

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 495 of 2019

[Arising out of Order dated 26.03.2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, in CP(IB) No. 644/7/HDB/2018]

In the matter of:

**Asset Reconstruction Company (India) Limited
ARCIL, The Ruby, 10th Floor 29,
Senapati Bapat Marg, Dadar (W),
Mumbai- 400 028**

....Appellant

Vs.

**Mohammadiya Educational Society
D.No.4/115, Ramarajupally, Pulivindula Road,
Cuddapah- 516003, Andhra Pradesh**

....Respondent

Company Appeal (AT) (Insolvency) No. 496 of 2019

[Arising out of Order dated 26.03.2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, in CP(IB) No. 646/7/HDB/2018]

In the matter of:

**Asset Reconstruction Company (India) Limited
ARCIL, The Ruby, 10th Floor 29,
Senapati Bapat Marg, Dadar (W),
Mumbai- 400 028**

....Appellant

Vs.

**Mohammed Vaziruddin Educational Society
D.No. 75-6-36, Prakash Nagar, Rajamundry,
Andhra Pradesh**

....Respondent

**For Appellant: Mr. Abhijeet Sinha, Mr. Karan Malhotra,
Advocates.**

**For Respondents: Mr. Ramji Srinivasan, Senior Advocate with Mr.
Pawanshree Agarwal, Mr. Divyanshu Agrawal,
Advocates.**

J U D G M E N T
(3rd August, 2021)

A.I.S. Cheema, J.

Company Appeal (AT) (Insolvency) No. 495 of 2019

1. This Appeal has been filed by the Appellant- 'Asset Reconstruction Company (India) Limited' against impugned order dated 26th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in CP(IB) No. 644/7/HDB/2018. The Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) was filed against the Respondent- 'M/s. Mohammadiya Educational Society' claiming that the Respondent is Corporate Debtor. The Adjudicating Authority in the impugned order held that the Respondent is not a body corporate and dismissed the Petition. Hence, the Appeal.

Company Appeal (AT) (Insolvency) No. 496 of 2019

2. The same Appellant filed yet another Application under Section 7 of the 'I&B Code' against Respondent- 'Mohammed Vaziruddin Educational Society' and in this Application also, the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in CP(IB) No. 646/7/HDB/2018 vide impugned order dated 26th March, 2019 held that the Respondent is not a body corporate. Hence, this Appeal.

3. Both the Appeals have been heard together. For sake up convenience, we will refer to particulars and documents of parties from the record of

Company Appeal (AT) (Insolvency) No. 495 of 2019 (unless mentioned otherwise).

4. The Application under Section 7 of the 'I&B Code' was filed claiming that the Respondent was in default of amount as mentioned in the Application. It was claimed that the Respondent is a Society governed by the special enactment called 'AP Societies Registration Act, 2001' ("A.P. Act" for short) and that as per Section 18 of the said Act, the Registration of a Society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal. The Appellant thus claimed that the Respondent is governed by the definition of 'Corporate Person' under Section 3(7) of the 'I&B Code' and the Application was maintainable. Before the Adjudicating Authority, the Respondent- Society claimed that it is a Society registered under the Societies Registration Act, 1860 (XXI of 1860) ("1860 Act" for short) and that it does not fall under the purview of Section 2 of the 'I&B Code'. The Respondent claimed that it is not a body corporate and remains unincorporated body. The Respondent also claimed that Section 18 of the 'A.P. Act' confers the status of a body corporate for such Societies registered thereunder and that the status of Body Corporate was not afforded to Societies registered under '1860 Act'. The Respondent relied before the Adjudicating Authority on the judgment rendered by Hon'ble High Court of Andhra Pradesh in WP No. 488 of 2006 between ***"Satyadeva Sannakaru Rythu Sangham vs. The State of Andhra Pradesh"*** dated 12th August, 2011.

5. The Adjudicating Authority heard the parties and took up the issue whether the Application under Section 7 of the 'I&B Code' was maintainable and discussed and held, as follows:-

“9. It is not in dispute that the Respondent is a society registered under Act XXI of 1860. The provisions of the AP Societies Registration Act, 2001 shall be Applicable to the Societies that are registered thereunder. As rightly pointed out by the Respondent the Judgment Cited Supra stands in their favour more particularly para 32 of the said Judgment read as follows:-

“32.....It is only under Section 18 of the AP Societies Registration Act, 2001 that a Society registered there under is conferred the status of a body Corporate having perpetual succession and a Common seal. This status however was not afforded to societies registered under the Act of 1860.”

10. In view of the above dictum, it is held that the Respondent is not a body Corporate and hence, the Present Petition is not maintainable under IB Code.

11. In the Result, this Company Petition is dismissed as not maintainable. No order as to costs.”

6. We have heard Counsel for both sides. The Learned Counsel for the Appellant submitted that under Section 18 of the 'A.P Act', Societies registered in the State of Andhra Pradesh are to be treated as 'body corporate'. According to the Learned Counsel, the Adjudicating Authority wrongly relied on Judgment in the matter of **“Satyadeva Sannakaru Rythu Sangham”** (Supra). According to the Learned Counsel for the Appellant, the Respondents- 'Mohammed Vaziruddin Educational Society' was originally established in the year 1990 and 'Mohammadiya Educational Society' in the year 1999 and was registered under the 1860 Act. The said Act was

subsequently repealed to the extent of applicability to the Act of A.P. when the 'A.P. Act' was enforced. With the repeal of the 1860 Act in Andhra Pradesh, the Respondents- Societies for all material purposes are governed by the A.P. Act. The Learned Counsel referred to Section 32 of the A.P. Act which provides for the repeal and savings clause. According to the said provision, anything done or any action taken under the 1860 Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under the A.P. Act as if the A.P. Act was in force on the date on which such a thing was done or action taken. Thus, it is claimed that the Respondents are deemed to have been registered under the provisions of the A.P. Act. Section 2(n) of the A.P. Act defines a 'society' to mean a society registered or deemed to be registered under the A.P. Act.

7. It is argued for the Appellant that Section 18 of the A.P. Act confers a society (whether registered under A.P. Act or deemed to be registered under the said Act) with the status of a 'body corporate' by the name under which it is registered and would have a perpetual succession and common seal, and can acquire, hold and dispose of property, enter into the contracts, institute and defend suits and other legal proceedings like a Company.

8. It is argued for the Appellant that the Appellant is 'Financial Creditor' and Respondents- Societies are in default of a sum more than Rs.1 lac. It is stated that Section 3(7), 3(8), 3(11), 3(12) and 3(23) are to be read harmoniously and Section 7 of the 'I&B Code' must be held to be maintainable. It is stated that under Section 3(7) of the 'I&B Code' 'any other person incorporated with limited liability under any law for the time being in

force' is also covered under the definition of 'Corporate Person'. The definition under Section 3(23) relating to 'person' is inclusive definition which covers 'any other entity established by a statute'. The object of 'I&B Code' is to provide resolution to such entities and no exemption is given to a borrower which is a society.

9. Against this, learned Senior Counsel for Respondents has argued that the provisions of the 'I&B Code' do not apply to Society. The Respondent is admittedly a Society registered under 1860 Act. Referring to Section 2 of the 'I&B Code', it is argued that Section 2 makes it clear that the 'I&B Code' applies only to such persons as mentioned in the said Section. The various clauses of Section 2 do not include an entity like the Respondent Societies. Referring to clauses (b) and (d) of Section 2 of the 'I&B Code', it is argued that Clause (b) uses the word "any other company governed by any special Act". To apply the same, it will have to be firstly shown that it is Company incorporated under the special Act. It is argued that the word 'company' is not defined under the 'I&B Code' and under Section 2(20) of the Companies Act, 2013 definition of Company has been provided. Referring to the said definition, it is argued that the Respondent- Society is not a company incorporated under the Companies Act, 2013 and thus, it is not covered in 'I&B Code'. The argument is that clause (b) of Section 2 of the 'I&B Code' the word 'company' cannot be said to include "any body corporate" as such interpretation would make clause (d) redundant. Provisions cannot be so read to make the same redundant or meaningless. To apply clause (d) of Section 2, it would be necessary that the Central Government issue a notification in that

behalf to make a particular body incorporated under any law eligible for application of provisions of the Code. There is no such notification by the Central Government.

10. It is further argued by the Learned Senior Counsel for Respondents that if structure of the 'I&B Code' is perused, the Society cannot be comprehended to be covered under the provisions of the 'I&B Code' given the nature of proceedings under the 'I&B Code'. All the provisions of the 'I&B Code' are typically tailored to deal with insolvency of the company formed under the Companies Act or the limited liability partnership. The word used 'any other person' in Section 3(7) has to be read "*ejusdemgeneris*" for the purpose of interpretation and a Society could not be construed to be 'Body Corporate'. Even if the 1860 Act has been repealed in State of Andhra Pradesh, the status acquired under the 1860 Act will not cease to exist and the same shall continue under Section 6 of the General Clauses Act and Section 8 of the Andhra Pradesh General Clauses Act. Section 32 of the A.P. Act will not exclude the General Clauses Act, 1860.

11. Alternatively, Counsel for Respondents has argued that even if Section 18 of the A.P. Act was said to be applicable, it was only for limited purpose of carrying out the provisions of the A.P. Act and cannot go beyond the purpose specified in Section 18 so as to understand the same as if it is Company or limited liability partnership under 'I&B Code'.

12. Respondents argue that, Society is never incorporated with limited liability and Section 3(7) is not applicable. The Learned Senior Counsel

referred to ‘U.P. Cooperative Societies Act, 1965’, ‘Assam Cooperative Societies Act, 2007’ and ‘Delhi Cooperative Societies Act, 2003’ to submit that in those Acts, there are provisions to the effect that the concerned registered Societies would have limited liability. In the 1860 Act or the A.P. Act, there are no such provisions. The Legislature consciously has not provided limited liability for a Society like Respondents. In the matter of Respondents, there are no shareholders and only Members are there and it is difficult to comprehend such Society for the purpose of provisions of the ‘I&B Code’. A.P. Act deals with “Members” and not shareholders like Companies Act. The Society is “registered” and not incorporated. The Appellant cannot claim that it has no remedy as already the Appellant had invoked provisions of the SARFAESI Act, 2002 against the assets of the Societies.

13. For such reasons, the Respondents claimed that the Appeals should be dismissed.

14. Before discussing the issues involved, it would be appropriate to reproduce relevant Sections for the purpose of reference. Relevant provisions from the A.P. Society Registration Act, 2001 are:

“2. Definitions. *In this Act, unless the context otherwise requires:-*

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(n) ‘ Society’ means a society registered or deemed to be registered under this Act; and”

Section 13 of the ‘A.P. Society Registration Act, 2001’ reads as under:-

“13. the Register of members shall be kept open during the business hours subject to such reasonable restrictions as the bye-laws of the society may specify”

Section 18 of the ‘A.P. Society Registration Act, 2001’ reads as under:-

“18. The registration of a society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal. The society shall be entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all other things necessary for the furtherance of the aim for which it was constituted.”

Section 32 of the ‘A.P. Society Registration Act, 2001’ reads as under:-

“32. Repeals and savings Central Act 21 of 1860. Act 1 of 1350 F.

(1) The Societies Registration Act, 1860, in its application to the Andhra area of the State of Andhra Pradesh and the Andhra Pradesh (Telengana Area) Public societies Registration Act, 1950 F are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts (including any order, rule, form, regulation, certificate or bye-laws) in the exercise of any power conferred by or under the said Acts shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the date on which such a thing was done or action taken.”

15. In ‘I&B Code’, the relevant Sections are:-

“2. Application.- *The provisions of this Code shall apply to—*

- (a) any company incorporated under the Companies Act, 2013 or under any previous company law;*
- (b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;*

(c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
 (d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and
 (e) personal guarantors to corporate debtors;
 (f) partnership firms and proprietorship firms; and
 (g) individuals, other than persons referred to in clause (e)
 in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.”

“3. Definitions.- xxx xxx xxx

(7) "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

(8) "corporate debtor" means a corporate person who owes a debt to any person;

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(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;

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(23) "person" includes—

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a trust;
- (e) a partnership;
- (f) a limited liability partnership; and
- (g) any other entity established under a statute, and includes a person resident outside India;”

16. In the Companies Act, 2013, Section 2(11) and Section 2(20) read as follows:-

“2. Definitions.— *In this Act, unless the context otherwise requires,—*

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(11) “body corporate” or “corporation” includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

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(20) —company means a company incorporated under this Act or under any previous company law;”

17. In the Limited Liability Partnership Act, 2008, Section 2(1) (n) reads as follows:-

“(n) “limited liability partnership” means a partnership formed and registered under this Act”

18. It would be appropriate to carefully consider Section 2 along with relevant definition of ‘corporate person’ in Section 3 of the ‘I&B Code’. The best case claimed by the Appellant is that the Respondents are Societies registered under the 1860 Act which after coming into force of A.P. Act under Section 18 read with Section 32 of the A.P. Act should be deemed to be a ‘body corporate’ under the Special Act.

19. The question is whether Section 2 would apply to such Society even if it is accepted to be deemed body corporate. If Section 2 is considered, it lays

down that the provisions of the 'I&B Code' shall apply to entities and individuals as mentioned in this Section.

(a) Section 2(a) shows that the Code applies to any "company" incorporated under the Companies Act, 2013 or under any previous company law. Admittedly, the Respondents are not Companies incorporated under the Companies Act, 2013 or under any previous company law.

(b) Section 2(b) provides that the Code applies to any 'other company' governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act. Even if the best case of the Appellant is accepted, the Respondents can be said to be Societies which are deemed to be 'body corporate'. It cannot be said that it is "Company" incorporated by the Special Act. Section 18 of the A.P. Act does not say that the Society would be deemed to be Company incorporated under the A.P. Act.

(c) Section 2(c) provides that the Code shall apply to any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008. Admittedly, the Respondents are not Limited Liability Partnership.

(d) Section 2(e) provides that the Code shall apply to personal guarantors to corporate debtors and Section 2(f) applies to partnership firms and proprietorship firms and Section 2(g) applies to individuals, other than persons referred to in clause (e). Undisputedly, the Respondents are neither personal guarantors to Corporate Debtor or

partnership firms or proprietorship firms or any individuals other than persons referred to in clause (e) of Section 2.

20. Section 3(7) defines “corporate person” and even if this definition is considered, the Respondents are not Companies defined in clause 2(20) of the Companies Act, 2013 or “limited liability partnership” as defined under the Limited Liability Partnership Act, 2008 or any other person incorporated with limited liability under any law for the time being in force. Even if the Appellant was to say that the Respondents should be treated as body corporate under Section 18 of the A.P. Act, nothing is shown that Respondents Societies are persons “incorporated” or that the incorporation is with “limited liability”. This has to be further read with Section 2(d) which requires that to apply the Code such other body incorporated under any law for the time being in force needs to be specified by Central Government only then ‘I&B Code’ would apply to it.

21. Thus, reading Section 2 which prescribes the entities and individuals to which the ‘I& B Code’ applies when considered with definition of ‘corporate person’ under Section 3(7) of the ‘I&B Code’, the Respondents i.e. Societies cannot be said to be ‘corporate persons’ to whom the provisions of the Code applies.

22. Respondents have relied on judgment in the matter of **“Satyadeva Sannakaru Rythu Sangham vs. The State of Andhra Pradesh and Ors.”** [MANU/AP/0497/2011] [Writ Petition No. 488 of 2006] which was also relied on by the Adjudicating Authority which mentioned in Para 32, as under:-

“32. It is pertinent to note that the Petitioner Sangham was registered under the provisions of the Act of 1860. The legal character of a society registered under the Act of 1860 has been determined by case law to mean that it would not be conferred the status of a body corporate or a corporation having a distinct legal entity from the members constituting it, in the sense of a company under the Companies Act, 1956 or a society registered under the Andhra Pradesh Co-operative Societies Act, 1964. However, it has its own identity, personality or entity for certain limited purposes which would set it apart from that of its members. It is only under Section 18 of the Andhra Pradesh Societies Registration Act, 2001 that a society registered thereunder is conferred the status of a body corporate having perpetual succession and a common seal. This status however was not afforded to societies registered under the Act of 1860.”

23. Learned Counsel for the Appellant referred to Judgment in the matter of **“Somasundaram Memorial Social Educational Rural Development Society vs. APSRTC, Khammam”** [(2011) SCC OnLine AP 821] wherein it was observed in para 5 of the judgment as under:-

“5. The respondent has not disputed the fact that the petitioner has been registered under the 1350 Fasli Act. Section 32(1) of the 2001 Act repealed the Societies Registration Act 1860 and the 1350 Fasli Act. Sub-section (2) thereof however provided that anything done or any action taken under the said Acts (including any order, rule, regulation, certificate or bye-laws) in the exercise of any power conferred by or under the said Acts shall be deemed to have been done or taken in the exercise of the powers conferred by or under the 2001 Act as if the said Act was in force on the date on which such a thing was done or action taken. As a result of the said statutory provision, the registration of the petitioner under the 1350 Fasli Act is deemed to have been done under the 2001 Act. The Respondent has overlooked this indisputable position of law. Therefore, the action of the Respondent in treating the petitioner’s tender as not valid cannot be sustained and the same is accordingly declared as illegal. The respondent is therefore directed

to consider the petitioner's tender along with the other tenders and finalise the same strictly in accordance with the tender conditions."

24. Reference was also made to judgment in the matter of ***"V. Kameswara Rao vs. District Legal Services Authority-cum-VII Additional District and Session Judge Court (Lok Adalat), Vijayawada, Krishna District and Ors."*** [(2014) SCC OnLine Hyd 1467] where it was observed in Para 25 to 27, as under:-

"25. The third respondent society is registered under the provisions of the Societies Registration Act, 1860. The Andhra Pradesh Societies Registration Act, 2001 (for short, 'the Act, 2001') was enacted and came into force on 10.10.2011. Sub-section (1) of Section 32 of the Act, 2001 provides that the Societies Registration Act, 1860, in its application to the Andhra area of the State of Andhra Pradesh, and the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350F are hereby repealed. Sub-section (2) provides for savings of the act done or action taken in pursuance of the Societies Registration Act, 1860. Section 3 of the Act, 2001 provides as to how a society can be registered. Section 4 deals with Memorandum of Association of the society and Bye-laws to be filed with Registrar. Section 8 deals with amendment of Memorandum and Bye-laws. Section 14 deals with Committee of the society; Section 18 provides that society is to be a body corporate, which reads as follows:

"The registration of society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal. The society shall be entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all other things necessary for the furtherance of the aim for which it was constituted."

26. Section 19 of the Act, 2001 reads as follows:

"Legal Proceedings:- (1) The Committee or any officer of the society authorized in this behalf by its

bye-laws, may bring or defend any action or other legal proceedings touching or concerning any property or any right or claim of the society and may sue and be sued in its name.

(2) Any action or legal proceeding shall not abate or be discontinued by the death; resignation or removal from office of any member of the society after the commencement of the proceeding.”

27. *From the above provision, it is clear that a committee or any officer of the society authorized in that behalf by the bye-laws may sue or be sued in its name. 'Authorization' means to give right or authority to a particular person to act on behalf of the society to sue or be sued. 'To sue' means initiating or defending any legal proceedings in accordance with the provisions of the CPC.”*

25. The Learned Counsel for the Appellant further referred to judgment in the matter of **“All India SC and ST Railway Employees Association, Zonal Office at Secunderabad vs. E. Venkateshwarlu and others”** [(2003) SCC OnLine AP 97] and observation of the Hon’ble High Court in Para 5 which reads as under:-

“5. The petitioner-Association was registered under the Societies Registration Act, 1860 (for short '1860 Act'), which Act stood repealed by Section 32 of A.P. Societies Registration Act, 2001 (for short '2001 Act'). Section 32(2) of 2001 Act lays down that notwithstanding the repeal of 1860 Act, anything done or action taken under that Act shall be deemed to have been done or taken in exercise of the powers conferred by or under the 2001 Act as if that 2001 Act was in force on the date on which the thing was done or action was taken. Therefore, the petitioner-Association should be deemed to have been registered under the provisions of 2001 Act. As per Section 18 of the 2001 Act, a Society registered under that Act becomes a body corporate, by the name under which it is registered, and would have a perpetual succession and common seal, and can acquire, hold and dispose of property, enter into the contracts, institute and defend suits and other legal

proceedings. Even as per 1860 Act, as held in PBNC Committee v. Government of A.P., AIR 1958 AP 773, a Society registered with the Registrar under that Act, by filing memorandum and certified copy of rules and regulations, and after the Registrar issuing a certificate that it is a Society registered under the 1860 Act, it enjoys the status of a legal entity, apart from the members constituting the same, and is capable of suing and being sued, and the members of the Society, or its Governing Body, do not have any proprietary or beneficial interest in the property of the Society. Thus it is very clear that a Society registered either under 1860 Act, or 2001 Act, becomes an artificial person, and is and would be entirely different from its members. Therefore, if the elections held for that Society are not in accordance with its Bye-laws, or constitution (Memorandum of Association), person aggrieved by those irregularities has to file a petition, but the society itself cannot file a petition questioning the elections held to its Governing Body.”

26. Referring to the above judgments, the Learned Counsel for the Appellant stated that in the matter of **“Satyadeva Sannakaru Rythu Sangham”** in para 32 reproduced supra, the effect of Section 32 of the A.P. Act was not considered. It is explained that although the Respondents who are registered under the 1860 Act, the 1860 Act stood repealed and acts done under the 1860 Act need to be treated as done under the A.P. Act now applicable.

27. Against this, the Learned Counsel for the Respondents has relied on judgment in the matter of **“Illachi Devi v. Jain Society, Protection of Orphans India”** [(2003) 8 SCC 413]. That was a matter where the issue before the Hon’ble Supreme Court was whether a society registered under the Societies Registration Act, 1860 is entitled to obtain Letter of Administration under Section 236 of the Indian Succession Act. In that context, the Learned

Counsel for the Respondents referred to paras 21 to 26 & 31 which reads as under:-

“21. A Society registered under the Societies Registration Act is not a body- corporate as is the case in respect of a company registered under the Companies Act. In the view of the matter, a Society registered under the Societies Registration Act is not a juristic person. The law for the purpose of grant of a probate or Letter of Administration recognises only a juristic person and not mere conglomeration of persons or a body which does not have any statutory recognition as a juristic person.

22. It is well known that there exists certain salient differences between a society registered under the Societies Registration Act, on the one hand, and a company corporate, on the other, principal amongst which is that a company is a juristic person by virtue of being a body corporate, whereas the society, even when it is registered, is not possessed of these characteristics. Moreover, a society whether registered or unregistered, may not be prosecuted in criminal court, nor is it capable of ownership of any property or of suing or being sued in its own name.

23. Although admittedly, a registered society is endowed with an existence separate from that of its members for certain purposes, that is not to say that it is a legal person for the purposes of Sections 223 and 236 of the Act. Whereas a company can be regarded as having a complete legal personality, the same is not possible for a society, whose existence is closely connected, and even contingent, upon the persons who originally formed it. Inasmuch as a company enjoys an identity distinct from its original shareholders, whereas the society is undistinguishable, in some aspects, from its own members, that would qualify as a material distinction, which prevents societies from obtaining letters of administration.

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26. Vesting of property, therefore, does not take place in the Society. Similarly, the society cannot sue

or be sued. It must sue or be sued through a person nominated in that behalf.

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31. *A bare perusal thereof would show that a society registered under the Societies Registration Act as contra-distinguished from a company registered under the Company Act cannot sue in its own name. It is to be sued in the name of the president, chairman, or principal secretary or trustees as shall be determined by the rules and regulations of the society or in the name of such person as shall be appointed by the Government Body for the occasion in default of such determination. It is, therefore, not correct to contend that it is capable of suing or being sued in its own name.”*

28. Relying on the said judgment, it has been argued that the Society cannot be treated as a juristic person and thus, cannot sue or be sued.

The Hon’ble Supreme Court had in the judgment of **“Illachi Devi”** (supra) referred in para 38 to Section 2(7) of the Companies Act, 2013, which reads as under:-

“38. *Section 2(7) of the Companies Act states :*

“2(7) “body corporate” or “corporation” includes a company incorporated outside India but does not include -

- (a) a corporation sole;*
- (b) a cooperative society registered under any law relating to cooperative societies; and*
- (c) any other both corporate (not being a company as defined in this*

Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf."

29. After considering the law on the subject which dealt with the issue whether a Society registered under the Societies Registration Act, 1860 cannot sue in its own name, the Hon'ble Supreme Court had in para 53 observed as under:-

"53. Before parting, however, we may add that growing needs of the country in this field of law appears to have not received sufficient attention of the Parliament. Existing law is required to be suitable amended to meet the requirement of changing scenario."

30. In the set of facts which were before the Hon'ble Supreme Court in the matter of **"Illachi Devi"** (supra), the Hon'ble Supreme Court moulded the relief and in para 55 of the Judgment directed as under:-

"55. For reasons stated above, the appeal is allowed in part. The judgment under challenge stands modified. The matter is sent back to the High Court with liberty to respondent to amend the petition for grant of Letter of Administration. It would be open to the respondent-society to nominate any of its office-bearer to whom Letter of Administration is granted. Such nominated person may move application for substitution for his name for grant of Letter of Administration. If such amendment application is made, the High Court shall permit this amendment and grant Letter of Administration in favour of person nominated by the society for carrying of the wishes of the testator which is for the benefit of the society."

31. It does not appear that when this judgment in the matter of **"Illachi Devi"** (supra) was passed in 2003, the A.P. Act of 2001 was noticed. Section

18 of the A.P. Act appears to have attempted to meet the requirements expressed by Hon'ble Supreme Court (Para 53) in the matter of ***"Ilachi Devi"***. What appears from reading of Section 18 of the A.P. Act is that the registration of a Society shall render it a body corporate by the name under which it was registered having perpetual succession and a common seal. Thus, although the Society is not incorporated and it is registered, it is rendered a body corporate which can have perpetual succession and have a common seal. Section 18 makes it clear that as the Society will be rendered body corporate, it shall be entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all other things necessary for the furtherance of the aim for which it was constituted. The Learned Counsel for the Respondents has rightly submitted that even if best case of the Appellant is accepted, the Society which will be deemed to be a body corporate is for the purposes as mentioned in Section 18, and not Company incorporated as such.

32. We need not deliberate in more details on the effect of Section 18 of the A.P. Act for the reasons we have already discussed above.

Looked at in any manner, Section 2 read with Section 3 (7) does not spell out that the Respondents Companies in these Appeals are 'Corporate Persons' under the 'I&B Code' to whom provisions for 'I&B Code' would apply.

33. For such reason, we do not find any substance in these Appeals. For reasons mentioned above:

(a) Company Appeal (AT) (Insolvency) No. 495 of 2019 is dismissed. No order as to costs.

(b) Company Appeal (AT) (Insolvency) No.496 of 2019 is dismissed. No order as to costs.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
Anjali