BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA
C.P (IB) NO. 1340 OF 2018
I.A (IB) NO. 1340 OF 2020

In the matter of:

JINDAL STEEL & POWER LTD.

...Financial Creditor

Versus

BHARAT NRE COKE LTD .

...Corporate Debtor

And

In the matter of:

Raghavendra G. Kundangar & Ors.

...Applicant

Versus

Shashi Agarwal

...Respondent

Order Reserved on – 21.02.2022
Pronounced on - 06.05.2022

ORDER

Per Rohit Kapoor, Member (Judicial)

1. The Court convened *via* video conference today.
2. The instant IA has been filed under section 11 of NCLT rules seeking recalling of order dated 11 March, 2019 passed by this Adjudicating Authority in CP number 1340 of 2018 for initiation of Corporate Insolvency Resolution Process, U/S 7 of Insolvency and Bankruptcy Code 2016.
3. Applicant seeks to recall the order dated 11 March, 2019 passed by this Tribunal on the grounds summarised herein after in the form of submissions of applicant.

Submissions by/on behalf of Applicants (Shareholders).

4. Re: There is lack of jurisdiction in terms of law declared by the Hon'ble Supreme Court in Anuj Jain's case under Article-141 of the Constitution of

India.

5. It is the uncontroverted position that the present liquidation proceedings have been set in motion by an entity (JPSL) which according to the judgment rendered in **Anuj Jain v Axis Bank** ("Anuj Jain") [(2020)8 SCC 401 paras 45, 47, 47.1, 47.2,48, 50.1, 50.2 & 45] and followed in **Phoenix ARC Ltd. v Ketulbhai Ramubhai Patel** [(2021) 2 SCC 799 paras 35,36], is admittedly not a financial creditor. This is because "pledge of shares" does not qualify as "financial debt" and hence an application under S.7 of IBC by JSPL, who is not a financial creditor with respect to corporate debtor under Section 5(7) of IBC, is not maintainable before the Learned Tribunal. The proposition that JSPL is not a financial creditor, has not been contested.

6. The liquidation proceedings have always been held as "civil death" of an organization. The settled common law is that the initiation of liquidation proceedings must be construed strictly and shall only be a matter of last resort. The objective of IBC is to revive the corporate debtor, ensure its continuation and prevent its corporate death **[Swiss Ribbons v.Union of India (2019) 4 SCC 17 para 28]**. This is more so important to be followed in spirit when the concerned unit is a "going concern" and actual financial secured creditors (Suraksha ARC) have not proceeded to institute such application. Infact, they have vehemently opposed CIRP of the corporate debtor since its inception.

7. It is, therefore, admitted position that JSPL, not being a Financial Creditor under Section-7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") does not have the right to initiate CIRP proceedings against corporate debtor. If there is an inherent lack of jurisdiction, any order passed is nullity. The continuation of the present proceedings would also be legally untenable as assumption of jurisdiction is *non-est* in the eyes of law as declared by Supreme Court in Anuj Jain's case. The entire proceedings were and are anullity.

8. Re: Doctrine of res-judicata/merger/attainment of finality of judgment. The doctrine of res-judicata and merger has two clear exceptions; fraud and Intrinsic lack of jurisdiction. Any order without jurisdiction is a null and void **[Dwarka Prasad Agarwal v. BD Agarwal (2003) 6 SCC 230 para 37]**, and can be

challenged at any stage including stage of execution [Balwant Viswamitra v. Yadav Sadashiv Mule (2004) 8 SCC 706 paras 9 & 14]. The Hon'ble Supreme Court in the present matter did not declare any law in present case vis-à-vis jurisdiction, but dismissed it *in limine*.

9. Therefore, even if the order relating to jurisdiction is merged in the Appellate order, the question of jurisdiction was never final and remains inconclusive. [Kindly see Carona Limited v. Parvathy Swaminathan (2007) 8 SCC 559-569(para 28) ("Carona case")], where in the Hon'ble Supreme Court of India after quoting Halsbury's Laws, stated that question of jurisdiction is never conclusive: -

   "*Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described a preliminary to,or collateral to the merits of, theissue. If,at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not can give a ruling on the preliminary or collateral issue; <u>but that ruling is not conclusive</u>*."[Emphasis is supplied]

10. The contention put forth by JSPL stating the orders passed by the Hon'ble NCLAT and the Hon'ble Supreme Court in the present matter prevents this Tribunal to allow the present application, is totally misconceived and baseless. Since the original order passed by this Tribunal was itself a nullity, there is no question of such null order merging with any other order. Something that is null and void cannot merge with anything else.

11. Furthermore, as to the argument of res-judicata, it is important to note that the Applicants here in viz.shareholders were never parties and were never heard by any forum in connection with these proceedings. It is made clear even in section 11 of CPC that res-judicata shall apply only "*between the same parties*". Thus, res-judicata is not a plea available to oppose the instant application**. [(2021) 3 SCC 475 at paras 31, 32{Phoenix ARC v. Spade}**

12. Re:Difference between jurisdictional facts and adjudicated facts - Jurisdictional fact is never final. Accordingly, merger and res-judicata do not apply in case of inherent lack of jurisdiction. Existence of a jurisdictional

fact is thus as *sine qua non* or condition precedent to the assumption of jurisdiction by a court or tribunal. [Carona case(supra)]. Similar view has been expressed by the Constitution Bench of Apex Court in Calcutta Discount v. Income Tax Officer (1961) 2 SCR 241 at para 24.

13. Tribunal is a creature of a statute. Tribunal cannot assume jurisdiction on the subject matter erroneously. The assumption of jurisdiction on subject matter is of paramount importance apart from territorial and pecuniary jurisdiction. No person, including the courts, can confer jurisdiction. Jurisdiction is always enjoined by law. Therefore, the assumption of jurisdiction by the Tribunal does not accord with the law declared by the Hon'ble Supreme Court of India in Anuj Jain's case. Kindly see *Kiran Singh v. Chaman Paswan* 1955 SCR 117 to 121 and it is quoted below: -

    It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to been force do relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.[Emphasis supplied]

14. Thus, the jurisdictional fact about the assumption of jurisdiction of this Tribunal is settled by Apex Court Judgment in Anuj Jain's case, and the proceedings cannot continue further. The continuation of the proceedings would be null and void.

15. Re: Doctrine of prospective ruling not applicable .It is settled position that law is always retrospective in nature unless specifically made prospective by Hon'ble Supreme Court M A Murthy v. State of Karnataka (2003) 7 SCC 517 (para8) ("MAMurthy case"). The prospective overruling can only be made by the Hon'ble Supreme Court of India (C Golaknath v. State of Punjab 1967 SCR (2) 762). Anuj Jain's case has not declared law prospectively. Law declared by the Court in Anuj Jain's case is deemed to be so since it since ption as every judgment of the Hon'ble Supreme Court is to be applicable retrospectively [CIT

v. Saurashtra Kutch Stock Exchange (2008) 14 SCC 171 para 35]. Blacks to nian version of retrospective application of Anuj Jain's case shall apply to all pending matters including the present one. (Kindly see MA Murthy case). JSPL has also not relied upon doctrine of prospective overruling during course of arguments. Thus, ratio in Anuj Jain would apply retrospectively.

16. The doctrine of prospective overruling is in apposite and inapplicable.
17. The argument presented by JSPL based on the Explanation to Order XLVII of the CPC, 1908 is totally misplaced. Firstly, Order XLVII relates to "review" of orders and in any event has no application to proceedings under IBC. In the present case, no review is sought and instead there life prayed for is to set aside the CIRP and Liquidation orders based on the ground that they are nullities.
18. Secondly, the issue here in does not relate to any factual aspect on merits or any legal question touching upon the merits. Instead, the clear position that emerges is that the entire proceedings from the very inception were completely without jurisdiction and anullity. This is a doorway/threshold issue, because if the Tribunal did not have jurisdiction to even entertain the main petition (which is not contested even by JSPL), there is no question of admitting the section 7 petition.
19. Thirdly, there is no question of law which has been reversed or modified by Hon'ble Supreme Court in *Anuj Jain's* case. On the contrary, the Hon'ble Supreme Court has expounded and stated the law that "pledge of shares" cannot be financial debt.
20. There is no change of law as argued by JSPL. The law was always the same and which has been clarified and clearly stated in *Anuj Jain's* case. As demonstrated above, doctrine of prospective overruling does not apply. This is because unless the Hon'ble Supreme Court categorically states that its judgment has to apply prospectively, all judgments of the Hon'ble Supreme Court operate retroactively.
21. Re: Power to recall under Rule 11 of NCLT Rules-2016. Rule-11 of the NCLT Rules is *pari materia* to Section 151 Code of Civil Procedure. The Supreme Court of India in Jet Plywood Ltd. v. Madhukar Nowlakha (2006) 3 SCC 699

at 704 (para25), held that Section 151 CPC would include power to recall. The Hon'ble Bombay High Court in Jotun India Pvt Ltd. v. PSL Ltd. 2018 SCC Online Bom 36 (para 116,117) held that power to recall is contemplated under the erstwhile Rule 9 Companies (Court) Rules, 1959. The judgment of the Learned Single judge was affirmed by the Division Bench of the High Court in *Jotun India v. PSL Ltd*. (DB) 2018 SCC OnlineBom 1952. Therefore, power to recall exists with this Tribunal on the ground of lack of jurisdiction.

22. Hon'ble Supreme Court of India has also delineated the power to recall any order on four grounds which are enumerated in Budhia Swain v. Gopinath Deb (1999) 4 SCC 396, 401 (para8). Lack of jurisdiction is one of them. Relevant extract is reproduced herein below(para-8):-

"*8. In our opinion a tribunal ora court may recall an order earlier madefit*

(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."

23. Re: No water has flown since initiation of CIRP proceedings - No irreversible change has taken place with respect to the corporate debtor since the initiation of CIRP proceedings in March, 2019 till date. Thee entity which was running the present unit of Bharat NRE prior to initiation of CIRP proceedings continues to do so even now and Bharat NRE continues to be a going concern. There are no sales carried out so far in the liquidation. In short, no water has flown in the last two and half years. Hence, recalling of the order dated 11.03.2019 and 11.12.2019 on the grounds of lack of jurisdiction shall cause no harm to any third party. Infact, such an order would be aligned with the objective of Insolvency &Bankruptcy Code, 2016, the ratio laid down in Swiss Ribbons &in the interest of the justice.

24. Re: No locus of JSPL to oppose the revival plans of the Corporate Debtor -

JSPL is not a financial creditor u/s 5(7) of the IBC. It is also a major share holder in the corporate debtor and no benefit will accrue to JSPL, if the corporate debtor is liquidated. Instead, JSPL will be benefitted if the corporate debtor is revived in line with the requirement of IBC. As such, the opposition of JSPL to present application is against the interest of all stakeholders and cannot be deemed bonafide. There is no justifiable logic (apart from personal vendetta against the CD) for JSPL to oppose the prayer made herein.

25. Re: Doctrine of Merger - The Doctrine of Merger can be better understood from the following observation of the Supreme Court in a landmark decision in the *Kunhayammed v. State of Kerala* (2000) 6 SCC 359 para 44 (iii) with where in it is stated that the doctrine of merger is not a doctrine of universal and unlimited application. It will dependon the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge and is not applicable in all scenarios. The Hon'ble High Court of Karnataka in *Kothari Industrial Corporation Ltd. v. Agricultural Income Tax Officer* (1998) 230 ITR 306 para 12 (iv) &(v) has further elaborated on the matter where in it has observed that when an order passed by an authority is reviewed or rectified by the self-same authority, the Doctrine of Merger will be in applicable. Hence recalling of the order dated 11.03.2019 and 11.12.2019 will amount to rectification of an earlier order which was passed without considering facts. Hence, doctrine of merger will not be applicable here. In view of the above submissions, it is prayed that the captioned application be kindly be accepted.

<u>Submissions by/on behalf of Respondent number 2:</u>

26. The captioned Application under Section 7 of the Insolvency & Bankruptcy Code, 2016 ('IBC') filed by the Applicant/ Respondent No. 2 was admitted by this Hon'ble Tribunal vide order dated 11.03.2019.

27. Thereafter, the order dated 11.03.2019 was challenged before the Hon'ble NCLAT as follows: (a) Arun Kumar Jagatramka Versus Jindal Steel & Power Limited & Anr.Company Appeal (AT)(Insol.) No.255 of 2019. (b) Suraksha Asset Reconstruction Limited Versus Jindal Steel & Power Limited & Anr.; Company Appeal (AT)(Insol.) No.322 of 2019.

28. The above-mentioned appeals were heard together by the Hon'ble NCLAT, wherein, vide common order dated 23.07.2019, the said appeals were dismissed. 2.
29. Thereafter, following Civil Appeals were filed before the Hon'ble Supreme Court: (a) Arun Kumar Jagatramka Versus Jindal Steel & Power Limited & Anr. Civil Appeal No.6015 of 2019. (b) Suraksha Asset Reconstruction Limited Versus Jindal Steel & Power Limited &Anr.Civil Appeal No.7027 of 2019. The Civil Appeal No.6015 of 2019 was dismissed by the Hon'ble Supreme Court vide order dated 16.08.2019 whereas, the Civil Appeal No.7027 of 2019 was dismissed vide order dated 16.09.2019 thereby re-affirming the order dated 11.03.2019 passed by this Hon'ble Tribunal.
30. This IA is barred in view of Doctrine of merger in view of the fact that the admission order dated 11.03.2019 passed by this Hon'ble Adjudicating Authority has been firstly upheld by the Hon'ble NCLAT and then further upheld by the Hon'ble Supreme Court, the said order dated 11.03.2019 therefore, stands merged into the order of the Hon'ble Supreme Court. Reliance is placed on the following Judgments:
    (i) M/s Gojer Bros (Pvt.) Ltd. Vs. Shri Ratan Lal Singh; (1974) 2 SCC 453; [Paras: 11, 21, 22].
    (ii) Collector Of Customs, Calcutta Vs. East India Commercial Co. Ltd., Calcutta And Others; AIR 1963 SC 1124. [Paras 4, 5, 6].
31. In view of the applicability of doctrine of merger, the order passed by this Hon'ble Tribunal stands merged with the order passed by the Hon'ble Supreme Court and that the admission order dated 11.03.2019 does not survive independently as such. Any challenge to the same can only be made before the Hon'ble Supreme Court.
32. Subsequent decision in Anuj Jain's case is not a ground of review. The contention of the Applicant that in view of a subsequent decision of the Hon'ble Supreme Court the judgment passed by this Tribunal ought to be reviewed / recalled is baseless and completely contrary to the provisions of Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (CPC).

33. Reliance is placed on : Shanti Devi Vs. State of Haryana & Ors. (1999) 5 SCC 703; [Relevant para: 2]. Union of India & Ors. Vs. Mohd. Nayyar Khalil & Ors.(2000) 9 SCC 252; [Relevant para: 1] and Kalinga Mining Corporation Vs. Union of India & Ors. (2013) 5 SCC 252. [Relevant paras: 39, 44, 62] .
34. NO POWER OF REVIEW: Without prejudice to the arguments raised above, it is submitted that in view of the decision of the Hon'ble NCLAT in the matter of Adish Jain Vs. Sumit Bansal & Ors. Review Application No. 13 of 2020 in Company Appeal (AT) Insolvency No. 379 of 2020 (NCLAT Order dated February 3rd, 2021), this Hon'ble Tribunal has no power of review. The Hon'ble NCLAT held as under:
35. By way of an Application under section 60 (5) r/w Rule 11 of NCLT Rules, the applicant is effectively seeking a review of Tribunal's own order. Rule 11 (Inherent Powers) does not include power to review. Tribunal has no Jurisdiction to review its Orders unless expressly authorized by a statute. There is no express provision for 'Review' under the rules or the Act, the power vested in this Tribunal under Rule 11 can only be exercised to enhance cause of justice or prevent abuse of process. Power of Review has to be granted by statute and the 'power of Review' is not an inherent power and therefore cannot be exercised unless conferred specifically or by necessary implications.
36. Judgments cited by applicant are distinguishable both on law and on facts.
37. Neither the judgment in 'Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited vs. Axis Bank Limited and Others', (2020) 8 SCC 401, assailed by the Applicants herein nor the judgment in 'Phoenix ARC Pvt. Ltd. vs. Ketulbhai Ramubhai Patel', (2021) 2 SCC 799 passed by Hon'ble Supreme Court is applicable in the instant case. The factual matrix of the present case is distinguishable from the above-mentioned judgments so much so that the reasoning given by the Apex Court is also not applicable on the factual matrix of the case at hand.
38. That the Hon'ble Appellate Tribunal and this Hon'ble Tribunal in the present case have dealt at length with the provisions of Section 5(8) (f) and (i) while admitting the claim of the Respondent No.2 as to be Financial Creditor. This

Hon'ble Tribunal in its order dated 11.03.2019 categorically held that the amount claimed by the Respondent No.2 basis the award dated 16.08.2016 falls under the category of a 'Financial Debt'. Thereafter, even the Hon'ble NCLAT has taken into its consideration the said aspect to hold that that the interest clause contained in the agreement fulfils the requirement of 'time value for money'. Resultantly, the Hon'ble NCLAT upheld the decision of this Hon'ble Tribunal holding the Respondent No. 2 herein to be a 'financial creditor'.

39. Even an erroneous decision on a question of law is binding and operates as a res judicata.

40. Without prejudice to the submissions made hereinabove, it a mandate of law that even an erroneous decision on a question of law operates as res judicata between the parties to it. Thus, even if the order dated 11.03.2019 passed by this Hon'ble Tribunal is said to be an erroneous decision (though not admitted), the same can now not be challenged by way of the captioned applicble. Reliance is placed on: Mohanlal Goenka Vs. Benoy Kishna Mukherjee And Others; AIR 1953 SC 65 [Paras: 22 & 23].

41. In view of the dismissal of the Civil Appeals by the Hon'ble Supreme Court, it is trite to state that the challenge to the admission order dated 11.03.2019 has been put to rest. However, by way of the captioned application, the Applicants have attempted to re-agitate the same issue which is barred in view of operation of res-judicata as defined under Section 11 of the CPC.

42. In view of the above submissions, it is prayed that the captioned application be kindly dismisses/ rejected by this Hon'ble Authority.

43. ***Before summing up the issue raised and required to adjudicated in this IA, following dates and events are significant.***

Date of the order by NCLT, Kolkata Bench	11.03.2019	The Adjudicating Authority (NCLT) admitted the Corporate Debtor into CIRP and held the debt to be Financial Debt.

Hon'ble NCLAT, New Delhi Company Appeal (AT)(Ins) No. 255 & 322 of 2019.	23.07.2019	The above order of NCLT dated 11-03-2019 affirmed by NCLAT.
Hon'ble Supreme Court Order Civil Appeal No. 6015 of 2019	16.08.2019	SLP filed against NCLAT order dated 23-07-2019 dismissed.
Order by Adjudicating Authority, (NCLT).	11.12.2019	Order of Liquidation passed by NCLT.
Civil Appeal No. 8512-8527 of 2019	26.02.2020	Date of Judgement in Anuj Jain's case by Hon'ble Supreme Court.

44. We have heard the Ld. Counsel for the parties, perused the record and case law as on the issue <u>*The primary issue that arises for consideration is:*</u> ***"Whether a different interpretation of nature 'Financial Debt' in subsequent judgement (*****Anuj Jain v Axis Bank*****) by Hon'ble Supreme Court delivered on* 26.02.2020 *will apply to different proceedings between different parties, wherein* a <u>contrary view</u> was taken on the nature of 'Financial Debt' by NCLT prior to Anuj Jains's case and upheld *by NCLAT and SLP thereto dismissed by Hon'be Supreme Court on* 16.08.2019".**

<u>We are of the view:</u>

45. Where the rights of a party have been considered and declared, then the said proceedings cannot be reopened on the ground that a contrary view has been taken subsequently by the Hon'ble Supreme Court in different proceeding and between different parties?

46. We seek to rely on the Hon'ble 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 the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognised 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***, after considering the doctrine of Prospective overruling and law laid down in Golak Nath's in particular (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 terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the 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 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 unduly 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 State 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 the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognised 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 proceeding, 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."

47. If argument of the applicant is accepted, it shall mean that there can be no finality attached to any judicial proceedings. In the present case it is an admitted position as borne out from the table of dates and events referred above, the proceedings in C.P. No. 1340 of 2018 has attained finality and after attaining the finality the matter is in liquidation at present since 11.12.2019.

48. The process, after appointment of Liquidator, is irreversible after it attained finality particularly after the dismissal of the SLP by Hon'ble Supreme Court of India on 16 August, 2019
49. The law laid down by the Hon'ble Supreme Court of India in subsequent judgment in Anuj Jain case on 26 February, 2020 taking a different view as to Pledge of debentures is not a operational debt has, has apply in those cases where the proceedings initiated under IBC 2016 have not attained finality.
50. Where proceedings have attained finality like decree has become final in a civil court, a different view in ***Interpretation Nature of Debt,*** subsequently by Hon'ble Supreme Court will apply only to proceedings that may be initiated subsequent to this judgment and pending proceedings which have not attained the finality. For the reasons brought out herein above, we hereby reject this application.
51. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
52. File be consigned to the record.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on May 06, 2022.

SA (LRA)