

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1610 of 2024

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I.A. No. 5879 of 2024

[Arising out of Order dated 13.06.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Court – V, New Delhi Bench), in IA No.
5670/ND/2023 in C.P. (IB) No. 211/ND/ 2022]

IN THE MATTER OF:

CADILLAC INFOTECH PVT. LTD.

E -4 Defence Colony, New Delhi - 110024.

Email: anilmahindra66@yahoo.co.in

...Appellant

Versus

JKM INFRASTRUCTURE PVT. LTD

310, LAL KUAN,

M.B. ROAD, NEW DELHI,

Delhi, India, 110044

EMAIL: jkmip1@gmail.com

...Respondent

Present:

For Appellant : Mr. Sajeve Deora, Ms. Bani Dikshit, Mr. Aditya Puri and Mr. Uddhav Khanna, Advocates.

For Respondents : Mr. Gaurav Mitra, Sr. Advocate with Mr. Abhinav Mukhi, Mr. Shantanu Tomar and Mr. Ishan Mathew, Advocates.

WITH

Company Appeal (AT) (Insolvency) No. 1611 of 2024

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I.A. No. 5883 of 2024

[Arising out of order dated 13.06.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Court – V, New Delhi Bench), in IA No.
5682/ND/2023 in C.P. No. (IB) 210/ND/ 2022]

IN THE MATTER OF:

CADILLAC INFOTECH PVT. LTD.

E -4 Defence Colony, New Delhi - 110024.

Email: anilmahindra66@yahoo.co.in

...Appellant

Versus

AIRWIL JKM INFRASTRUCTURE PVT. LTD

B -32A, between 25 TO 35,
Kalkaji Opp. Park New Kalkaji,
South Delhi, New Delhi - 110019.
Email: pramodsach@hotmail.com

...Respondent

Present:

For Appellant : Mr. Sajeve Deora, Ms. Bani Dikshit, Mr. Aditya Puri and Mr. Uddhav Khanna, Advocates.

For Respondents : Mr. Gaurav Mitra, Sr. Advocate with Mr. Abhinav Mukhi, Mr. Shantanu Tomar and Mr. Ishan Mathew, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

By these two Appeals between the same Parties, Orders dated 13.06.2022 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Court – V, New Delhi Bench) in I.A. No. 5670(ND)/2023 in C.P. (IB) No. 211(ND)/2022 and in I.A. No. 5682(ND)/2023, in C.P. (IB) No. 210(ND)/2022 has been challenged.

2. Both the Appeals arises out of similar facts and grounds hence, they have been heard together and are being decided by this common Judgment. It shall be sufficient to refer to the pleadings in Comp. App. (AT) (Ins.) No. 1610/2024, for deciding both the Appeals.

3. Brief facts of the case necessary to be noticed for deciding the Appeals are:

- i. A Section 7 Application was filed by JKM Infrastructure Private Limited, the Respondent herein against the Appellant on which C.P. (IB) No.211(ND)/2022 was registered. The total amount of debt claimed in the Part IV of the Application was ₹5,73,75,000/- as on 01.03.2022.
- ii. Application was filed by the Financial Creditor on 04.03.2022. The Application under Section 7 was through Authorised Representative, Vinod Sachdeva, one of the Directors of the Financial Creditor.
- iii. Similarly, Section 7 Application was filed by the Financial Creditor against the Appellant on which C.P. (IB) No. 210(ND)/2022 was registered in which Application in Part IV, the amount of debt claimed was ₹26,56,25,000/- as on 01.03.2022. Application under Section 7 was filed by the Financial Creditor through its Authorised Representative, Mr. Vinod Sachdeva Director of the Financial Creditor. The Application under Section 7 was filed on 04.03.2022.
- iv. The Corporate Debtor filed an Application on 11.10.2023 being I.A. No. 5670(ND)/2023, in C.P. (IB) No. 211(ND)/2022, seeking dismissal of the Company Petition on the ground that Vinod Sachdeva, the Authorised Signatory of the Section 7 Application has no authority to file Section 7 Application, he being disqualified as Director of a Sister Company Airwill JKM Infracon Pvt. Ltd. (Airwill Infracon or Infracon Company) is also to be treated to be disqualified in filing an Application on behalf of the Financial Creditor.

- v. The Corporate Debtor has filed the Reply in Section 7 Application dated 24.02.2023 and after about 7 months, filed the I.A. No. 5670(ND)/2023, praying for dismissal of the Application on the ground that Authorised Signatory was not competent to file the Application.
- vi. The pleading in I.A.5670/2023 by the Corporate Debtor was with regard to sister concern of the Financial Creditor, namely Airwill JKM Infrastructure Pvt. Ltd. It was pleaded that sister concern of the Financial Creditor, namely Airwill Infracon had been struck off from the Register of Company since 08.08.2018, in terms of Section 248 of the Companies Act 2013 (hereinafter referred to as 'The Act'). Vinod Kumar Sachdeva, Authorised Signatory of Financial Creditor was also Director of the Airwill Infracon. Vinod Kumar Sachdeva, even after being disqualified, was signing and verifying the Affidavits. It was pleaded that in light of proviso to Section 167(1)(a) of the Act, Vinod Kumar Sachdeva was disqualified and could not have signed the Affidavit in light of the automatic vacation of his Office as Director of all Companies.
- vii. Application I.A.5670/2023 was opposed by the Financial Creditor and a Reply was filed to the Application. It was pleaded that Vinod Sachdeva does not lack authority to sign the Section 7 Application on behalf of the Financial Creditor. It was pleaded that striking of the Infracon Company was under Section 248(1)(c) and not on account of non-filing of balance sheets, the disqualification as envisaged under Section 164(2)(a) read with proviso to Section 167(1)(a) could not come into play.

- viii. Adjudicating Authority heard the Parties on the IA and by the Impugned Order rejected the IA5670(ND)/2023 Adjudicating Authority held that disqualification under Section 164(2) shall extend only to the defaulting Company, i.e., Airwill Infracon and shall have no implication on the sister Company i.e., the Financial Creditor.
- ix. It was held that provisions contained under proviso to Section 161(1)(a) are not applicable in the present case hence the disqualification shall not extend to Airwill JKM Infrastructure Pvt. Ltd. (the Financial Creditor herein).
- x. Aggrieved by the Order, rejecting I.A.5670(ND)/2023, Comp. App. (AT) (Ins.) No. 1610/2024 has been filed and similarly against the Order dated 13.06.2024, rejecting I.A. No. 5682(ND)/2023, Comp. App. (AT) (Ins.) No. 1611/2024 has been filed.

4. We have heard Learned Counsel Mr. Sajeve Deora appearing for the Appellant and Learned Counsel. Mr Gaurav Mitra appearing for the Respondent.

5. Learned Counsel for the Appellant challenging the Order submits that Adjudicating Authority has made erroneous interpretation of the Judgment of the Delhi High Court in the matter of '**Mukul Pathak & Ors.' Vs. 'Union of India & Anr.'** in **Writ Petition (Civil) 9088/2018**. The conclusion of Adjudicating Authority that disqualification referred to under Section 164(2)(a) of the Act shall extend only to the defaulting Company and same shall have no implication on Directors of the Financial Creditor is incorrect.

It is submitted that default under Section 164(2)(a) of the Act leads to automatic vacation of Office of Director by a person in any other Company. Vinod Sachdeva was a Director of the Airwill Infracon and also Director in the Airwill JKM Infrastructure Pvt. Ltd. (the Financial Creditor herein). Infracon Company did not file statement for any Financial Year except Return for 2015. Infracon Company was default in filing its Financial Statement for 4 continuous Year as on 07.05.2018 and continued to be in default in respect of these filing for 2018 and thereafter. Default of Infracon Company of not filing its Financial Statement for a continuous period of 3 years which default continuous and subsist all Directors of Infracon Company cease to hold Office as Director of any other Company also on 07.05.2018. The submission of the Respondent that proviso does not come into play is baseless and incorrect. The existence of default in filing the Financial Statement by Infracon Company as on 07.05.2018 is sufficient to attract the disqualification of Vinod Sachdeva, Director of Company to act as Director of the Financial Creditor, which disqualification continued to exist as on the date of filing of Section 7 Application. Office of Vinod Sachdeva, as Director of Infracon Company became vacant in all other Companies due to lack of authority of Vinod Sachdeva to sign and verify the Section 7 Application and supporting Affidavit therein, Application under Section 7 deserves to be rejected on this ground alone. The Directors were required to report the disqualification under Section 164(2). There was no filing of 'Form-9' by Infracon Company nor there is existence of Form DIR-8 from the side of Vinod Sachdeva. The Order passed

by the Adjudicating Authority deserves to be set aside and Application under Section 7 signed by the Vinod Sachdeva deserves to be rejected.

6. Learned Counsel, Mr. Gaurav Mitra appearing on behalf of the Respondents, the Financial Creditor refuting the submission of the Counsel for the Appellant submits that there was no lack of authority in Vinod Sachdeva to sign and file Section 7 Application on behalf of the Financial Creditor. It is submitted that Infracon Company has been struck off from the Register of the Companies not on account of any default under Section 164(2) but it has been struck off on the ground of its failure to commence business operation for a continuous period of 2 preceding Financial Year and also for not preferring any Application for seeking status of dormant Company. Learned counsel for the Respondent has referred to the Notice dated 18.06.2018 issued by RoC and further Notice dated 08.08.2018 issued by RoC. It is submitted that Infracon Company was struck off on account of it not carrying any business or operation for a period of 2 immediate preceding Financial Year and not on account of Section 164(2), hence the Application filed by the Corporate Debtor was misconceived. It is further contended that there is no deemed disqualification in terms of Section 164(2) of the Act. There is no adjudication and decision by the RoC regarding disqualification of Directors of Infracon Company under Section 164(2). Application filed by Corporate Debtor was only on the basis of assumptions and presumptions. The DIN status of Vinod Kumar Sachdeva is still available on Official Website of the Ministry of Corporate Affairs (MCA). Infracon Company had last filed its Balance Sheet on 31.03.2015 and continuous period of 3 Years in terms

of Section 164(2)(a) shall include Financial Year 2015–16, 2016–17 & 2017–18. The triggering point for the provision of Section 164(2)(a) shall be Financial Year 2017–18 and the Balance Sheet for the said period shall have to be filed as per the last AGM which is required to be held within 6 months from the date of completion of the relevant Financial Year. The said Financial Year 2017–18 would run from 01.04.2018 and the Company concern i.e., Infracon Company shall be entitled to hold AGM on or after 30.09.2018 and file the Financial Statement within 30 days from the date of said last AGM. The Company got struck off in terms of Section 248 of the Act with the effect from 05.08.2018, hence disqualification of Directors on account of non-filing of Balance Sheets for the defaulting Company, i.e., Infracon Company would not come into play and not applicable in the present case. Mr. Gaurav Mitra submits that Reply was filed by Corporate Debtor to Section 7 Application, where no such ground was taken, and it was an afterthought that Application has been filed to delay the disposal of Section 7 Application.

7. We have considered the submissions of Counsel for the Parties and perused the record.

8. The principal contention which has been advanced by the Counsel for the Appellant is disqualification of Vinod Sachdeva, Director of the Financial Creditor to sign the Section 7 Application. As noticed above Section 7 Application has been filed by the Financial Creditor on 04.03.2022. Board Resolution by the Financial Creditor was passed on 23.02.2022 authorising Vinod Sachdeva to sign and verify the Petition under Section 7 and file Affidavit. The submission of the Counsel for the Appellant is founded on non-

filing of Financial Statements by Airwill Infracon, the sister Company of the Financial Creditor. The Airwill Infracon was incorporated on 26.02.2014 from the Company Master Data which is brought on record in the Affidavit filed by the Respondent. The date of incorporation and date of Balance Sheet filed has been mentioned as 31.03.2015, and the status of Company has been shown as strike off.

9. The Counsel for the Appellant submits that Infracon Company has been struck off on account of non-filing its Financial Statement for last 3 years, which attracts the disqualification of the Directors under Section 164.

10. Learned Counsel for the Appellant relies on Section 164(2) of the Act, which provision is as follows:

“164. Disqualifications for appointment of director.

(2) No person who is or has been a director of a company which--

(a) has not filed financial statements or annual returns 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 be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so:

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.”

11. Relying on Section 164(2), Counsel for the Appellant has also relied on Section 167(1) proviso which has been inserted by Act 01/2018 with effect from 07.05.2018. Section 167(1) is as follows:

“167. Vacation of office of director.

(1) The office of a director shall become vacant in case-
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(a) he incurs any of the disqualifications specified in section 164:

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section;

....”

12. There is no dispute between the Parties that Infracon Company has been struck off from the Register of Companies on 08.08.2018.

13. Before proceeding further, we need to first notice the ground for striking off the Infracon Company which according to the Respondent is not on the ground of non-filing Financial Statement or Annual Return on any continuous period of 3 Financial Year rather was on the ground that Company has not carried out any business or operation for period of 2 immediately preceding Financial Years. In the Affidavit which has been filed by the Respondent Public Notice dated 18.06.2018 has brought on the record which was issued by a Government of India, MCA. The Public Notice is at Page 61 of the Affidavit filed on behalf of the Respondent which is as follows:

“FORM No. STK - 5

PUBLIC NOTICE

Pursuant to sub-section (1) and sub-section (4) of section 248 of the Companies Act, 2013 and rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

Government of India
Ministry of Corporate Affairs
Office of Registrar of Companies, NCT of Delhi & Haryana
IFCI Tower - 4th Floor, 61, Nehru Place, New Delhi -110019.

Email: roc.delhi@mca.gov.in
Phone: 011-26235702, 26235708

Public Notice No-ROC-DEL-248/STK-5/2018/2912

Date: 18.06.2018

Reference:

*In the matter of striking off of companies under Section 248 (1) of the Companies Act, 2013, of following Companies in **Annexure "A"**,*

Notice' is hereby given that the Registrar of Companies has a reasonable cause to believe that-

*The companies mentioned in **Annexure "A"** (List of **31,250** Nos. Companies enclosed) have not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under Section.455 of the Companies Act, 2013.*

And therefore, proposes to remove/ strike off the names of the above mentioned companies from the Register of companies and dissolve them unless a cause is shown to the contrary, within thirty days from the date of this notice.

Any person objecting to the proposed removal/ striking off nature of the companies from the Register of companies may send his/her objection to the office address mentioned hereabove within thirty days from the date of publication of this notice."

- 14.** Along with the Notice, the list of 31,250 Companies were enclosed wherein at Item No. 916, Airwill Infracon has been mentioned. Subsequent

to issue of above Notice dated 18.06.2018, a Notice for striking off the Resolution of the Company was published on 08.08.2018 by Government of India, where 24,280 Companies were struck off with effect from 08.08.2018. The name of Airwill Infracon is mentioned as Item No. 1250 thus by Order 08.08.2018 Airwill Infracon was struck off. The Order dated 08.08.2018 was issued in reference to the Show Cause Notice since 18.06.2018 and when we look into the reasons given in the Show Cause Notice, the reason for striking off was not non-filing of Financial Statement or Annual Statement for continuous 3 Years rather was on the ground that Companies have not been carrying on any business or operation for 2 immediately preceding Financial Years as has not made any Application within such period for obtaining the period of dormant Company under Section 465. The Publication dated 08.08.2018 is as follows:

“FORM No. STK - 7

NOTICE OF STRIKING OFF AND DISSOLUTION

Pursuant to sub-section (5) section 248 of the Companies Act, 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

***Government of India
Ministry of Corporate Affairs
Office of Registrar of Companies, NCT of Delhi &
Haryana
IFCI Tower - 4th Floor, 61, Nehru Place, New
Delhi -110019.***

***Email: roc.[delhi@mca.gov.in](mailto:roc.delhi@mca.gov.in)
Phone: 011-26235703/Fax: 26235702***

Public Notice No-ROC/DELHI-248(5)/STK-7/4865

Date: 08.08.2018

Reference:

*In the matter of Companies Act, 2013, and **24280** Companies as per list attached as **Annexure “A”**,*

*This is with respect to this Office Notice ROC-DEL/248(1) even dated and notice in form Public Notice No- ROC-DEL/248/STK-5/2018/2912 issued on dated 18.06.2018. Notice is hereby published that pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 the name of **24280** Companies as per list attached as **Annexure "A"** have this day i.e. 08th day of August, 2018 been struck off from the Register of the Companies and the said Companies are dissolved.”*

15. Thus, it is proved from the record that striking off Airwill Infracon was not on the ground as mentioned in Section 164(2)(a) rather was on the ground on Section 248(1)(a). Section 248(1) is as follows:

“248. Power of Registrar to remove name of company from register of companies.–(1) Where the Registrar has reasonable cause to believe that-

(a) a company has failed to commence its business within one year of its incorporation; [or]

** * * * **

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under ³[section 455; or]

[(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.]

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations

along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.”

16. The basis of the submission of the Appellant that Airwill Infracon has not filed Financial Statement for continuous last 3 years hence the Directors have become disqualified does not commend us. Further for applicability of Section 164(2), essential condition is that the Company has not filed Financial Statement or Annual Return for any continuous period of 3 Financial Years. The Company Airwill Infracon has been incorporated on 26.02.2014 and last date of filing of Balance Sheet was mentioned as 31.03.2015. In the Reply which has been filed by Financial Creditor to the I.A.5670/2023, the Financial Creditor has clearly pleaded that said condition as contemplated under Section 164(2)(a) cannot also be attracted since there can be no default for filing of Financial Statement of 3 continuous Year. Company having been struck off on 08.08.2018. The said facts have been pleaded clearly in Para 4 of the Reply is as follows:

“4. It is most respectfully submitted that even if for the sake arguments, the allegations of the CD are taken at its best, though being vehemently denied, then also the same doesn't merit out minutest of credence in as much as the Infracon Co. as per its official record as available on the official website of Ministry of Corporate Affairs had last filed its balance sheet on 31.03.2015 and the continuous period of three years, in terms of Section 164 (2) (a), shall include FY 2015 - 16, FY 2016- 17 and FY 2017 - 18. Thus, the triggering point for the provision of Section 164 (2) (a) shall be FY - 20 17 - 18 and the balance sheet for the said period shall be have to be filed as per the last AGM which is required to be held within six months from the date of completion of the relevant financial year. The said financial year of 2017 - 18 would run from 01.04.2018 and the company concerned i.e. Infracon Co. shall be entitled to hold AGM on or before 30.09.2018 and file the

financial statements within 30 days from the date of the said last AGM. Having said so and since in the present case before the said AGM of Infracon Co. could take place within the stipulated period (six months) and requisite balance sheet within the stipulated period (30 days) could be filed, the company got struck off in terms of Section 248 of the Companies Act, 2013 w.e.f. from 05.08.2018. Thus, on this account as well, the mischief as envisaged under Section 164 (2) r/w Section 167 (1) of the Companies Act, 2013, of disqualification of directors on account of non - filing of balance sheets by the defaulting company, would not come into play and be applicable in the present case.

The true copy of the MCA Data of Airwill JKM Infracon Co. downloaded from the official website of MCA is being annexed herein and marked as Annexure R - 4.”

17. Now we come to the sheet anchor of the submission of the Appellant which is Section 167(1) proviso. The submission of the Counsel for the Appellant is that in event, disqualification under sub-Section (2) of Section 164, the Office of Director becomes vacant in all the Companies other than the Company which is in default under the sub-Section (2). The Counsel for the Appellant contended that in view of the default committed by Airwill Infracon not filing the Financial Statement under sub-Section (2) of Section 164, the Office of the Director of all the Companies including Financial Creditor, where Vinod Sachdeva is the Director shall be vacated. It is relevant to notice that proviso has been inserted by Act of 01/2018 with effect from 07.05.2018. There are two reasons for which the said submission advanced by the Appellant cannot be accepted. Firstly, as noted above present is not a case of incurring a disqualification under sub-Section (2) of Section 164 by Infracon Company as noticed above. Striking off Infracon Company was not on account of any default under sub-Section (2) of Section 164, rather was default under Section 248(1), which is proved from the Orders issued by the

Government of India, MCA. There being no disqualification attached under sub-Section (2) of Section 164, there is no question of applicability of Section 167(1) proviso.

18. Secondly 167(1) proviso was inserted with effect from 07.05.2018. The proviso is a provision which now provides for vacation of Office of Director in all the Companies other than the Companies which is in default.

19. Learned Counsel for the Appellant has relied on the Judgment of Hon'ble Delhi High Court in the matter of '**Mukul Pathak & Ors.**' (*Supra*). Section 164(2) as well as Section 167(1) proviso came for consideration in the above case. The Delhi High Court after noticing the statutory scheme and the question, whether the Directors incurring a disqualification under Section 164(2) of the Act would demit their Office as a Director in all Companies in terms of Section 167(1)(a) of the Act was considered by the Delhi High Court from Paragraphs 76 to 98. In Paragraph 93, the Delhi High Court has noticed that Section 167(1) provides for a punitive measure against Directors of defaulting Company, which cannot be readily infer to apply retrospectively. The conclusions have been recorded by the Delhi High Court in Paragraph 98. What is held by the Delhi High Court is that *"if they suffer any of the disqualifications under Section 164(2) on or after 07.05.2018, the clear implication of the proviso to Sections 164(2) & 167(1)(a) of the Act are that they would demit their Office in all Companies other than the defaulting Companies"*. Present is not a case where on any material or reasons we can come to any conclusion that Director Vinod Sachdeva suffer from any disqualification under Section 164(2) on after 07.05.2018. Learned Counsel for the Appellant

submits that default even prior to 07.05.2018 within meaning of Section 164(2) are relevant to declare Director disqualified in all the Companies except the defaulting Company. It is submitted that the mere fact that proviso operate on default which is prior to 07.05.2018, the proviso cannot be held to be a retrospective operation. Proviso applies prospectively, but the default may be prior to insertion of the proviso. Learned Counsel for the Appellant has referred to Paragraph 45 of the '**Mukul Pathak & Ors.**' (*Supra*), which is as follows:

“45. In view of the above, if a company had failed to file its annual returns within a period of thirty days from the holding of the AGM or from the last date for holding such meeting for the financial year 2013-14, it would be in default under the provisions of the Act. There is no reason for excluding such default for the purposes of considering defaults in respect of three financial years as contemplated under Section 164(2) of the Act. Plainly, a director cannot be heard to contend that he had acquired a vested right not to be penalised for this default since it pertains to filing returns for a financial year that had closed prior to Section 164 of the Act coming into force. The date on which such default occurred is after the date on which Section 164 of the Act had become effective. This Court finds it difficult to understand as to which right of the petitioners has been impaired by considering such default for the purposes of Section 164 of the Act.”

20. Even if we accept the submission of the Appellant that default prior to insertion of proviso maybe relevant for applicability of Section 167(1) proviso. As noted above the default under Section 164(2) has neither been proved nor is the basis of striking off the Airwill Infracon as was contended by the Counsel for the Appellant.

21. We, thus are fully satisfied that there is no Applicability of Section 167(1) proviso to hold the Vinod Sachdeva as disqualified in the Airwill JKM Infrastructure Pvt. Ltd., the Financial Creditor. On the date of filing the Section 7 Application, Airwill Infracon had already been struck off, and the Vinod Sachdeva could not continue as Director of the Company Airwill Infracon having been dissolved, but that shall have no effect on continuance of Vinod Sachdeva as Director in Airwill JKM Infrastructure Pvt. Ltd. Vinod Sachdeva was fully competent to file Section 7 Application and swear Affidavit in support of Section 7 Application.

22. We do not find any error in the Order of the Adjudicating Authority in rejecting I.A. No. 5670/2023 & I.A. No. 5682/2023 filed by the Corporate Debtor. We do not find merit in any of the Appeals. Both the Appeals are dismissed. We request the Adjudicating Authority to expeditiously consider Section 7 Application filed by the Financial Creditors being C.P. (IB) 211(ND)/2022 & C.P. (IB) 210(ND)/2022.

Parties shall bear their own cost.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

11th November, 2024

himanshu