

## **Insolvency and Bankruptcy Board of India**

**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

**18<sup>th</sup> February, 2023**

***Subject: Judgment<sup>1</sup> dated 6<sup>th</sup> February 2023 of National Company Law Appellate Tribunal, New Delhi in the matter Rourkela Steel Syndicate Vs. Metistech Fabricators Pvt. Ltd. & Or matters CA (AT)(Insolvency) No. 924 of 2022***

### **I. Brief Background**

The appeal has been filed against the orders of AA dismissing the application of Operational Creditor (OC) on the ground that the application is barred by the provisions of the Partnership Act. Section 69(2) of the Partnership Act bars filing of a suit by or on behalf of an unregistered partnership firm against any third party. The issue arising in the appeal before NCLAT is whether an application under section 9 be treated as suit?

### **II. Observation**

Drawing analogy from observations of Hon'ble Supreme Court in the matter of *Gaurav Hargovindbhai Dave Vs. Asset Reconstruction and another*, it was held that application under section 9 of the Code cannot be considered to be a suit and the provisions of the section 69(2) of the Partnership Act are not attracted in respect of application filed by an unregistered firm for initiating corporate insolvency resolution processes against CD.

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