement of Account and Solvency or annual returns as the case maybe for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,
- shall be eligible to become or continue a designated partner of that LLP or to become a designated partner in any other LLP for a period of five years on the date on which the said company or LLP fails to do so
- Provided that where a person becomes a designated partner of a LLP which is default of clause (a) or (b), he shall not incur disqualification for a period of six months from date on which he becomes a designated partner.”
3. Modifications made to Section 165 of CA 2013 are as follows:
- (1) Section 165 (1) with respect to its application to LLPs will be read as, “No person shall become designated partner in more than twenty limited liability partnerships”;
- (2) Section 165 (3) with respect to its application to LLPs shall be read as,
- “Any person holding office as a designated partner in LLP more than the limits as specified in sub-section (1) immediately before this notification shall within a period of one year from such notification:
- (a) choose not more than specified limit of LLP as LLP in which he wishes to continue to hold office as a designated partner.
- (b) resign his office as designated partner in the other remaining LLP.
- (c) intimate the choice made by him under clause (a) to each one of the LLP in which he was holding office of designated partner before such notification and Registrar having such jurisdiction in respect of each LLP.”;
- (3) In Section 165 (4) with respect to its application to LLPs shall be read as, “any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned;”
- (4) Section 165 (5) with respect to its application to LLPs now states that no person shall now act as designated partner in more than the specified



number of companies after despatching the resignation of his office as designated partner or designated partner thereof, in pursuance of clause (b) of sub-section (3) or after the expiry of one year from the date of this notification.

- (5) Section 165 (6) with respect to its application to LLPs shall be read as, “if a person becomes a designated partner in violation of this section he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees”
4. Modifications made to Section 167 of CA 2013 are as follows:
 - (1) Section 167 (1) which speaks about circumstances under which a director’s office shall become vacant will apply to designated partner also. However, the words ‘director’, ‘company’ and ‘this Act’ shall be substituted by ‘designated partner’, ‘limited liability partnerships’ and ‘the Limited Liability Partnership Act, 2008’;
 - (2) Section 167 (2) with respect to its application to LLPs shall now be read as, “If a person, functions as a designated partner even when he knows that the office of designated partner held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both”;
 - (3) Section 167 (3) with respect to its application to LLPs shall now be read as, “Where all the designated partners of a limited liability partnership vacate their offices under any of the disqualifications specified in sub-section (1), the partners or, in his absence, the Central Government shall appoint the required number of designated partners who shall hold office till the designated partners are appointed by the limited liability partnership”;
5. Section 206(5) with respect to its application to LLPs states that depending upon the circumstances Central Government can make appointment of an inspector for direct inspection of books and papers of an LLP.
6. Section 207(3) with respect to its application to LLPs, states the registrar or inspector making an inspection or inquiry shall have powers similar to the powers which are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in the matters specified in the section.
7. Section 252 with respect to its application to LLPs shall be read as,
 - (1) Any person aggrieved by an order of the Registrar, notifying a limited liability partnership as struck off and dissolved pursuant to Section 75, may file an appeal to the Tribunal within a period of three years from the date on which the order is being given by the Registrar and if the Tribunal is of the



opinion that removal of the name of the limited liability partnership from the register of limited liability partnership is not justified in view of absence of any grounds on which Registrar has passed the order, Registrar may order restoration of name of limited liability partnership in the register of limited liability partnership.

Provided before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, limited liability partnership and all other concerned persons.

Provided further that if Registrar is satisfied that the name of the limited liability partnership has been struck off from the register of limited liability partnerships either inadvertently or on the basis of incorrect information furnished by the limited liability partnership or its partners, which requires restoration in register of limited liability partnership he may within a period of three years from the date of passing of the order for dissolving the limited liability partnership under Section 75, shall file an application before the Tribunal seeking for restoration of name of such limited liability partnership.

- (2) A copy of the order passed by the Tribunal shall be filed by the limited liability partnership with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the limited liability partnership to be restored in the register of limited liability partnerships and shall issue a fresh certificate of incorporation.
 - (3) If a limited liability partnership, or any partner or creditor or workman thereof feels aggrieved by the limited liability partnership having its name struck off from the register of limited liability partnerships, the Tribunal on an application made by the limited liability partnership, partner, creditor or workman before the expiry of five years from the publication in the Official Gazette of the notice under pursuance to Section 75 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of limited liability partnerships, order the name of the limited liability partnership to be restored to the register of limited liability partnerships, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the limited liability partnership had not been struck off from the register of limited liability partnerships”;
8. In Section 439 of CA 2013 with respect to its applicability to LLPs has been amended to state as follows:



- (1) Any offence under this act shall be deemed to be non-cognizable within the meaning of the Code of Criminal Procedure 1973, notwithstanding anything in the said Code;
 - (2) No court shall take cognizance of any offence under this Act which have been committed by any LLP or any designated partners or partners or employees thereof, unless a written complaint has been filed by the Registrar, partner of LLP, or a person authorised by the Central Government in that capacity. Also it has been provided that nothing in this section shall apply to a prosecution by limited liability partnership of any of its officers;
 - (3) The liquidator of the LLP shall not be deemed to be an officer of the LLP within the meaning of Section 439 (2)
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Ministry of Corporate Affairs

LIMITED LIABILITY PARTNERSHIP RULES

Central Government in exercise of its powers conferred upon it by Sections 17, 69, 72, 76A, and 79 of the Limited Liability Partnership Act, 2008 ("**LLP Act 2008**"), further amended Limited Liability Partnership Rules, 2009 ("**LLP Rules 2009**") vide Notification dated February 11, 2022 ("**Notification**"). LLP Rules 2009 may now be called as Limited Liability Partnership Rules, 2022 ("**LLP Rules 2020**") and shall come into force with effect from April 01, 2022. LLP Rules 2020 have been amended as follows:

1. Following amendments have been made to Rule 5 of LLP Rules 2020:
 - (a) First and Second provisos of sub-rule (2) have been completely omitted and the third proviso shall now read as, "Provided that, where application is filed through electronic media or through any other computer readable media, the user may choose any one of the following payment options namely, (i) Credit Card; or (ii) Internet Banking; or (iii) Remittance at the Bank Counter; or (iv) any other mode as approved by the Central Government";
 - (b) After sub-rule (2), sub rule (3) has been inserted, namely, "(3), National Company Law Appellate Tribunal Rules, 2016 mutatis mutandis shall be applicable for filing an appeal under Sections (2) and (3) of Section 72."
2. Clause (xi) of Rule 18 (2), shall be substituted by, "The suggested name is either identical to or too similar to the name of any other limited liability partnership or a company."
3. Rule 19 (1) shall now be read as,

"A Limited Liability Partnership, a Company or the owner of the Trade Mark Act 1999 (47 of 1999) which already has a name or trade mark which is similar to or too nearly resembles the name or new name of a limited liability partnership incorporated subsequently, may apply to the Regional Director in Form 23 to give a direction to that limited liability partnership incorporated subsequently to change its name or new name, as the case may be:

Provided that an application of the proprietor of a registered trademark shall be maintainable within a period of three years from the date of incorporation or registration or change of name of limited liability partnership under



the act.”

4. Rule 19A has been inserted after Rule 19, which states as follows,

“19A. Allotment of new name to existing LLP under sub-section (3) of sub-section 17. –

- 1) *In case a Limited Liability Partnership (herein after referred to as LLP) fails to change its name or new name, as the case may be in accordance with the direction issued under sub-section (1) of Section 17 within a period of three months from the date of issue of such direction then the letters ‘ORDNC’ (i.e. Order of Regional Director Not Complied), the year of passing of the direction, the serial number and the existing LLPIN of the LLP shall become the new name of the LLP without any further act or deed by the LLP. Registrar will make entry of new name in the register of LLP and issue a fresh certificate of incorporation in Form No. 16A. Provided, that nothing in sub-rule (1) shall apply in case e-form LLP Form No-5 filed by the LLP is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director unless the said e-form is subsequently rejected.*
- 2) *The LLP whose name has been changed under sub-section (3) of Section 17 shall at once make necessary compliance with the provisions of Section 21 and the statement, “Order of Regional Director Not Complied (under Section 17 of the LLP Act, 2008)” shall be mentioned in brackets below the name of LLP on its invoices, official correspondence and publications:
Provided that no such statement shall be required to be mentioned in case the LLP subsequently changes its name in accordance with Section 19.”*

5. *After Rule 37, of LLP Rules 2008, Rule 37(A), 37(B), 37(C) and 37(D) have been inserted which are briefly stated as below:*

- (i) *Rule 37(A) of LLP Rules 2020 provides for adjudication of penalties and briefly states as follows –*
 - a. *The Central Government may appoint any of its officers with the Rank of Registrar or above, as adjudicating officer for imposing penalty under the LLP Act 2008;*
 - b. *Before imposing penalty, adjudicating officer shall issue a written notice to the Limited Liability Partnership or any other any other individual who has committed non-compliance or has made any default while complying with the Act, as the case may be, to show cause within the period stated in notice (not being less than fifteen days from the date of service thereon), why the penalty should not be imposed upon it or him;*



- c. *All the notices issued under sub-rule (2), shall clearly state the nature of non-compliance or default made under the Act, alleged to have been committed or made by LLP, its partners or its designated partner, or by any other person, draw attention to the relevant penal provisions of the Act, as well as maximum penalty that can be imposed on such LLP, its partners or designated partners or any other person, as the case may be;*
- d. *Reply for the above mentioned notice shall be filed in electronic mode only within the period specified in the notice which may be extended by the adjudicating officer and may also issue a notice to the LLP for physical appearance if required;*
- e. *After hearing the concerned person, the adjudicating officer may pass its order in writing with reasons recorded therein for the same. As well as the order should be duly dated and signed. Rule 37(A) also provides for certain powers granted to the adjudicating authority to carry out its responsibilities provided in this rule.*
- (ii) *Rule 37(B) of LLP Rules 2020 which provides for appeal against order of adjudicating officer states that order of the adjudicating authority may be challenged before the regional director having jurisdiction in the matter within the period of sixty days. The said limitation period may be extended by the regional director on the grounds of sufficient cause if found any.*
- (iii) *Rule 37(C) and Rule 37(D) of LLP Rules 2020, speaks about the process of registration of appeal and disposal of the appeal by regional director.*
- 6. *Form 16A for obtaining certificate of incorporation pursuant to change of name due to non-compliance of the order of regional director and Form 33 for memorandum of appeal have also been inserted after Form 16 and Form 32 respectively in LLP Rules 2020.*



MINISTRY OF POWER

The Ministry of Power, Government of India vide its Notification dated February 17, 2022 has framed Green Hydrogen Policy (“GH Policy”), an initiative launched by Hon’ble Prime Minister on India’s seventy fifth (75th) Independence as National Hydrogen Mission aiming to aid the government in meeting its climate targets and making India a green hydrogen hub.

The GH Policy provides as under:

1. Green Hydrogen/Green Ammonia shall be defined as Hydrogen/ Ammonia produced by way of electrolysis of water using Renewable Energy (“RE”), including RE which has been banked and the Hydrogen/ Ammonia produced from biomass.
2. The waiver of inter-state transmission charges shall be granted for a period of twenty-five (25) years to the producer of Green Hydrogen and Green Ammonia for the projects commissioned before June 30, 2025.
3. Green Hydrogen/ Green Ammonia Plants will be granted Open Access (“OA”) for sourcing of RE within fifteen (15) days of receipt of application in all respects. The OA charges shall be in accordance with rules as laid down.
4. Banking shall be permitted for a period of thirty (30) days for RE used for making Green Hydrogen / Green Ammonia.
5. The charges for banking shall be as fixed by the State Commission which shall not be more than the cost differential between the average tariff of renewable energy bought by the distribution licensee during the previous year and the average market clearing price in the Day Ahead Market during the month in which the RE has been banked.
6. RE consumed for the production of Green Hydrogen/ green Ammonia shall count towards Renewable Purchase Obligation (“RPO”) compliance of the consuming entity. The RE consumed beyond obligation of the producer shall count towards RPO compliance of the DISCOM in whose area the project is located.
7. Ministry of New and Renewable Energy (“MNRE”) will establish a single portal for all statutory clearances and permissions required for manufacture, transportation, storage and distribution of Green Hydrogen/ Green Ammonia. The concerned agencies / authorities will be requested to



provide the clearances and permissions in a time- bound manner preferably within a period of thirty (30) days from the date of application.

8. In order to achieve competitive prices, MNRE may aggregate demand from different sectors and have consolidated bids conducted for procurement of Green Hydrogen/ Green Ammonia through any of the designated implementing agencies.
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CASE SUMMARY

Case Name : *CP No. 263 of 2019 in the matter of The Solapur District Central Co-operative Bank Limited Vs. Sangola Taluka Sahakari Sakhar Karkhana Limited*

Court : *National Company Law Tribunal*

Order Dated : *February 04, 2022*

Facts of the Case:

1. The "Corporate Debtor" i.e. Sangola Taluka Sahakari Sakhar Karkhana Limited availed a loan of Rs. 8399.66/- Lakhs (Rupees Eight Thousand Three Hundred Thirty-Nine Lakhs Only) from Solapur District Central Operative Bank ("Financial Creditor") for setting up a plant for production of sugar, cutting of sugarcane, transport advance, machinery repair, pre-seasonal purchase & other expenses. In this case, the Financial Creditor filed an application under section 7 of Insolvency and Bankruptcy code, 2016 ("IBC, 2016") against Sangola Taluka Sahakari Sakhar Karkhana Limited. ("Respondent").
2. On Corporate Debtor's default in the repayment of the said loan along with interest the Financial Creditor initiated legal action against it under Section 98 of Maharashtra State Co-operative Societies Act, 1960 ("MSCS Act 1960") and obtained a recovery certificate. Subsequently, the Respondent appealed against the same before the Maharashtra State Co-Operative Appellate Court ("MSCAC") and the said order of the lower court set aside on the condition that the Respondent would deposit the amount as directed by MSCAC to the Financial Creditor within two (2) months of the date of order.
3. However, the Corporate Debtor failed to repay the amount directed by the MSCAC within the specified period. Therefore, the Financial Creditor filed an application before National Company Law Appellate Tribunal ("NCLT") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC 2016") in order to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor.



Issues before the Hon'ble NCLT:

- i) Whether the petition filed by the Financial Creditor is barred by limitation?
- ii) Whether the petition filed by the Financial Creditor under Section 7 of IBC 2016 maintainable under the provisions of IBC 2016?

Held by the Hon'ble NCLT:

1. With respect to the first issue Hon'ble NCLT observed as follows,
“While considering the contentions of the Financial Creditor with respect to the Limitation Period, this Bench observed that even if the Petition filed by the Financial Creditor is within the limitation, the Financial Creditor is not eligible to file a petition under the IBC against the Corporate Debtor here, being a Co-operative Society registered under the Maharashtra State Co-operative Societies Act, 1960. The remedy to the Financial Creditor can be available under any other applicable Legislation.”
2. With respect to the second issue, the Hon'ble NCLT in light of the judgement passed by the Hon'ble National Company Law Appellate Tribunal (“NCLAT”) in the matter of Asset Reconstruction Company (India) Limited Vs. Mohammadiya Educational Society observed that there was no merit in the petition filed by the Financial Creditor because the Corporate Debtor is a co-operative society, registered under MSCS Act 1960 and does not fall under the ambit of the IBC 2016. Therefore, CIRP cannot be initiated against the Corporate Debtor.
3. The Court after hearing the submissions of the Applicant observed that the petition filed is well within the period of limitation, but as the Respondent is a Co-operative Society registered under the Maharashtra State Co-operative Societies Act, 1960, the Applicant cannot file a petition and the Applicant can avail remedy under any other applicable way.
4. The bench pronounced that as the Respondent is a Co-operative Society registered under the Maharashtra State Co-operative Societies Act, 1960 it cannot be considered under the purview of the IBC, 2016 and as a result, CIRP cannot be initiated against the Respondent.
5. Hence, the petition was disposed off.



CASE SUMMARY

Case Name : *Civil Appeal No. 2839 of 2020 in the matter of Consolidated construction consortium limited vs. Hitro Energy Solutions Private Limited*

Court Name : *Hon'ble Supreme Court of India*

Order Dated : *February 04, 2022.*

Sections Cited : *Section 3(12) of Insolvency & Bankruptcy Code, 2016 ("IBC, 2016") Section 5(20) of IBC, 2016; Section 5(21) of IBC, 2016; Section 8 of IBC, 2016; Section 9 of IBC, 2016 Section 14 of IBC, 2016; Section 21 of IBC, 2016; Section 62 of IBC, 2016; Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 ("IBC AAA Rules, 2016"); Rule 6 of IBC AAA Rules, 2016; Regulation 7 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("IBBI IRP CP Regulations, 2016"); Section 4 of Companies Act, 2013 ("CA, 2013"); Section 10(1) of CA, 2013 and Section 13 of CA,*

Facts of the Case:

1. Consolidated Construction Consortium Limited ("**Appellant**") has filed an appeal under Section 62 of IBC, 2016 against Order dated December 12, 2019 passed by the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") by which Hon'ble NCLAT had reversed the decision of Hon'ble National Company Law Tribunal ("**NCLT**") dated December 06, 2019. Hon'ble NCLT admitted the petition filed by the Appellant under Section 9 of IBC, 2016 for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against Hitro Energy Solutions Private Limited ("**Respondent**").
2. The Appellant undertook a project with Chennai Metro Rail Limited ("**CMRL**") who placed an order with the Appellant for light fittings. The Appellant then placed orders with the proprietary concern i.e. Hitro Energy Solutions ("**Proprietary Concern**"). The Proprietary Concern then supplied the above mentioned product through the supplier, Thorn Lightning India Private Limited ("**TLIPL**"). The Proprietary Concern thereafter requested the Appellant for an advance payment of Rs.



- 50,00,000/- (Rupees Fifty Lakh Only) ("**Amount**"). CMRL issued a cheque for the Amount in the name of the Respondent with a condition that the delivery of the light fittings should be in compliance with the schedule provided by the Appellant.
3. On January 02, 2014 CMRL terminated the contract with the Appellant, which was as per the Appellant communicated to the proprietary concern but denied by the Respondent. Thereafter, the Proprietary Concern deposited the cheque and withdrew the said Amount. Since the project had been terminated, CMRL informed the Appellant that the Amount would be deducted from the dues payable unless the Amount is returned. The Appellant refunded the said Amount and requested the Proprietary Concern to make the payment of the Amount. In the meantime, the Respondent was incorporated and one of its main objective was to take over the Proprietary Concern as per its Memorandum of Association ("MoA"). On July 23, 2016 the Appellant requested the Proprietary Concern to refund the Amount. It was also assured by the Proprietary Concern that it would indemnify the Appellant if CMRL raises any future claim.
 4. The Proprietary Concern on July 25, 2016 stated that it would return the Amount directly to CMRL. A joint meeting was held between the representatives of the Appellant, Proprietary Concern and TLIPL wherein it was decided that the Appellant should obtain a letter from CRML stating that the advance was paid by the Appellant and the same would not be claimed by it in future. Thereafter the appellant produced a letter dated December 27, 2016 by CMRL noting that the issue of cheque was only on the request of Appellant. The letter was later forwarded to the Proprietary Concern, however, no payment was made.
 5. Thereafter the Appellant demanded the refund of the Amount with eighteen (18%) interest. The same was denied by the Proprietary Concern on a whole new ground that the light fittings were lying unused in their warehouse and suffered innumerable losses. The Appellant then issued a demand notice under section 8 of IBC, 2016 which was denied by the Respondent. Hence an application in NCLT was filed by the Appellant under section 9 of IBC, 2016 read with Rule 6 of IBC AAA Rules, 2016 invoking CIRP. vide its Order dated December 06, 2018, NCLT admitted the petition and declared moratorium under Section 14 of IBC, 2016. Thereafter the Respondent, filed an appeal before Hon'ble NCLAT, which set aside NCLT's decision. The Appellant then feeling aggrieved appealed



to the Hon'ble Supreme Court.

Issues before Hon'ble Supreme Court:

- i) Whether the Appellant is an operational creditor under the IBC, 2016 even though it was a 'purchaser'?
- ii) Whether the Respondent took over the debt from the Proprietary Concern? And
- iii) Whether the application under Section 9 of the IBC, 2016 is barred by limitation?

Held by the Hon'ble Supreme Court:

1. While dealing with the first issue, the Hon'ble Supreme Court examined Section 3(12)⁹ of IBC, 2016, Section 5(20)¹⁰ of IBC, 2016, Section 5(21)¹¹ of IBC, 2016, Section 8 of IBC, 2016, Section 9 of IBC, 2016 and Section 21(2) of IBC, 2016, Rule 5 of IBC AAA Rules and 2016, Rule 6¹² of IBC AAA Rules, 2016, Regulation 7¹³ of IBBI IRP CP Regulations, 2016, Report of Bankruptcy Law Reforms Committee, ***Swiss Ribbons (P) Ltd. v. Union of India (2019) 4 SCC 17, Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416, Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407, Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353, Kay Bouvet Engg. Ltd. v. Overseas Infrastructure Alliance (India) (P) Ltd. (2021) 10 SCC 483 and Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd. (2021) 3 SCC 475***, held that the Appellant is an operational creditor under Section 5(20) of IBC, 2016 as the Appellant had clearly sought operational service from the Proprietary Concern-
2. The Hon'ble Supreme Court placed reliance on Section 4 of CA, 2013, Section 10(1)¹⁴ of CA, 2013, Section 13¹⁵ of CA, 2013 to deal with second issue. The Respondent had produced a resolution passed by it purportedly

⁹Deals with definition of 'default'

¹⁰ Deals with definition of 'operational creditor'

¹¹ Deals with definition of 'operational debt'

¹² Provides for application under Section 9 of IBC, to be filed along with details required in Form 5

¹³ Claims made by operational creditors

¹⁴ Deals with legal effect of Memorandum of Association

¹⁵ Deals with Alteration of MoA



to show that it did not take over the Proprietary Concern to buttress its submissions. However, the Hon'ble Supreme Court disregarded such submission and held that one of the object of Respondent was to take over the Proprietary Concern and hence, was liable to re-pay the debt to the Appellant. Therefore, application under Section 9 of IBC, 2016 was maintainable.

3. While dealing with the third issue, placed reliance upon **B.K. Education Services (P) Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633** and held that the debt was not barred by limitation. The Court held that limitation did not commence when the debt became due but when the default has occurred as default is defined as non-payment of debt by the corporate debtor.

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