

Raghavendra G. Kundangar And Ors vs Shashi Agarwal The Liquidator Of Bharat ... on 24 August, 2022

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Ins.) No. 886 of 2022

[Arising out of an order dated 6th May, 2022 passed in I.A. No. 1340 of 2020 in C.P.(IB) No. 1340 of 2018 by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata)]

IN THE MATTER OF:

1. Raghavendra G. Kundangar,
Mahalaxmi Nilaya, Plot No. 144,
Kumareshwar Nagar, Pb-Orad,
Dharwad-580007. .. Appellant No. 1
2. Mallikarjun N Badiger,
Renuka Nagar, Bhairidevarkopda,
Hubli- 580025. .. Appellant No. 2
3. Sunil R Kulkarni,
C/o C.G. Nadagouda,
Nandagouda Building,
Ramnagar Crossing,
Near NTTF, Dharwad. .. Appellant No. 3
4. Sanjay Ashok Bidikar,
H No. 159, Shri Manjunath Krupta,
S.P Nagar, Tejaswinagar, Dharwad. .. Appellant No. 4
5. Vinayak H Chavan,
22, Mandi Oni, Kamalapur, Dharwad. .. Appellant No. 5
6. Parameshwar V Mandla,
Kannaya Nagar Extension,
Chalukya Nagar, Gadag Road, Hubli. .. Appellant No. 6
7. Girish B Kalkoti,
LIG 425, I2tn Cross Ward 23,
Navanagar, Hubli. .. Appellant No. 7
8. Dhananjaya M Undale,
Kumareshwar Nagar,
1st Main Road, Belgaum Road,
Dharwad. .. Appellant No. 8

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9. Basavraj L Koujalagi,
Paper Mill Cross, Kelagiri, Dharwad. .. Appellant No. 9
10. Prakash Sah,
SF- 11, Shri Shakambari Appartment,
Naraynpur, Dharwad. .. Appellant No. 10
11. Gururaj Kulkarni,
Mahavir Nagar, Garag, Dharwad. .. Appellant No. 11
12. Manojkumar G Hosamath,
Gavimath Compound, 2nd Main Road,
7th Cross, Ramnagar, Dharwad. .. Appellant No. 12
13. Prakash Devendrappa Badiger,
S/o Devendrappa, R/o Gali Oni
Mangalawarpeth, Bellary. .. Appellant No. 13
14. Manjunath S Kallimani,
S/o Shambulingappa, R/o Kumargoppa,
Post: Yamanur, Tal: Navalgund. .. Appellant No. 14
15. Rajashekhar C Kurahatti,
S/ o Chandragouda Kurah atti,
R/ o Nagnur, T-Navalagund. .. Appellant No. 15
16. Aiiiaz M Risaldar,
S/o Mohammed Aslam Risaldar,
R/o 20 43 Chapparband Colony,
Hosayallapur Road, Dharwad. .. Appellant No. 16
17. Anandkumar S. Dodamani,
S/o Siddaramappa, R/o Janata Plot,
Tejaswiri.agar, Dharwad. .. Appellant No. 17
18. Laxman D Patil,
S/o Devaji Mahadev Patil,
R/o Sangolli Rayanna Nagar,
Tejaswinagar, Dharwad. .. Appellant No. 18
19. Mahesh Kumar Agamral,

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S/o Madan Lal Agarwal,
R/o TF-3, Shri Gunatmika Apartment,
Haliyal Road, Bharati Nagar,

- Dharwad-580 001. .. Appellant No. 19
20. Shyam G Singanamalli,
S/o G Singanamalli, R/ o 1st Cross,
Keshav Nagar, Malarnaddi, Dharwad. .. Appellant No. 20
21. Vinay Nagamule,
S/o Narayan Roa, R/o Siddeshwar Nagar,
Unkal Cross, Hubli. .. Appellant No. 21
22. Ratnaji Shinde,
S/o Ramu Shinde,
R/o KHB Colony, EWS 64,
Sadankeri, Dharwad. .. Appellant No. 22
23. Ramesh Pammar,
S/o Bhimappa Pammar,
R/o H. No. -2933,
Banjara Colony, Near Ganesh Temple,
Hindalaga Road, Belgaum-590018. .. Appellant No. 23
24. Anand Hampiholi,
S / o Fakkirappa Harnpiholi,
R/o House No 148, Neharu Nagar,
Kelageri, Dharwad. .. Appellant No. 24
25. Ramesh Pujar,
S/o Thukaram Pujat,
R/o Karlkatti Tande,
PO: Yakkundi, Tq: Savadatti,
Belagaum. .. Appellant No. 25
26. Chandrashekhar B Gadag,
S/o Bhimappa Gadag,
R/o S T Anandicompound Wood Merchant,
Nr Venkateshwar Temple,
Reddy Colony Saraswatapur, Dharwad. .. Appellant No. 26
27. Parashuram Lamani,
S/o Venkatappa Lamani,
R/o Po: Mummigatti Tande,

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Company Appeal (AT) (Ins.) No. 886 of 2022

- Dharwad-580011. .. Appellant No. 27
28. Mohan Raikar,
S/o Narayan Rao,
R/o "Kamari Sadan"
Bhind Mallasajjanrqrnrneshala,
Maratha Colony, Dharwad. .. Appellant No. 28

29. Parappa Shivappa Torgal,
S/o Shivappa Torgal
R/o H. No.-34. Dundi Oni,
Hosayallapur, Dharwad. .. Appellant No. 29
30. Rajesh Jagadish Singh,
S/o Jagadish Banarsi Singh,
R/o Plot No-29 Vinayak Nagar,
Navi Bhachau, Bhachau -370I40,
Kutch, Gujarat. .. Appellant No. 30
31. Santoshkumar Balmiki Prasad,
S/o Balmiki Prasad, R/o Mahiplal,
89 High School Road, Bhamal,
Opposite Old Donbosco School,
Nirsa Dist Dhanbad - 828205.
Jharkhand. .. Appellant No. 31
32. Panchanan Singh,
S/o Brijmohan S Singh,
R/o Village Nepaidih,
Post Brahmandiha, P.S. Topchahchi,
Dist Dhanbad - 828402, Jharkhand. .. Appellant No. 32
33. Krishnanand Harimohan Singh,
S/o Hari Mohan Singh,
R/o Village: Subakhar Pur Lawa,
Dist Ghazipur, Uttar Pradesh. .. Appellant No. 33
34. Ramavatar Sharma,
S/o Rameshwarlal J. Sharma,
R/o Village Digal, Post Berwa,
Via Maulasar, Dist Nagour,
Rajasthan. .. Appellant No. 34
35. Bharatkumar Lavjibhai Oza,
S/o Lavjibhai Manjibhan Oza,

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- R/o Near Gayatri Temple,
Gayatri Nagar,
Taluka Bhachau- 370140,
Kutch, Gujarat .. Appellant No. 35
36. Dharmendra Kulinchandra Dhulla,
S/o Kulinchandra T Dhulla,
R/o Plot No 58,
Rajnagar Antarjal,
Adipur -37 0205, Gujarat. .. Appellant No. 36

37. Praduman Pandey,
S/o Pand.y, R/o Village:- Hathuva,
Dist Gopalganj - 841436, Bihar. .. Appellant No. 37
38. Nayyar I{asan,
S/o Mahzar Hasan Syed,
R/o Moh-Noura.rryan, Vill Baghau,
Distt: Mwzaffarnagar - 251306,
Uttar Pradesh. .. Appellant No. 38
39. Biswaranjan Ghosh
Son of Hrishikesh Dhirendranath Ghosh,
R/o A-61, Lions Nagar, Bhachau- 370140
Kutch, Gujarat .. Appellant No. 39
- 40 Dharm Raj Dubey,
S/o Mahabali Dubey,
Residing at 6A, Plot No-436A,
Adipur -370205, Kutch, Gujarat. .. Appellant No. 40
41. Surendra Pal Singh,
S/o Charan Singh, R/o House No.
B1, Flat No 1, M.P. Enclave,
Ghaziabad 20|002. Uttar Pradesh. .. Appellant No. 41
42. Basanta Kumar Kandi,
S/o Prahallada Kandi,
R/o B-134, Lions Nagar,
Bhachau- 370140,
Kutch Gujarat .. Appellant No. 42
43. Pravin L Joshi,
S/o Lafjibhai Joshi,
R/o.Gayatri Nagar,
Jamkhambhalia - 361305,

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- Gujarat. .. Appellant No. 43
44. Jaipal Singh,
S/o Sukh Singh, R/o Vill Dheegal,
Teh Diwana, Distt Nagaour - 341506,
Rajasthan. .. Appellant No. 44
- 45 Mohanbhai Chhanga,
S/o Devkaranbhai Chhanga,
R/o Village Lunva,
Taluka Bhachau - 370140,
Kutch, Gujarat. .. Appellant No. 45

46. Narayan Surabhai Ahir,
S/o Surabhai Devabhai Ahir,
R/o Village Lunva,
Taluka Bhachau - 370I40,
Kutch, Gqjarat. .. Appellant No. 46
47. Rambali Shree Sahdev Tanti,
S/o Shree Sahdev Bihari Tanti,
R/o Village Kanan, Post Keshovpur,
Dist-Jamui - 811305, Bihar. .. Appellant No. 47
48. Samay Singh, S/o Foshu
R/o Village Sikrouda Meena,
Tehsil Hindaar City,
Distt Karaouli - 322230,
Rajasthan. .. Appellant No. 48
49. Bhanwar Singh Narooka,
S/o G S J S Narooka,
R/o 153, Radha Krishna Nagar,
Meghpar Borichi, Anjar -370 110,
Gujarat. .. Appellant No. 49
50. Saroj Kumar,
S/o Rarnbahadur LaL,
R/o Village Dah Post, Bharwari,
Dist Samastipur - 848208, Bihar. .. Appellant No. 50
51. SatishchandraVallabhdas Rathod,
S/o Vallabhdas Rathod,
R/o 57/D, New Aram Colony Street -2,
Jamnagar - 361006, Gujarat. .. Appellant No. 51
52. Hiren J. Mehta,
S/o Jantilal Mehta,

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- R/o Subhash Market,
Tank Delo, Jamnagar- 361 001,
Gujarat. .. Appellant No. 52
53. Chetankumar Valabhdas Rathod,
S/o Valabhdas Rathod,
R/o 1 Hathi Colony, Jaya Kunj,
Summair Club Road,
Jarnnagar -361008, Gujarat. .. Appellant No. 53
54. Anilbhai Parshottambhai Shah,
S/o Parshottambhai Shah,

- R/o Oswal Plaza, Shree Nivash Colony,
Ranjit Nagar Main Road,
Jamnagar - 36 1008, Gujarat. .. Appellant No. 54
55. Keval Atulbhai Rathod,
S/o Atulbhai Valabhdas Rathod,
R/o 1, Hathi Colony, Jaya Kunj,
Surnrnair Club Road,
Jamnagar -361 008, Gujarat. .. Appellant No. 55
56. Govind Madhavjibhai Sonecha (Huff),
S/o Madhavjibhai Vithaldas Sonecha,
R/o Mahavir Society Bhakti Vardhin,
Jamnagar - 361008, Gujarat. .. Appellant No. 56
57. Rizvan H Makrvana,
Son of Hanif I Makwana,
R/o Ghanchivad Nr Takiya Pir,
Jamnagar - 361001, Gujarat. .. Appellant No. 57
58. Makwana Md Nadeem Gani,
S/o Gani Ismail Makwana,
R/o Ghanchivad Nr Takiya Pir,
Jamnagar - 361001, Gujarat. .. Appellant No. 58
59. Makwana Anas Kadarbhai,
S/o Makwana Kadarbhai Alarakhabhai,
R/o Ghanchivad Nr Takiya Pir,
Jamnagar - 361001, Gujarat. .. Appellant No. 59
60. Sonecha Ochhav Nandlalbhai,
S/o Nandlatbhai Sonecha,
R/o 6, Patel Colony, Near P & T Society,
Near Radha Krishna Temple,
Jamnagar - 361008. .. Appellant No. 60

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61. Ghavda Bharat Ramji,
S/o Rarnji Ghavda,
R/ o Vill-Kachanpur, Tac-Khambhalia,
Dist- Devbhumi Dwarka 361305. .. Appellant No. 61
62. Rathod Kishorbhai Pragiibhai,
S/o Rathod Pragjibhai D.,
R/o JKV Nagar-3, Vibhav Place,
Block No-202, Dwarka Hiway Khambhalia,
Devbhumi Dwarka 361305, Gujarat. .. Appellant No. 62
63. Piyus Dhirajlal Modha,
S/o Dhirajlal, R/o Ramanath Society,

Khambhalia, Devbhumi Dwarka 361305,
Gujarat.

.. Appellant No. 63

64. Hemraj Chopda,
S/o Lakhubhai Chopda,
R/o Opp Ramapir Temple,
Sodhari Vadi Dharampur Khambhali,
Devbhumi Dwarka 361305, Gujarat. .. Appellant No. 64

65. Prabodhh Mandal,
S/o Ganesh Mandal,
R/o Gujarat Nre Coke Ltd Staff Colony,
Vill-Dharampur,
Tat- Jam Khambh alta,
Devbhumi Dwarka 361305, Gujarat. .. Appellant No. 65

66. Karansinh K Gohil,
S/o Kusumba K Gohil,
R/o Gujarat Nre Coke Ltd Staff Colony,
Vill-Dhararnpur, Tac- Khambhalia,
Devbhumi Dwarka 361305, Gujarat. .. Appellant No. 66

67. Jayesh Natwarlal Kanabar,
S/o NatwarlaT, R/o JKV Nagar-3,
Dwarka Hiway, Khambhalia,
Devbhumi Dwarka-36 1 305,
Gujarat. .. Appellant No. 67

68. Harsha Kishorbhai Vora,
S/o Jaysukh Lal Mehta,
R/o Suvarna Barot Fali,
Opposite Ganesh Temple,
Near Anandabava, Chaklo
Jamnagar - 361008, Gujarat. .. Appellant No. 68

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69. Jayesh Chamanlal Vora,
S/o Chamanlal Vora,
R/o Adinath Appartment, Dali Fali,
Chandi Bazar, Jamnagar - 361001,
Gujarat. .. Appellant No. 69

70. Nilesh Indulal Doshi,
S/o Indulal Doshi,
R/o Nilesh Pandya Street,
Opposite Neminath Derasar,
Jamnagar - 361001, Gujarat. .. Appellant No. 70

71. Hetal Chetanbhai Vora,
S/o Bhaychandbhai Mehta,

- R/o Kanchan Palace,
Rajgor Fali Ambali Sheri,
Jamnagar -36100 1, Gujarat. .. Appellant No. 71
72. Jadeja Devendrasinh Bhupendrasin,
S/o Bhupendrasinh Jadeja,
R/o Dharam Deep, New Aram Colony,
Khodiyar Colony, Jamnagar - 361008,
Gujarat. .. Appellant No. 72
73. Sagar Kishorbhai Vora,
S/o Kishor Chimanlal Vora,
R/o Suvarna Barot Fali,
Opposite Ganesh Temple,
Near Anandabava Chaklo,
Jamnagar - 361008, Gujarat. .. Appellant No. 73
74. Mita Jitendra Vora,
S/o Haribhai Mehta,
R/o 201, Sulsha Appartment,
Near Dev Bag Near Kalyanji Temple,
Jamnagar - 36 1008, Gujarat. .. Appellant No. 74
75. Kirtibhai llarilal Jhaveri,
S/o Harilal Jhaveri,
R/o 401/402, Neminath Complex -1,
Jaindharam Salar, Chandi Bazar,
Jamnagar - 361001, Gujarat. .. Appellant No. 75
76. Navinbhai Harilal Jhaveri,
S/o Harilal Jhaveri,
R/o Kalyanji Mandir Road,
Near Gpoinath Diary,
Jamnagar- 361001, Gujarat. .. Appellant No. 76

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77. Prakashbhai Harilal Jhaveri,
S/o Harilal Jhaveri,
R/o Jhaveri & Co, 101,
Atul Shopping Center,
Opposite Nawanagar High School,
Jamnagar-361 001, Gujarat. .. Appellant No. 77
78. Nita Prakashchandra Jhaveri,
S/o Kantilal Manilal Ajmera,
R/o Jeevan Navkar Apartment,
Kalyanji Mandir Road,
Naginiya Street, Jamnagar-361 001,
Gujarat. .. Appellant No. 78

79. Kokila Navinchandra Jhaveri,
S/o Havinchandra Jhaveri,
R/o Kalyanji Mandir Road,
Near Gpoinath Diary,
Jamnagar- 361 001, Gujarat. .. Appellant No. 79
80. Ashaben Kirtikumar Jhaveri,
S/o Pranolal Shah, R/o 401/402,
Neminath Complex -1,
Jaindharam Salar Chandi Bazar,
Jamnagar - 36100 1, Gujarat. .. Appellant No. 80
81. Punjani Ashish Mahendrabhai,
S/ o Punj ani Mahendrabhai Pranshanker,
R/o 40I2, Vaibhav Apartment,
4, KaiIashnagar, Opp. S. T. Depo,
Jamnagar- 361 005, Gujarat. .. Appellant No. 81
82. Ketan Mahendralal Vora,
S/o Mahendralal Chotalal Vora,
R/o Bhat Ni Ambali Khara Kuva,
Jamnagar - 361001, Gujarat. .. Appellant No. 82
83. Deepak Kirankumar Makrrrana,
S/ o Kirankumar Makwana,
R/o "Chandra Bhrlvan",
Sidi Pir Street, Nadipa Road,
Jamnagar - 361001, Gujarat. .. Appellant No. 83
84. Santosh Balasaria,
S/o Baijnath D Balasaria,
R/o 20l, Rozy Tower,
Near LG Haria School. Indira Marg,
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85. Shashi Santosh Balasaria,
S/o Vishwanath Gupta,
R/o 20I, Rory Tower,
Near L G Haria School, Indira Marg,
Jamnagar - 361004, Gujarat. .. Appellant No. 85
86. Praful Chandra Chunilal Vora,
S/o Chunilal L Vora, R/o 501
Divyam Palace, Cricket Bungalow Street No 1,
Jamnagar - 36 1005, Gujarat. .. Appellant No. 86
87. Kamlesh Chunilal Vora,

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S/o Chunilal L Vora, R/o A/4,
Mahavir Appartment, Opposite Pratap Place,
Jamnagar 36100S, Gujarat. .. Appellant No. 87

88. Pravinchand Chunilal Vora,
S/o Chunilal L Vora,
R/o 101, Pushpak Residency,
6, Patel Colony Main Road,
Jamnagar - 36 1008, Gujarat. .. Appellant No. 88

89. Vijay Kantilal Doshi,
S/o Kantilat Doshi,
R/o 102, Siddhivinayak Appartment,
Near Aaram Hotel,
Jamnagar - 361008, Gujarat. .. Appellant No. 89

90. Miten Pravinchandra Doshi,
S/o Pravinchandra P Doshi,
R/o Kulpurush, Opposite Joggers Park,
Jamnagar - 361005, Gujarat. .. Appellant No. 90

91. Ashiwn Pravinchandra Doshi,
S/o Pravinchandra P Doshi,
R/o Chandan, Opposite Pratap Patel Road,
Jamnagar - 361008, Gujarat. .. Appellant No. 91

92. Krunal Dilipbhai Porecha,
S/o Dilip I Porecha,
R/o 1 Manindgr, Gandhindgffi,
Jamnagar - 36 1005, Gujarat. .. Appellant No. 92

93. Mohmedraza Bachubhai Jafri,
S/o Bachubhai Jafri,

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R/o 40, Sardar Smruti Society,
Nr/Agro Petrol Pump, Juhapura,
Ahmedabad - 380 055. .. Appellant No. 93

94. Alihasnain Mohmedraza Jafri,
S/o Mohrnedraza Jafiri, R/o 40,
Sardar Smruti Society,
Nr/Agro Petrol Pump,
Juhapura, Ahmedabad - 380 055. .. Appellant No. 94

95. Sunil Kumar Jain,
S/o Bhanwar Lal Jain,
R/o Griha, Flat 2A, 2nd Floor, 54/11
Girish Mukherjee Road,

- Kolkata-700025. .. Appellant No. 95
96. Akhil Chandra Mandal,
S/o Gobinda Mandal,
R/o Langalpara, Gorkhara,
Sonarpur South 24 Parganas,
West Bengal-700150. .. Appellant No. 96
97. Sachin Kumar Gupta,
S/o Vishnu Dutt Gupta,
R/o B-301, Jindal Tower,
1 Kundan Bye Lane, Liluah,
Howrah -711204. .. Appellant No. 97
98. Suresh Kumar Sangneria,
S/o Gobind Ram Sangneria,
R/o 493, G.T. Road (South),
Block-C -2, 1st Floor,
Howrah -71102. .. Appellant No. 98
99. Harinath Yadav,
S/o Sahbir Yadav,
R/o 4/H/15, Commissariate Road,
Hastings, Kolkata- 700022. .. Appellant No. 99
100. Ram Nagina Prasad,
S/o Lakhi Prasad,
R/o 1, Clyde Row Hastings,
Kolkata-700022. .. Appellant No. 100
101. Sannu Kumar Mishra,
S/o Deva Nand Mishra,
R/o 1, Clyde Row Hastings,
Kolkata-700022. .. Appellant No. 101

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102. Ajay Kumar Singh,
S/o Ram Naresh Singh,
R/o 2/t/.115, Achambit Shah Road,
Hastings Kolkata-7 00022. .. Appellant No. 102
103. Sanat Das,
S/o Ashananda Ojha,
R/o Banipur, Nimno, Jhorehat,
Haora, West Bengal-711304. .. Appellant No. 103
104. Bachchu Mondal,
S/o Rabi Mondal,
R/ o Andal South Bazar,

Aurbind Nagar,
Dist Bardhaman,
Post Andal, Pin-713321.

.. Appellant No. 104

105. Vijay Thakur,
S/o Guru Dayal Thakur,
R/o 19A, Mansatala Lane,
Khidderpure, Kolkata- 700023.

.. Appellant No. 105

106. Soumya De,
S/o Samar Lal De,
R/o 90, Ahiritola Street,
Kolkata- 700005.

.. Appellant No. 106

107. Biswajit Mondal,
S/o Sunil Mondal,
R/o Keota Sanghati Palli,
PO- Sahaganj, Hooghly-712 104.

.. Appellant No. 107

108. Debraj Chandra,
S/o Sailendra Sekhar Chandra,
R/o 89, Ahiritola Street,
Kolkata-700005.

.. Appellant No. 108

109. Mukund Chandak,
S/o Ramdas Chandak,
R/o 91/I /C, Peary Mohan Paul Lane,
Kolkata-700007.

.. Appellant No. 109

110. Prodip Mondal,
S/o Bijay Mondal,
R/o 89, Shyam Nagar Road,
Dumdum, Near Jessor Road,

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Kolkata-700055.

.. Appellant No. 110

111. Nandalal Khandelwal,
S/o Suraj Karan Khandelwal,
R/o 9, Rawdon Street,
Kolkata- 700017.

.. Appellant No. 111

112. Rajni Khandelwal,
S/o Nand Kishore Khandelwal,
R/o 9, Rawdon Street,
Kolkata- 700017.

.. Appellant No. 112

113. Bimala Khandelwal,
S/o Mahabir Prasad Shah,

R/o 9, Rawdon Street,
Kolkata - 7000114.

.. Appellant No. 113

114. Ravi Khandelwal,
S/o Nand Kishore Khandelwal,
R/o 9, Rawdon Street,
Kolkata- 700017.

.. Appellant No. 114

115. Shyama Devi Khandelwal,
S/o Murlidhar Khandelwal,
R/o 1, Ishan Bose Larre,
Block-A, Sibpur Haora Corporation,
Haora West Bengal - 711 102.

.. Appellant No. 115

116. Shankar Lal Khandelwal,
S/o Suraj Karan Khandelwal,
R/o 1, Ishan Bose Lane, Block-A,
Sibpur Haora Corporation,
Haora, West Bengal - 711 102.

.. Appellant No. 116

VERSUS

1. Shashi Agarwal,
the Liquidator of BHARAT NRE Coke Ltd.
21N Block A, New Alipore,
Kolkata - 700053.

.. Respondent No. 1

2. Jindal Steel and Power Limited,
Jindal Centre, 12, Bhikaji Cama Place,
New Delhi - 110066.
ALSO AT: O.P. Jindal Marg,
Hisar - 125005, Haryana.

.. Respondent No. 2

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Present:

For Appellants: Mr. Bharat Sood, Advocate.

For Respondents:

JUDGMENT

[24th August, 2022] (Per Hon'ble Mr. Justice M. Satyanarayana Murthy) Aggrieved by the order dated 6th May, 2022 passed in I.A. No. 1340 of 2020 in C.P.(IB) No. 1340 of 2018 by National Company Law Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as Adjudicating Authority) the Appellants- Raghavendra G. Kundangar & Ors. preferred this Appeal who are claiming to be the shareholders of the Corporate Debtor.

2. The Respondent No. 2 claiming to be Financial Creditor filed an Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter will be referred as 'IBC') claiming that there is subsisting financial debt regarding supply of material to the Corporate Debtor under the Agreement. However, the Appellants preferred an appeal before this Tribunal which ended in dismissal. The Appellants preferred appeal before the Hon'ble Apex Court under Section 62 of IBC (Civil Appeal No. 7029 of 2019 dated 16.08.2019) which was dismissed in-limine. In all these proceedings, the debt of the Respondents was declared as Financial Debt. Along with this appeal

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Company Appeal (AT) (Ins.) No. 886 of 2022 another batch of appeals in "Arun Kumar Jagatramka Versus Jindal Steel & Power Limited & Anr.",¹ "Suraksha Asset Reconstruction Limited Vs. Jindal Steel & Power Limited & Anr."² was dismissed by the Hon'ble Supreme Court by an order dated 16.08.2019 and attained finality. However, in "Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited"³ held that the person who supplied material under contract to the Corporate Debtor is not Financial Creditor but only Operational Creditor. Based on the judgment in Anuj Jain case, referred above, the Appellants filed an Application in I.A. No. 1340 of 2020 under Rule 11 of NCLT Rules, to recall the order dated 11.03.2019 passed by the Adjudicating Authority in C.P.(IB) No. 1340 of 2018, initiating Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') under Section 7 of IBC on this ground.

3. The main contention of the Appellants is that once the decision of the National Company Law Appellate Tribunal which was confirmed by Hon'ble Apex Court is overruled in the subsequent judgment, the order passed by the Adjudicating Authority in C.P.(IB) No. 1340 of 2018 is bad in law and consequently, the Respondent No. 2 is incompetent to initiate a proceeding under Section 7 of IBC, claiming to be a Financial Creditor and recall the order. (Company Appeal (AT)(Insolvency) No. 322 of 2019) in Civil Appeal No. 7027 of 2019 (2020) 7 SCC 401

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4. The Adjudicating Authority, upon hearing both the Counsel, passed a detailed reasoned order considering all the aspects including the effect of such overruling of the earlier judgment, dismissed the petition filed by the Appellant in I.A. No. 1340 of 2020 in C.P.(IB) No. 1340 of 2018.

5. Considering the contentions of the Appellants the point that need to be answered is as follows:

Whether the order dated 11.03.2019 passed in CP(IB) No. 1340 of 2018 and the order dated 23.07.2019 be recalled on the ground of over-

recalling the Judgment of Apex Court in "Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited".

POINT:

6. The main grounds in the Grounds of Appeal are that the earlier judgment of this Tribunal and earlier judgment of the Hon'ble Apex Court in Civil Appeal No. 7029 of 2019 along with "Arun Kumar Jagatramka Versus Jindal Steel & Power Limited & Anr.",⁴ Suraksha Asset Reconstruction Limited Vs. Jindal Steel & Power Limited & Anr are overruled in the subsequent judgment in Anuj Jain case referred supra, invalidated the Judgment, sought to be recalled. It is further contended that when the judgment is overruled, the Respondent herein a Creditor is incompetent to file an application

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Company Appeal (AT) (Ins.) No. 886 of 2022 under Section 7 of IBC claiming to be Financial Creditor, since, he is only Operational Creditor. Therefore, the order passed by Adjudicating Authority is illegal. The Order passed by the Adjudicating Authority in I.A. No. 1340/2020 is contrary to the law laid down by the Apex Court as the Judgment was overruled retrospectively and requested to set aside the order I.A. No. 1340 of 2020 in C.P.(IB) No. 1340 of 2018 dated 06.05.2022 and allow the appeal while recalling the order passed by the Adjudicating Authority.

7. Heard learned Counsel for the Appellants at length.

8. During hearing, learned Counsel for the Appellant vehemently contended that in view of overruling judgment in "Arun Kumar Jagatramka Versus Jindal Steel & Power Limited & Anr." and "Suraksha Asset Reconstruction Limited Vs. Jindal Steel & Power Limited & Anr". , referred supra, and in the present judgment between the Appellants and Respondent in Civil Appeal No. 7029 filed against order in C.P.(IB) No. 1340 of 2018 dated 06.05.2022 later judgment by Hon'ble Apex Court in the case of "Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited" referred supra, the proceedings before the Adjudicating Authority are without jurisdiction and thereby further proceedings cannot be allowed to be continued and order has to be recalled, since, it was against law, by placing reliance on the judgement of Hon'ble Supreme Court in the matter of "M.A. Murthy V.

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Company Appeal (AT) (Ins.) No. 886 of 2022 State of Karnataka & Ors."⁵, "Harshad Chimanlal Modi vs DLF Universal Ltd. & Anr"⁶ and also in Anuj Jain's case referred supra.

9. It is an undisputed fact that an Application under Section 7 of IBC filed by the Respondent was admitted in C.P.(IB) No. 1340 of 2018 and challenge thereto before this Appellate Tribunal and Hon'ble Apex Court, was unsuccessful. This order passed by the Tribunal treating the Respondent No. 2 as Financial Creditor and initiation of CIRP under Section 7 of IBC has attained finality. At the same time, the order of this Tribunal along with orders in "Arun Kumar Jagatramka Versus Jindal Steel & Power Limited & Anr"., and, "Suraksha Asset Reconstruction Limited Vs. Jindal Steel & Power Limited & Anr." referred supra were overruled by the Hon'ble Apex Court in Anuj Jain's case

referred supra, treating the person who supplied material under an agreement to the Corporate Debtor as Operational Creditor and not as a Financial Creditor.

10. In view of the admitted facts that this Tribunal has to examine the impact of such overruling on the proceeding already attained finality in view of the order passed by Hon'ble Apex Court along with "Arun Kumar Jagatramka Versus Jindal Steel & Power Limited & Anr.", and "Suraksha Asset Reconstruction Limited Vs. Jindal Steel & Power Limited & Anr".

(2003) 7 SCC 517 (2005) 7 SCC 791

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11. The main objection of the Appellants before this Tribunal is that once the judgment is overruled it will have retrospective effect, invalidate the proceedings undertaken in pursuance of the overruled judgment are null and void. Incidentally, the Adjudicating Authority relied on the judgment "Sri Budhia Swain & Ors. v. Gopinath Deb & Ors."7. Hon'ble Apex Court considered the power to recall orders and held in paragraph-8 of the judgment as follows:

"8. In our opinion a tribunal or a court may recall an order earlier made it in the following circumstances:

i) The proceedings culminating into an order suffer from inherent lack of

jurisdiction and such lack of jurisdiction is patent,

ii) There exists fraud or collusion in obtaining the judgment,

iii) There has been a mistake of the Court prejudicing a party, or

iv) A judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented."

12. In view of the law laid down by Hon'ble Apex Court in "Sri Budhia Swain & Ors. v. Gopinath Deb & Ors." case, only in four circumstances, an order or judgment can be recalled. In the present case, it is not the case of the Appellant that the Adjudicating Authority (1999) 4 SCC 396

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Company Appeal (AT) (Ins.) No. 886 of 2022 lacks inherent jurisdiction patently or order was obtained by playing fraud or collusion as enumerated in paragraph - 8 of the judgment.

13. Learned Counsel only made a vain attempt to demonstrate that passing an order treating the Operational Creditor as a Financial Creditor, admitting the petition for initiation of CIRP can be said to be inherent lack of jurisdiction, but we are unable to agree with the contention raised by the Counsel for the Appellant for the reason that the Adjudicating Authority is vested with the jurisdiction to hear and decide any matter under IBC whether under Section 7 or 9. Hence, the contention that the Adjudicating Authority lacks inherent jurisdiction is liable to be rejected.

14. Learned Counsel for the Appellants also drawn the attention of the Tribunal to the judgment in the matter of "Harshad Chiman Lal Modi Vs. DLF Universal Ltd. & Anr."⁸ wherein in paragraph-30, the Division Bench of the Hon'ble Apex Court held as follows:

"30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and

(iii) jurisdiction over the subject-matter. So far territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled (2005) 7 SCC 791

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Company Appeal (AT) (Ins.) No. 886 of 2022 on the point that if such objection is not taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity."

15. The Hon'ble Apex Court noted the earlier judgment in the matter of "Kiran Singh & Ors. Vs. Chaman Paswan & Ors."⁹ where the Court observed that it is a fundamental and well established principle that a decree passed by a Court without jurisdiction is nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or is relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. But the same has no application to the present facts of the case for the reason that the Adjudicating Authority is vested with such jurisdiction and the order does not suffer from inherent lack of jurisdiction. Hence the (1955) 1 SCR 117: AIR 1954 SC 340

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Company Appeal (AT) (Ins.) No. 886 of 2022 contention of this Appellant that the Adjudicating Authority lacks inherent jurisdiction is hereby rejected.

16. The specific contention of the Appellants is that the overruling of judgment invalidated the order/judgment itself but when the order/judgment attained finality, acted upon, the same cannot be reopened on account of overruling of the judgment in different proceedings as the attainment of finality is the basic principle of our legal system. In case, such issues are reopened on the basis of subsequent overruling, there will not be any end for legal proceedings. The prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by the Hon'ble Supreme Court, are also duty-bound to apply such dictum to the cases which would arise in future only. In the matters where decisions opposed to the said principle have been taken prior to such declaration of law, cannot be interfered with on the basis of such declaration of law. The Adjudicating Authority has relied on judgment of the Hon'ble Apex Court in "Union of India Vs. Madras Telephone

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Company Appeal (AT) (Ins.) No. 886 of 2022 SC & ST Social Welfare Assn."10 where the Hon'ble Apex Court held as follows:

"Having regard to the above observations and clarifications we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognized by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment in Madras Telephones. Further, Division Bench of Hon'ble High Court of Madhya Pradesh in WP No. 3257/2017, State of M.P. vs. Maharaj Singh) has held on 30 July, 2019 has held:

"15. In Somaiya Organics (India) Ltd. v. State of U.P., this Court held that the doctrine of prospective overruling was in essence a recognition of the principle that the court moulds THE HIGH COURT OF MADHYA PRADESH WP No. 3257/2017 (State of M.P. vs. Maharaj Singh (dead) the relief claimed to meet the justice of the case and that the Apex Court in this country expressly enjoys that power under Article 142 of the Constitution which allows this Court to pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before this Court. This Court observed: (SCC p. 532, para 27) "27. In the ultimate analysis, prospective overruling, despite the terminally, is only a recognition of the principle that the court moulds the reliefs claimed to meet the (2006) 8 SCC 662

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Company Appeal (AT) (Ins.) No. 886 of 2022 justice of the case -justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to 'pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it'. In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do 'complete justice'.

16. The "doctrine of prospective overruling" was, observed this by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without duly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law."

It has also been held in Sunil Raghuvanshi vs. Stte of M.P. on 24 January, 2019 (para 18) [2019 SCC OnLine MP 2265] - "However, where the rights of a party have been considered and declared, then the said proceedings cannot be reopened on the ground that the judgment on the basis of which, the rights were declared, has been overruled. The Supreme Court in the case of Union of India Vs. Madras Telephone SC & ST Social Welfare Assn. reported in (2006) 8 SCC 662 has held as under:

"21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in

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Company Appeal (AT) (Ins.) No. 886 of 2022 the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognized by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment in Madras Telephones. Since the rights of such applicants were determined in a duly constituted proceedings, which determination has attained finality, a subsequent judgment of a court or tribunal taking a contrary view will not adversely affect the applicants in whose cases the orders have attained finality. We order accordingly."

17. In view of the law laid down by the Hon'ble Apex Court and applied by the Adjudicating Authority that once the rights of parties have been considered and declared, the proceedings cannot be reopened on the basis of the judgment which overruled the earlier judgment, since, the purpose of the decision is to crystalise the rights of the parties based on the law prevailing on that date. If such practice of recalling the order passed in subsequent judgment, which overruled the earlier judgment, then litigation will continue forever. To give quietus and settle the rights of the parties, prospective overruling may be applied normally, if the Court directs such prospective application of the law. Learned Counsel for the Appellants vehemently contended that once earlier law laid down is overruled, it automatically invalidated the earlier law. In support of this contention, he placed reliance on the judgment of the Hon'ble Apex Court in the matter of

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Company Appeal (AT) (Ins.) No. 886 of 2022 "M.A. Murthy V. State of Karnataka & Ors. " referred supra wherein the Hon'ble Apex Court succinctly held normally the decision of the Hon'ble Supreme Court enunciating principle of law is applicable to all cases irrespective of the pendency thereto because it is assumed that what is enunciated by the Hon'ble Supreme Court is in fact the law from inception. The doctrine of prospective overruling, which is a feature of American jurisprudence is an exception to normal principle of law. Prospective overruling is part of principle of constitutional interpretation and can be resorted to by a Supreme Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issue to prevent multiplicity of proceedings and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies only to future cases.

18. It is for the Hon'ble Supreme Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decision and enables an organic development of the law besides providing assurance to the individual as to the consequences of forming part of daily affairs.

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19. In Anuj Jain's case referred supra, the Hon'ble Apex Court did not indicate as to the applicability of the principle prospectively. Hence, it directly overruled the earlier law. However, such overruling the law retrospectively is not a ground to exercise the recall an order. In any view of the matter, the ground urged is not sufficient to recall the order passed by the Adjudicating Authority. Since the order can be recalled only in four circumstances enumerated in the judgment in "Sri Budhia Swain & Ors. v. Gopinath Deb & Ors." referred earlier:

- i) The proceedings culminating into an order suffer from inherent lack of jurisdiction and such lack of jurisdiction is patent,
- ii) There exists fraud or collusion in obtaining the judgment,
- iii) There has been a mistake of the Court prejudicing a party, or
- iv) A judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented."

20. Here, the Appellants sought recall of the judgment on the ground of change of law. But it will never be a ground to recall the order passed by the Adjudicating Authority and in case the Adjudicating Authority exercises such power to recall the order passed on subsequent judgment

overruling the earlier judgment it would not only amount to setting aside the judgment in appeal but also setting aside a judgment in an appeal passed by the Appellate Tribunal and Hon'ble Supreme Court, which is impermissible in law.

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21. Once the order of the Adjudicating Authority attains finality on account of affirmation by the Hon'ble Apex Court in appeal, the same cannot be reopened. But the simple reason that the Appellants did not raise such issue and consequently, it is hit by the doctrine of constructive resjudicata, though the principle of resjudicata is a part of CPC, the doctrine is applicable to the proceedings in IBC. The Hon'ble Apex Court in the matter of "Ebix Singapore Pte Ltd. Vs. Committee of Creditors of Educomp,"¹¹ held in paragraph-62 of the judgment, the Hon'ble Apex Court dealt with the doctrine of resjudicata, concluded that the principle of resjudicata is applicable in IBC also.

22. It is undoubtedly true that once the proceedings are concluded in appeal before the Hon'ble Apex Court, the same cannot be reopened and recalled on the ground passed on subsequent judgment which overruled the earlier judgment.

34. "The Apex Court in *Edukanti Kistamma (Dead) Through LRs Vs. Venkatareddy (Dead) Through LRs* referred supra ...

"34. This judgment and order of the High Court also attained finality as it was not challenged by the respondents any further. Thus, in our view, the question of reconsideration of the validity of the tenancy certificate under Section 38-E(2) so far as Appellants 1 and 3 are concerned, could not arise in any subsequent proceedings

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Company Appeal (AT) (Ins.) No. 886 of 2022 whatsoever. More so, the entitlement of the said Appellants 1 and 3 to claim restoration of possession also cannot be reopened/questioned., as their entitlement to that effect had attained finality as the judgment and order of the High Court dated 28-4-2000, wherein their right to claim restoration of possession had been upheld, was not challenged by the respondents any further. ..

38. In view of the above factual matrix, we are of the considered opinion that it was not permissible for the High Court to reopen the issue either of grant or issuance of tenancy certificate under Section 38-E(2) or deal with the issue of restoration of possession so far as Appellants 1 and 3 are concerned. At the most, the High Court could proceed in the case of Appellant 2.

39. Admittedly, Smt. Ayesha Begum, the original landholder, had 127 acres of land. The claim of the appellants was valid and maintainable in view of the provisions of Section 37-A of the 1950 Act. The High Court was not justified in observing that as the issue of restoration of possession remained pending before the authority for about nineteen years, the respondents were justified in getting adjudication of their rights regarding issuance of certificate as it had not reached the finality. Mere pendency of proceedings before the court/tribunal cannot defeat the rights of a party, which had already been determined. The High Court ought to have appreciated that proceedings were only in respect of execution of the orders which had already been passed. Thus, proceedings were for the consequential relief. The issue of restoration of possession is to be decided under Section 32 of the 1950 Act. Question of application of the provision of Section 35 ought to have been raised in the first round of litigation. Such an issue is required to be agitated at the very initial stage of the proceedings and not in execution proceedings. The said issue in respect of Appellants 1 and 3 had already attained finality. More so, if in the tenancy registers of the

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Company Appeal (AT) (Ins.) No. 886 of 2022 relevant years, the High Court could not have opened the issues of factual controversies at all.

35. In addition to the above judgment of Hon'ble Supreme Court, in the recent judgment in Civil Appeal No. 4840 of 2021 dated 17.08.2021 in the matter of "Neelama Srivastava Vs. State of UP and Ors."¹² held that when the judgment attained finality, it cannot be re-agitated in any collateral or incidental proceeding. In "Rudra Kumar Sain and Ors. Vs. Union of India and Ors."¹³ while dealing with identical issue, the Hon'ble Supreme Court held that reconsideration of the judgment of the Court which has attained finality is not normally permissible. The decision upon the question of law rendered by this Court was conclusive and would bind the Court in subsequent cases. The Court cannot sit in appeal against its own judgment.

36. In the matter of "Union of India Vs. Maj. S.P. Sharma", the Hon'ble Apex Court held a decision rendered by the Competent Court cannot be challenged in a collateral proceeding for the reason that it is not permissible to do so as and when chooses and the finality of the proceeding would cease to have any meaning.

37. Applying the principle laid in the above judgment to the present facts, to give quietus to the dispute and to avoid abuse of the process of Court to challenge the judgment which attained finality in a collateral or incidental proceeding, the appellants must be non-suited. (2000) 8 SCC 25

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38. In view of the principle laid down in the above judgements, the principle of resjudicata, though a part of CPC, it would be applicable to the proceeding of this Tribunal and IBC. Only to prevent the abuse of process of law and give a finality to any proceeding, or orders, and to avoid an endless litigation to frustrate the very object of enacting IBC, the claim of appellants is liable to be rejected."

23. The law declared by Hon'ble Apex Court is consistent that on account of overruling earlier judgment, the Tribunal cannot recall order or judgment, since, it is not a ground to recall the judgment as held by the Hon'ble Apex Court in Gopinath Deb's case.

24. Though the learned Counsel for the Appellants would contend that the Adjudicating Authority lacks inherent jurisdiction, this contention holds no substance as the Adjudicating Authority is exclusively invested with inherent jurisdiction to decide the petition filed either under Section 7, 9 or any of the provisions of IBC. It appears that the learned Counsel for the Appellants invented such ground for the first time without any factual foundation in the pleadings before the Adjudicating Authority during 1st round of litigation. Therefore, we find no merit in the contention of the learned Counsel for the Appellants and consequently, the appeal is deserved to be dismissed.

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25. In the result, the Company Appeal (AT)(Insolvency) No. 886 of 2022 is dismissed. No costs.

[Justice Ashok Bhushan] Chairperson [Justice M. Satyanarayana Murthy] Member (Judicial)
[Barun Mitra] Member (Technical) NEW DELHI Akc