**IN THE NATIONAL COMPANY LAW TRIBUNAL,**
**CHENNAI BENCH**

IA/341/2020 in IBA/1031/2019 filed under Rule 11 of the NCLT Rules, 2016 r/w the provisions of the Insolvency and Bankruptcy Code, 2016

In the matter of M/s. Arrowline Organic Products Pvt. Ltd

**M/s. Arrowline Organic Products Pvt. Ltd,**
11/6, Bishop Wallers Avenue (South),
CIT Colony, Mylapore, Chennai – 600 004

*... Applicant/ Corporate Debtor*

-vs-

**M/s. Rockwell Industries Limited,**
6-3-883/2/A, 3rd Floor, Tejaswi Plaza,
Panjagutta,
Hyderabad – 500 082

*...Respondent/ Operational Creditor*

Order delivered on 2nd of June, 2020

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**

*For Applicant/ Corporate Debtor : Mr. Vishnu Mohan, Advocate*
*For Respondent/ Operational Creditor: Mr. Chandramouli Prabhakar, Advocate*

**ORDER**

***Per:*** **R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. This is an Application filed by the Applicant/Corporate Debtor aggrieved by the Order of admission passed by this Authority on 05.05.2020 initiating Corporate Insolvency Resolution Process (CIR Process) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016).

2. The trigger for moving this Application to recall the Order passed by this Tribunal on 05.05.2020 in the main Company Petition IBA/1031/2019 seems to be a Notification dated 24.03.2020 issued by the Central Government under Section 4 of the I&B Code, 2016, wherein the minimum threshold limit which hitherto (i.e) prior to 24.03.2020 was Rs.1 Lakh for maintaining a Petition before this Tribunal has been increased to Rs.1 Crore on and from the said date.

3. The Applicant/Corporate Debtor states that since the amount of claim as made by the Respondent/Operational Creditor before this Tribunal

seeking for initiation of CIR Process as against the Applicant/Corporate Debtor based on which the Petition was admitted falls below the threshold limit of Rs.1 Crore and in the said circumstance, this Tribunal is required to recall the order passed by this Tribunal admitting the Petition, and further, it also requires to dismiss the Petition as not maintainable as filed by the Respondent /Operational Creditor.

4. Upon notice being given to the Respondent / Operational Creditor, the Respondent / Operational Creditor entered appearance through its Counsel and also filed its Counter to the Application as filed by the Applicant/Corporate Debtor.

5. The main contention which is projected by the Respondent/Operational Creditor in its Counter is that this Tribunal does not have power either to recall or review the Order which was passed on merits. It is further contended by the Respondent/Operational

Creditor that neither under Section 420 of the Companies Act, 2013 nor under Rule 11 of the NCLT Rules, 2016, by invoking inherent powers of this Tribunal, the Order passed by this Tribunal can be recalled or reviewed, and in the said circumstance, this Application is required to be dismissed.

6. It is further projected by the Respondent/Operational Creditor that in any case, if the Applicant/Corporate Debtor is aggrieved by the Order passed by this Authority on 05.05.2020, the only recourse that is open to the Applicant/Corporate Debtor is by filing an Appeal before the Appellate Tribunal under Section 61 of the I&B Code, 2016 and taking into consideration the said position of law, this Application is not maintainable.

7. In view of COVID-19 lockdown, this Application was heard through Video Conferencing wherein Mr. Vishnu Mohan, Learned Counsel for the Applicant/Corporate

Debtor and Mr. Chandramouli Prabhakaran, Learned Counsel for the Respondent/Operational Creditor represented the respective parties. The matter was heard in detail on 19.05.2020. During the course of submissions made by the Learned Counsel for the Applicant/Corporate Debtor, it has been projected that the notification as issued by the Central Government on 24.03.2020 is applicable with retrospective effect, even for the cases which are pending before this Tribunal, and in the said circumstance, this Authority will not have any power to entertain the Petition under I&B Code, 2016 relating to the Corporate Debtor wherein the claim is less than Rs.1 Crore and further under the circumstances should have refrained from passing the order of admission on 05.05.2020, prejudicing the interest of the Corporate Debtor.

8. In relation to the main Petition filed by the Respondent/Operational Creditor it is pointed out that *prima facie* the claim as reflected therein is only to the

extent of Rs.21,00,000/- and under the said circumstance, subsequent to the publication of notification by the Central Government on 24.03.2020 in the Gazette of India, this Tribunal should have desisted itself in passing the Order for admission on 05.05.2020, namely the date of pronouncement of Order as by then the Notification in relation to enhancement of the pecuniary limit has become applicable much prior to the date of Order. It is also projected by the Learned Counsel for the Applicant/Corporate Debtor that no "vested rights" accrues to the main Petitioner viz. Operational Creditor to maintain the Petition before this Tribunal, since the pecuniary jurisdiction as prescribed earlier and which got enhanced by virtue of Notification dated 24.03.2020 is to be made applicable retrospectively and in this connection the Learned Counsel for the Applicant/Corporate Debtor points out the announcement made by the Hon'ble Finance Minister (FM) taking into account the extraordinary circumstance which cropped up in the country due to COVID-19 and

consequent slow down in economy being the main intendment for the enhancement and which can be gathered therefrom.

9. Further, the Learned Counsel for the Applicant/Corporate Debtor seeks to rely upon the Committee report submitted by Insolvency Law Committee dated 20.02.2020 to buttress his arguments that even though no specific date has been given as to when the Notification is applicable, however, in addition to the Hon'ble FM's speech the intendment of the Notification is that the same to be made applicable retrospectively.

10. Further, it is also argued that the material date to reckon the Pecuniary Jurisdiction to entertain the Petition is not the date of filing of the Petition and only the date when the Petition was admitted in view of the provisions of Section 9(6) of the I&B Code, 2016 specifying the date of commencement of CIR Process as

the date of admission unlike the earlier dispensation relating to winding up under the provisions of 1956 Act relating back to date of filing of the Petition.

11. Learned Counsel for the Applicant/Corporate Debtor also represents that the Corporate Debtor is an MSME and supplies organic milk and milk products and is an 'essential enterprise' serving to the society at large. In the said circumstance, the benefit of interpretation is required to be given while considering the Notification as has been issued by the Central Government as various slews of measures have been taken by the Government in order to bolster the growth of MSME Sector particularly during the COVID-19 lockdown.

12. The Learned Counsel for the Applicant/Corporate Debtor seeks to rely on the following judgements provided in relation to the captioned subject thereunder, the details of which are as follows:-

(I) POWER TO REVIEW / RECALL THE ORDER:-

i) ***Swiss Ribbons Pvt. Ltd.& Anr. v. Union Of India& Ors.,*** *in (2019) 4 SCC 17*

ii) ***NUI Pulp and Paper Industries (P) Ltd v. Roxel Trading GHBH*** in *Company Appeal (AT) (INS) No.664 of 2019.*

(II) NO VESTED RIGHT TO THE CREDITOR AND IF AT ALL ANY RIGHT IS MERELY AN EXISTING RIGHT GRANTED UNDER SECTION 9 OF THE I&B CODE, 2016 TO A CREDITOR WHICH CAN BE TAKEN AWAY IF CONDITIONS NOT FULFILLED:-

*i)* ***J. S. Yadav v.State of U.P.*** *(2011) 6 SCC 570]*

*ii)* ***Bibi Sayeeda v. State of Bihar*** *(1996) 9 SCC 516]*

*iii)* ***Trimbak Damodhar Raipurkar v. Assaram Hiraman Patil*** *[AIR 1966 SC 1758]*

*iv)* ***P. Suseela v. UGC*** *(2015) 8 SCC 129]*

*v)* ***Forech India Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*** *(2019) SCCOnline 87*

(III) EVEN ASSUMING THE EXISTENCE OF A 'VESTED RIGHT' IT CAN BE TAKEN AWAY EXPRESSLY OR BY NECESSARY IMPLICATION:

***Dahiben v. Vasanji Kevalbhai*** *[(1995) Supp. (2) SCC 295*

(IV) RELEVANT DATE FOR RECKONING THE PECUNIARY JURISDICTION IS THE DATE OF ADMISSION AND NOT FILING:-

***CoC of Essar Steel Ltd v. Sathish Kumar Gupta***, *(2019) SCC Online SC 1478*).

13. In opposition to the submissions made by the Learned Counsel for the Applicant/Corporate Debtor, the Respondent/Operational Creditor submits that at the time when the Company Petition was filed before this Tribunal, the threshold limit fixed under Section 4 of the I&B Code, 2016 was to the extent of Rs.1 Lakh and since the claim as made by the Respondent/Operational Creditor was well above the said threshold limit, the maintainability of the Petition before this Tribunal cannot be questioned. Subsequent Notification as issued by the Central Government by virtue of powers delegated under the statute cannot be of a retrospective effect and be only prospective on and from the date of the said Notification. Even though the Central Government has been granted the power under Section 4 of the I&B Code, 2016 to specify the threshold limit, however, such Notification

issued enhancing the pecuniary jurisdiction cannot seek to deprive the rights which have already accrued to the Respondent/Operational Creditor when the proceedings were initiated before this Tribunal after due compliance with the conditions prevalent on the date of default and subsequently as laid down by the statute upon the Respondent/Operational Creditor. It is further pointed out by the Learned Counsel for the Respondent/Operational Creditor that the 'default' which is the issue before this Tribunal leading to the initiation for triggering of the CIR Process had arisen much prior to the date of Notification as issued by the Central Government enhancing pecuniary jurisdiction on and from 24.03.2020 even though order being passed by this Tribunal subsequently. In this connection, the Learned Counsel for the Respondent/Operational Creditor listed the sequence of dates and events filed on behalf of the Respondent/Operational Creditor before this Tribunal along with Counter to this Application in which certain

dates which are material to this case are alone reproduced as under:-

| Sl. No. | Date | Particulars |
|---|---|---|
| 1 | Feb-Mar 2017 | Supply of Goods by the Operational Creditor to the Corporate Debtor (the Default in part payment of which was the subject matter of IBA/1031/2019 |
| 2 | 14.05.2019 | Date of Default (Being the date of dishonor of the 6th successive Cheque of Rs. 3,50,000/- each, cumulatively amounting to **Rs. 21,00,000/-**) as stated in the Form-3 & Form 5 as filed before this Hon'ble Tribunal |
| 3 | 03.06.2019 | Form 3 sent by the Operational Creditor to the Corporate Debtor for Rs. 21,00,000/- (**no Reply sent in response to the same**) |
| 4 | 26.07.2019 | Form 5 filed by the Operational Creditor before the Registry of this Hon'ble Tribunal for a sum of Rs. 21,00,000/- (**SR. No. 1073 / 11.25 / 26.7.19**) |
| 9 | 04.03.2020 | **5th hearing before this Hon'ble Tribunal** – Final Arguments advanced in the matter by respective Counsel.<br>The Ld. Counsel for the Corporate Debtor during the course of arguments stated that certain additional loans are in the process of being sanctioned by an NBFC and states that in the event the same fructifies and the Operational Creditor is settled in full to the extent of Rs. 21,00,000/-, the same would be brought to the notice of this Hon'ble Tribunal prior to any orders being passed.<br><br>**This Hon'ble Tribunal is pleased to reserve Orders in the above application** |

14. From the above list of dates and events which is pointed out by the Learned Counsel for the Respondent/Operational Creditor it is seen that the matter was finally heard by this Tribunal on 04.03.2020 and was reserved for orders on the said date. However, the Notification which was issued by the Central Government was published in the official gazette by the Central Government through Ministry of Corporate Affairs only on 24.03.2020, much after the matter was heard and reserved.

15. The Learned Counsel for the Respondent/Operational Creditor seeks to rely on the following judgment in relation to lay emphasis on the point that where the power has been delegated to an Authority by the legislature and in exercise of such delegation, the delegate seeks to notify and under such circumstance the same can have effect only prospectively and not retrospectively.

i) ***Dr. Indramani Pyarelal Gupta v. W.R. Nath*** *(AIR 1963 SC274)*

ii) ***Bakul Cashew Co. vs. Sales Tax Officer Quilon*** *(1986 2 SCC365)*

16. In addition, the Learned Counsel for the Respondent/Operational Creditor also seeks to rely on the following judgments passed by the Hon'ble NCLAT as well as by this Tribunal from time to time holding that the power to review/recall of the Order is not available under Section 420 of the Act and that a cursory reading of Section 420 of the Act shows that no such power as contemplated is available and hence this Tribunal under the circumstances cannot have jurisdiction to pass an order on the Application as filed by the Applicant/Corporate Debtor.

i) *Hon'ble NCLAT –* ***Amod Amladi v. Sayali Rane*** *(Order dt. 30.11.2017 in Company Appeal 295 of 2017)*

ii) *Hon'ble NCLAT –****Dinesh Goyal v. DCB Bank Limited*** *(Order dt. 10.07.2019 in Company Appeal 702 of 2019)*

iii) *Hon'ble NCLAT – **Peoples General Hospital vs. Alliance Industries** (Order dt. 08.08.2018 in Company Appeal 105/2018)*

iv) *Hon'ble NCLAT – **APC Credit Rating Pvt. Ltd. v. ROC, NCT of Delhi** (Company Appeal 206 & 221 of 2017)*

v) *Hon'ble NCLT Mumbai – **Vinod Kumar v. Sigmalon Equipments** (Order dt. 27.06.2019 in CA 39.2009)*

vi) *Hon'ble Madras High Courtin **Hero Exports v. K. Vasudevan** – (Order dt. 11.02.2020 in CRP No. 499/2020)*

17. Further it is also submitted by Learned Counsel for the Respondent/Operational Creditor that the date on which the order is reserved is the relevant one for the case on hand and in relation to reinforce the same as well as the prospective nature of applicability in the absence of anything to show of retrospectivity the following case laws are cited, namely: -

i. ***Karnail Kaur v. State of Punjab** {(2015) 3 SCC 206},*

ii. ***Videocon International v. SEBI** {(2015) 4 SCC 33}*

iii. ***Garikapatti Veeraya v. N. Subbiah Choudhry** {AIR 1957 SC 540}*

iv. ***K. S.Paripoornan v. State of Kerala*** *{1994 5 SCC 593}*

18. It is also submitted that retrospective effect in relation to all pending matters is covered by virtue of the Notification dated 24.03.2020 as sought to be given colour of by the Applicant/Corporate Debtor is not correct as the same is not the intent of the Executive in as much as no such power is available under the Statute for such an exercise by the delegate.

19. Parties have also filed Written Submissions along with list of citations on which they seek to rely.

20. This Application seeking for recall/review of the Order dated 05.05.2020 admitting the main CP and thereby initiating the CIR Process in relation to the Corporate Debtor is bound to fail as by now it has become trite by virtue of judicial pronouncements by this Tribunal as well as the Appellate Tribunal, both being creatures of statute, namely Companies Act, 2013 that unless the said statute specifically provides under which

it was created for exercise of such a power, the power of review or recall of its own order is not available.

21. The decision rendered by the Hon'ble Supreme Court in **Swiss Ribbons** *(supra)* as cited by the Applicant/Corporate Debtor, may not have application to the instant case on hand, as it is limited to serve the ends of justice only in relation to the circumstances stated thereunder where, in the absence of any specific provision available in I&B Code, 2016 allowing the parties to settle and have the Petition withdrawn in case of Committee of Creditors (CoC) is yet to be constituted, under such exceptional circumstances, if an Application is made seeking for withdrawal, this Tribunal/Appellate Tribunal can exercise the inherent powers available under Rule 11 of NCLT/NCLAT Rules, 2016, depending on the facts of each case. However, the said ratio laid down by the Hon'ble Supreme Court in relation to Rule 11 of NCLT Rules, 2016 cannot be made applicable to the instant case on hand, in the absence of any express

power being vested on the Tribunal under the statute constituting it for a review/recall of its own final order passed by it. **Swiss Ribbons** case, at the cost of repetition was not dealing with such a situation at all.

22. In relation to the other case cited across the Bar by Learned Counsel for the Applicant/Corporate Debtor namely **NUI Pulp and Paper Industries** *(supra)*, it has to be seen that the exercise of Rule 11 of the NCLT Rules, 2016 was called for to afford interim protection to the creditors pending final adjudication of a Petition initiated by a creditor in the absence of any undertaking on the part of the Corporate Debtor coming forth. However, in the present case, the main Company Petition itself has been disposed of on merits, and hence, the ratio laid down in **NUI Pulp and Paper Industries** *(supra)* cannot also apply to the instant case on hand. On the other hand, the citations relied by the Learned Counsel for the Respondent/Operational Creditor is apposite, and in the

circumstances, this Application as already stated in para *supra* of this Order, is bound to fail.

23. As to the jurisdictional issue, this Tribunal had chosen to exercise its jurisdiction over the subject matter namely Insolvency of a Corporate Debtor of which this Tribunal has the exclusive jurisdiction under the provisions of I&B Code, 2016, and therefore, it cannot be claimed that the impugned Order dated 05.05.2020 had been passed without jurisdiction, and hence, to be considered as a nullity thereby warranting the applicability of the decision rendered by the Hon'ble Supreme Court in ***M/s. Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.*** *in Civil Appeal Nos. 9170-9172 of 2019*

24. Equally, if this Tribunal can be construed to have exercised its jurisdiction in passing the impugned Order dated 05.05.2020 beyond its territorial or pecuniary limits, the said Order cannot sought to be recalled or

reviewed by this Tribunal and the remedy if at all available to the Applicant/Corporate Debtor is to approach the Appellate Tribunal under Section 61 of the I&B Code, 2016. The Hon'ble High Court of Madras, being fully conscious of the position of law, had while holding the Civil Revision Petition filed before it by the Applicant in CRP SR No.40137/2020 as not maintainable, has observed the following at paragraph No.5 of the Order dated 13.05.2020:

> *"5. In these circumstances, we are not inclined to entertain the present civil revision petition and we leave it free for the petitioner to approach the National Company Law Tribunal itself or the Appellate Tribunal, as the case may be, for raising the said issue. The amendment Notification dated 24.3.2020 depends upon the facts of the case and unless this issue is first adjudicated by the Tribunal below, this court cannot decide such abstract questions in writ jurisdiction. Therefore, we find that the present civil revision petition is not maintainable at this stage."*

Thus, the observations made by the Hon'ble High Court of Madras while holding that CRP SR No.40137/2020 as not maintainable, is that the issue of Notification dated 24.03.2020 enhancing the pecuniary limit by the Central Government through Ministry of Corporate Affairs has not been taken into consideration while passing the Order on 05.05.2020. The reason for not dealing with the Notification in the order dated 05.05.2020 passed by this Tribunal is firstly because in view of the well affirmed legal position by way of judicial pronouncements over the years by the Hon'ble Apex Court in several of its decisions, a few of which have also been cited before this Tribunal by the Counsel for Respondent/Operational Creditor as given in the earlier portion of this Order in relation to the prospective effect of the applicability of a Notification issued by the delegatee (Central Government) under the Statute itself and secondly due to the reason that prior to the pronouncement of the impugned Order on 05.05.2020, no issue was ever raised questioning the jurisdiction of this Tribunal by any of the parties to the *lis*

concerning pecuniary limits, more so by the Corporate Debtor between the date of Notification on 24.03.2020 and the date of pronouncement on 05.05.2020 and in the circumstances this Tribunal did not deem it appropriate to make a *suo motto* mention of the same in the Order.

25. Be that as it may, however presently, in deference to the observation made by the Hon'ble High Court in its order dated 13.05.2020 as stated in paragraph *supra* the said issue is being presently addressed by this Tribunal as follows:-

> It is required to note that the Notification had been issued by the Central Government through the Ministry of Corporate Affairs in exercise of powers conferred by the proviso to Section 4 of I&B Code, 2016 (31 of 2016). The I&B, Code, 2016, being a complete and self contained Code in itself when it left the portals of the Parliament duly passed and enacted and after receiving the assent of the Hon'ble President of India, notified to take effect from

01.12.2016, the minimum threshold of Rs.1 Lakh was left untouched despite the power being granted to the Central Government by the Act (I&B Code, 2016) to fix a different threshold limit as may be deemed expedient, of course subject to the maximum cap of Rs.1 Crore. Only recently the Central Government through Ministry of Corporate Affairs has chosen to exercise its powers by way of the Notification dated 24.03.2020 of which this Tribunal is presently concerned. Thus, if the argument of the Applicant of the retrospectivity/retroactivity is taken at face value, all the Applications filed under Sections 7, 9 and 10 of the I&B Code, 2016 and which are pending before this Tribunal for adjudication from the date of inception of I&B Code, 2016 namely 01.12.2016 till 24.03.2020 is required to be dismissed for lack of pecuniary jurisdiction, thereby effectively unsuiting the respective Petitioners/Claimants whose claim amount falls within the range of Rs.1 Lakh to an

amount lesser than Rs. 1 Crore. In the absence of I&B Code, 2016 granting such a power to the delegatee to make such a retrospective/retroactive application, can the delegatee exercise such a power thereby virtually effacing at one stroke the hitherto filed Applications falling within the range of Rs.1 Lakh and the now enhanced limit of Rs.1 Crore?

26. Before answering the above issue, it is required to notice that a power similar to that as available to the Central Government under Section 4 of the I&B Code, 2016 in relation to fixing the pecuniary limits was sought to be exercised by the Central Government through the Ministry of Finance (Department of Financial Services) by way of a Notification dated 06.09.2018 under Sub-section (4) of Section 1 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB&FI Act for brevity) raising the threshold pecuniary limit therein of Rs.10 Lakhs as was prevalent then to Rs.20 Lakhs, for filing an Application for recovery of debts in the Debt

Recovery Tribunal (DRT) by Banks and Financial Institutions and when a challenge was mounted to the said Notification dated 06.09.2018, it was held in the case of ***Kirti Kapoor v. Union of India*** *in Civil Writ Petition No. 21860/2018* vide judgement dated 01.07.2019, by the Division Bench of High Court for Rajasthan, Bench at Jaipur, after considering the provisions of the relevant Sections under RDDB&FI Act, 1993 as well referring and considering several authorities in relation to the same, that the nature of power exercised by the Central Government pursuant to the power granted by the Legislature under Sub-section (4) of Section 1 falls within the realm of *'Conditional Legislation'*. Further, the broad classification of 'Conditional Legislation' as enunciated by the Hon'ble Supreme Court in the matter of ***State of Tamil Nadu v. K. Sabanayagam & Anr.*** *(1998) 1 SCC 318*, had been also extracted in the said judgement which for ready reference is reproduced below:-

*"The Supreme Court held that conditional legislation can be broadly classified into three categories;*

*(1) when the legislature has completed its task of enacting a statute, the entire superstructure of the legislation is ready but its future applicability to a given area is left to the subjective satisfaction of the delegate who being satisfied about the conditions indicating the ripe time for applying the machinery of the said Act to a given area exercises that power as a delegate of the parent legislative body;*

*(2) the delegate has to decide whether and under what circumstances a completed Act of the parent legislation which has already come into force is to be partially withdrawn from operation in a given area or in given cases so as not to be applicable to a given class of persons who are otherwise admittedly governed by the Act. When such a power by way of conditional legislation is to be exercised by the delegate, a question may arise as to how the said power can be exercised. In such an eventuality if the satisfaction regarding*

*the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate; and*

*(3) the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who are likely to lose the existing benefit because of exercise of such a power by the delegate. It was held that in first two categories of cases hearing the parties is not obligatory, however, in cases falling in the third category opportunity must be given to other class of persons to submit their material in rebuttal thereof submitted by the first party.*

*In our opinion, the facts of the present case would fall in the second categories of the above referred to, where power to partially withdraw the applicability of the Act of 1993 to a given set of cases or to a given class of persons who are otherwise admittedly governed by the Act, viz., the recovery*

*case in the segment of ten to twenty lakh rupees. When such a power by way of conditional legislation is to be exercised by the delegate a question may arise as to how the said power can be exercised. In such an eventuality if the satisfaction regarding the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate."*

27. Thus, from the decision rendered by the Hon'ble High Court of Rajasthan, it can be discerned that the power (namely, enhancement of pecuniary jurisdiction) can be exercised in relation to a parent legislation which has already come into force and as to whether it is to be partially withdrawn from operation in a given area or in given cases so as not to be applicable to a given class of persons who are otherwise admittedly governed by the Act and further goes on to hold that the Government being the delegate under the RDDB&FI Act, 1993 was justified in enhancing the limit to Rs.20 Lakh (Rupees Twenty Lakhs only) from the then existing limit of Rs.10 Lakhs (Rupees Ten Lakhs only) prior to the Notification

dated 06.09.2018 in relation to filing of cases before DRT by Banks and Financial Institutions, based on the premise available from the statistics provided by the Government that the Tribunals were not being able to focus on clearing the higher value cases which if done would have otherwise have led to a significant recovery of public money.

28. The report of ILC dated 20.02.2020 in effect also seems to suggest almost a similar reason albeit in relation to resolution of insolvency taking into consideration the objects of I&B Code, 2016 for which it was enacted and on which reliance is placed by the Applicant to gather the intention while recommending an increase in the minimum threshold limit to Rs. 50 Lakhs (Rupees Fifty Lakhs only) instead of the earlier limit of Rs. 1 Lakh (Rupees One Lakh only). Even though in the decision of ***Kirti Kapoor*** case (*supra*), the Hon'ble High Court of Rajasthan upheld the validity of impugned Notification dated 06.09.2018 however had not addressed

the issue as to whether the said Notification is to be applicable retrospectively. Hence, it is clarified that the said decision is referred to here, only for the limited purpose of ascertaining the nature of power delegated by the Legislature and exercised by the Central Government under Sub-section (4) of Section 1 of RDDB&FI Act, 1993, as the said power exercised thereof being similar to the one granted to Central Government under the proviso to Section 4 of the I&B Code, 2016 and exercised presently. However, in this connection, it is pertinent to note that Government of India through Ministry of Finance (Department of Financial Services) after the decision of ***Kirti Kapoor's*** case, had issued a subsequent clarification dated 01.08.2019 about its applicability referring to the above cited judgement of Hon'ble High Court of Rajasthan rendered in ***Kirti Kapoor's*** case taking note of the same, at paragraph 4, of the clarification as follows:

> *4. It is hereby clarified that the cases having suit value between Rs.10 Lakh and Rs.20 Lakhs, which*

*have been filed before the DRTs during the stay period (i.e.) from 26.09.2018 to 30.06.2019 may continue in DRTs till conclusion so that no prejudice shall be caused to parties who have filed such suits in good faith. Cases filed on or after 01.07.2019, may be transferred to the civil courts by all the DRTs.*

Thus by way of clarification issued by the Central Government through the concerned Ministry, it had clearly brought into focus that the Notification dated 06.09.2018 is to apply only prospectively and had gone further to the extent of saving the cases filed between 26.09.2018 to 30.06.2019 when a stay was granted in ***Kirti Kapoor's*** case in relation to the operation of the impugned Notification which was in vogue between the relevant dates.

29. Apropos to the case on hand, from a careful perusal of the Notification issued by the Central Government through Ministry of Corporate Affairs dated 24.03.2020 annexed with the typed set to the Application, the date from which the effect is to be given to the Notification has

not been spelt out therein. In the absence of any date being specified in the Notification as to its applicability, Learned Counsel for the Applicant/Corporate Debtor submits that the intention of the delegate can be ascertained from the report of ILC dated 20.02.2020 seeking an enhanced pecuniary limit as well as the press reports of the Hon'ble Finance Minister made in relation to COVID-19 prompting the Central Government to notify the enhanced pecuniary limits under I&B Code, 2016 and more particularly keeping in mind the MSME Sector.

30. However, from the catena of decisions cited across the bar in relation to the applicability of a law retrospectively, it is discernable there from that Courts in India including the Apex Court, have sought to draw a distinction in relation to the legislative competence of a Legislature while enacting or amending the law, namely an Act in relation to its retrospective operation as compared to the power available to a delegate acting under such law/enactment which empowers it to make a

delegated / subordinate/ conditional legislation. The distinction between the powers available to the Legislature on the one hand and that of the delegate on the other is succinctly brought out by the Hon'ble Supreme Court in ***Dr. Indramaniyarelal Gupta v. W. R. Nath*** *AIR 1963 SC 274* as follows:-

> *"Learned counsel for the respondents contends that, as the legislature can make a law with retrospective operation, so too a delegated authority can make a bye-law with the same effect. This argument ignores the essential distinction between a legislature functioning in exercise of the powers conferred on it under the Constitution and a body entrusted by the said legislature with a power to make subordinate legislation. In the case of the legislature, Article 246 of the Constitution confers a plenary power of legislation subject to the limitations mentioned therein and in other provisions of the Constitution in respect of appropriate entries in the Seventh Schedule. This Court, in Union of India v. Madan Gopal Kabra held that the legislature can always legislate retrospectively, unless there is any prohibition under the Constitution which has created it. But the same rule cannot obviously be applied to*

*the Central Government exercising delegated legislative power, for the scope of their power is not coextensive with that of Parliament. This distinction is clearly brought out by the learned Judges of the Allahabad High Court in Modi Food Products Ltd. v. Commissioner of Sales Tax, U.P. wherein the learned Judges observed: "A legislature can certainly give retrospective effect to pieces of legislation passed by it but an executive Government exercising subordinate and delegated legislative powers, cannot make legislation retrospective in effect unless that power is expressly conferred."*

31. The judgments relied on by the Applicant it must be noted predominantly deals with the Legislative competence to enact a law having retrospective application as in the case of ***Essar Steel Limited*** *(supra)*. Further in relation to ***Forech India Ltd*** *(supra)* upon which heavy reliance was placed in relation to 'vested right' and the power of the Central Government to transfer the winding up petitions in particular, apart from other Petitions as specified under Section 434 of the Companies Act, 2013, it is required to be noted that the

Legislature had chosen to grant to the delegate, namely the Central Government to transfer even the pending proceedings before the High Courts to this Tribunal and by virtue of the express power granted, winding up petitions as well other petitions stated there under, namely Section 434 of the Companies Act, 2013 and by virtue of Notifications issued thereunder have been transferred. However, even in relation to the same, namely Petitions that are to be transferred, it is required to be noticed that an exception has been carved out in as much as in relation to those winding up Petitions or even in relation to other matters in which orders have been reserved by the concerned High Courts to be disposed by allowing or otherwise, are required to be left with the respective High Court for adjudication. This is evident from the perusal of Section 434 of the Companies Act, 2013 from the material portion as reproduced hereunder:

*"**434. Transfer of certain pending proceedings**.-*

*(a) .....*

*(b) .....*

*(c) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:*

*Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government:*

*Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may be order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for*

*initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code,2016*

*Provided further that only such proceedings relating to cases other than winding up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:*

*Provided also that—*

*(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or*

*(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts;*

*shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court)*

*Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before*

*the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act. 1956 and the Companies (Court) Rules, 1959*

32. Thus by virtue of the exercise of power under Section 434 of the said Act, even though the Petitioners who had filed winding up Petitions and whose cases are to be transferred in accordance with the said provision as well as Notification by the Central Government thereunder, are still left with a forum, namely NCLT to proceed with their claim and while delegating the power to the Central Government, the Legislature had seen to that, those Petitioners thereunder have not been left high and dry, which will be the case in the present instance, if the argument of the Applicant is taken at face value that the Notification dated 24.03.2020 is to be applied retrospectively and to be given a retroactive effect.

33. In view of the stated position of law by the Hon'ble Apex Court as extracted above and since this Tribunal being a creature of statute, does not have the power of

judicial review in relation to scrutiny of enactments or even the Rules and Regulations framed thereunder including the Notification as the present one issued by the Central Government dated 24.03.2020, this Tribunal confines itself only to a careful reading of the Notification and the provisions under which it has been issued, and find that the provision under which the Notification had been issued do not expressly confer any power on the delegate to issue the Notification making it retrospective in its operation nor any necessary intendment can also be gathered therefrom, however, laudable as sought to be given colour off by the Applicant/Corporate Debtor.

34. Thus, in view of the above observations, it is not necessary for this Tribunal to exercise itself upon the nature of right which had accrued i.e., 'vested' or 'conditional' in the absence of any express power granted which can be gathered from the statute itself, namely I&B Code, 2016 to the delegate to make the Notification dated 24.03.2020 to be applied retrospectively.

35. Now coming to the aspect of the argument as to the pecuniary limit which is required to be applied in relation to the main C.P., the list of dates clearly brings out the fact that the main C.P. was heard and reserved for Orders on 04.03.2020 when the pecuniary limit to entertain the Petition was Rs.1 lakh, even though on the date of pronouncement of the Order pecuniary limit had been enhanced to Rs.1 Crore. Enhancement of pecuniary limits in order to entertain Suits by Civil Courts by virtue of the power granted to the State has been exercised from time to time by the Executive keeping in mind the existing state of affairs prevalent in the State including economical. In the matter of ***Ramamirtham, Sole Proprietor v. Rama Film Service*** *AIR 1951 Mad 93, (1951) IIMLJ 121,* in the year 1950 rendered by the Hon'ble High Court of Madras while dealing with the law to be applied to pending proceedings before courts has stated as follows at paragraph 16 of the said judgement which is extracted as under:

*"16. It was also argued that a suitor had a vested right to have the suit validly instituted in a Ct. of competent jurisdiction, to have it tried & disposed of in that Ct. & that any subsequent legislation or notification issued in pursuance of a power conferred by a statute could not defeat that right nor take away the jurisdiction of that Ct. to try & dispose of the suits. No exception can be taken to the proposition & authority in support of it is to be found in the judgment of the F. C. in Venugopala v. Krishnaswami, A.I.R. (80) 1943 F. C. 24 : (I. L. R. (1943) Kar. p. c. 21) particularly in the judgment of Varadachariar J.--See also C. P. Banerjee v. B. S. Irani, A. I. R. (36) 1949 Bom. 182 : (51 Bom. L. R. 122). It is also settled law that when a suit is instituted, it carries with it the implications that the rights of appeal then in force are preserved to it throughout its career unaffected by a subsequent alteration unless the Legislature has expressly abolished the Ct. to which an appeal then lay or has, expressly or by necessary implication, made the legislation retrospective in effect....."*

36. Reiterating the above position of law, the Hon'ble Supreme Court in the matter of ***Karnai Kaur V. State of Punjab***, *(2015) 3 SCC 206* at paragraphs 24 to 26 of the

said judgement while considering the law which is to be applied when the matters stood reserved for orders has observed as follows after quoting several of its own judgements previously rendered :-

> *24. We have noticed the Gazette of India published by the Ministry of Law and Justice in respect of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014", in which a second proviso to Section 24(2) has been inserted which reads as follows:-*
>
> > *"Provided further that in computing the period referred to in this sub- section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."*
>
> *The above said amendment has come into force w.e.f. 01.01.2015. With due regard to the same, we are of the view that the amendment would not be applicable to the*

*case on hand for the reason that these appeals were pending much prior to the ordinance and also the applications under Section 24(2) of the Act of 2013 were filed prior to the amendment to Section 24(2) by Ordinance and the same were heard and reserved for orders on 28.10.2014 and therefore the Ordinance in so far as insertion of proviso to the above Section by way of an amendment is prospective.*

*25. Further, keeping in mind the principles laid down by this Court in the case of Garikapati Veeraya v. N. Subbiah Choudhry and Ors.[13], wherein it was held thus:*

> *"23...(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.*
>
> *(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.*

25. In construing the articles of the Constitution we must bear in mind certain cardinal rules of construction. It has been said in Hough v. Windus [1884] 12 Q.B.D. 224, that "statutes should be interpreted, if possible, so as to respect vested right." The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so constructed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed [Leeds and County Bank Ltd. v. Walker (1883) 11 Q.B.D. 84; Moon v. Durden (1848) 2 Ex. 22; 76 R.R. 479. The following observation of Rankin C.J. in Sadar Ali v. Dalimuddin (supra) at page 520 is also apposite and helpful : "Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right." In Janardan Reddy v. The State [1950]1SCR940 Kania C.J. in delivering the judgment of the Court observed that our Constitution is generally speaking prospective in its operation and is not to have retroactive operation in the absence of any express provision to that effect. The same principle was reiterated in Keshavan Madhava Menon v. The State of Bombay 1951CriLJ680 and finally in Dajisaheb Mane and Others v. Shankar Rao Vithal Rao [1955]2SCR872 to which reference will be made in greater detail hereafter." **(emphasis supplied)**

26. Further in the case of Shyam Sunder v. Ram Kumar & Anr.[14], the Constitution Bench of this Court held thus:

"26. In Hitendra Vishnu Tahkur & ors. vs. State of Maharashtra & ors. 1995CriLJ517 this Court laid down the ambit and scope of an amending act and its retrospective option as follows:

*'(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such as construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.*

*(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.*

*(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.*

*(iv) a procedural statute should not generally speaking be applied retrospective where the result would be to create new disabilities or obligations or to impose new duties in respect of of transactions already accomplished.*

*(v) a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication.'*

*27. In K.S. Paripoornan vs. State of Kerala & others AIR1995SC1012, this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus:*

> *"67. In the instant case we are concerned with the application of the provisions of sub-section 1(1-A) of S. 23 as introduced by the Amending Act to acquisition proceedings which were pending on the date of commencement of the Amending Act. In relation to pending proceedings, the approach of the courts in England is that the same are unaffected by the changers in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is change before the hearing of the case at the first instance or while an appeal is pending (See Halsbury's Laws of England, 4th Edn., Vol. 44, para 922).'*

*28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not effect the substantive rights of the parties on the date of*

*suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statue and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending act which affects the procedure is presumed to be retrospective, unless amending act provides otherwise. ....."*

37. As already stated, this Tribunal is not required to ascertain whether a vested or conditional right has accrued to the Respondent/Operational Creditor. However, the above portions extracted also clarify on the

said issue as well and it is not necessary for this Tribunal to go any further in this regard.

38. Under the circumstances, in the absence of any power of recall or review available to this Tribunal and in the case on hand, I find it does not fall within the confines of Section 420 of the Companies Act, 2013 nor Rule 11 of NCLT Rules, 2016, and as the recourse, if at all for the party aggrieved, namely the Applicant/Corporate Debtor, should have been to approach the Appellate Tribunal under Section 61 of I&B Code, 2016, if so advised and not this Tribunal by way of this Application and this Tribunal is hence constrained to dismiss this Application.

39. Further, the Notification issued by the Central Government through the Ministry of Corporate Affairs dated 24.03.2020 bearing S.O 1205(E), in view of the detailed discussions in relation to the issue of its Applicability, can be considered only as prospective, (i.e.)

applicable from 24.03.2020. The law which was prevalent on the date when the main CP in IBA/1031/2019 was filed, proceeded with and when the matter was finally heard and reserved thereafter on 04.03.2020, is required to be disposed of by this Tribunal considering only the pecuniary limits of Rs.1 Lakh for maintaining a Petition under Section 9 of I&B Code, 2016 by an Operational Creditor, and in the circumstances, this Tribunal at the time of pronouncement hence was not lacking in pecuniary jurisdiction.

40. This Application hence stands **dismissed**, however without costs.

-SD-

**(R.VARADHARAJAN)**
MEMBER (JUDICIAL)

P. ATHISTAMANI