

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**

**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (Ins) No.362/2023**  
**(IA Nos.1100, 1101, 1105/2023, 818 & 987/2025)**

**IN THE MATTER OF:**

**1. S. VASUDEVAN**

Suspended Director of  
M/s. Tuscan Consultants and  
Developers Private Limited  
G-2, Sona Palace 34,  
Norris Road Richmond Town.  
Bangalore, Karnataka - 560 025.

**... APPELLANT**

**V**

**1. IDBI TRUSTEESHIP SERVICES LIMITED**

Asian Bldg. Ground Floor,  
17, R. Kamani Marg, Ballard  
Estate, Mumbai - 400 001

**2. ASHOK MITTAL**

Interim Resolution Professional of  
M/s. Tuscan Consultants & Developers Private Limited  
IBBI/IPA-001/IP-P02549/2021-2022/13889  
Having Office at Banglow No. 1,  
Aai Shree Khodiyar Krupa,  
Near Jai Santoshi Maa Tower,  
Datta Pada Road, Rajendra Nagar,  
Borivali East, Mumbai - 400 066  
Ph: 9004352525

**.....RESPONDENTS**

**PRESENT:**

For Appellant : Mr. T K Bhaskar, Advocate  
Mr. Chandramouli Prabhakar, Advocate  
For Respondents : Mr. Angad Varma, Mr. Nikhil Mehndiratta &  
Ms. Nidhisha Choksi, Advocates for R1  
Mr. Amir Bavani, Advocate for R2/RP

## **JUDGMENT**

### **(Hybrid Mode)**

**[Per: Justice Sharad Kumar Sharma, Member (Judicial)]**

The backdrop of the instant controversy, is that the Appellant, Mr. S Vasudevan, the Suspended Director of M/s. Tuscan Consultants and Developers Private Limited (herein after to be called as the Corporate Debtor), has questioned the Impugned Order dated 09.10.2023 as it was passed by the Adjudicating Authority, NCLT Chennai, in CP/IB/81/CHE/2023 whereby the Application filed by Respondent No. 1, IDBI Trusteeship Services Limited under Section 7 of the I & B Code, 2016, had been directed to be admitted, to be carried against the M/s. Tuscan Consultants and Developers Private Limited of which the present Appellant, is the suspended director.

2. The Respondent No.1 had executed a Debenture Trust Deed (DTD) with Ozone Projects Pvt Ltd., (the Principal Borrower) on 29.06.2016 under the terms and conditions as recorded therein in the said Debenture Trust Deed. Under the said Debenture Trust Deed, the debenture holders had extended financial assistance to the tune of Rs. 1,26,30,00,000/- to Ozone Projects on the terms and conditions as it was recorded in the Debenture Trust Deed (DTD). As per the terms of the said Debenture Trust Deed, the principal amount along with the redemption premium was due to be paid within 40 months from the date of disbursement, which fell due to be paid on 29.10.2019. This Redemption Date was extended on seven occasions and was ultimately revised to be 30.09.2021.

The obligation of Ozone Projects, to pay the loan along with all amounts due under the Trust Deed was fully secured by a Corporate Guarantee Agreement dated 29.06.2016, executed by the Corporate Debtor in favour of the Respondent No.1/the Financial Creditor, which was an unconditional and irrevocable guarantee. In terms of the said guarantee, the CD herein (M/s. Tuscan Consultants and Developers Private Limited) agreed that in the event of default under the DTD by Ozone Projects, the same shall be construed as a default under the Corporate Guarantee Agreement and the CD shall forthwith pay to Respondent No.1 the outstanding amount due.

3. Owing to the fact that, the Principal Borrower failed to fulfil payment obligations as per the terms and conditions of the Debenture Trust Deed of 29.06.2016, the Respondent No. 1, on behalf of the Debenture holders, issued a Demand Notice on 13.12.2021 to Ozone Projects (Principal Borrower) and the other Guarantors, including the Corporate Debtor, demanding them to pay within 10 days of the receipt of the notice, the amount that fell due to be paid as under the DTD on 20.09.2021.

4. Despite of the receipt of the said notice of demand dated 13.12.2021, since the Ozone Projects and the Corporate Debtor who stood as Corporate Guarantor, failed to make any payment, Respondent No.1/the Financial Creditor had issued a final demand notice on behalf of the debenture holders on 06.01.2022, thereby calling upon the Ozone Projects (Principal Borrower) and the Corporate Debtor

to pay the outstanding amount as on 31.12.2021 within 10 days of the receipt of the said notice.

5. Despite of service of the said final Demand Notice, the Ozone Projects and the Corporate Debtor had failed to remit the amount within the scheduled time as provided therein. Subsequent to this, Respondent No.1 issued 2 legal notices and further, a Demand Certificate dated 12.08.2022 under clause 2 of the Corporate Guarantee. Failing to secure repayment of the amount due, Respondent No.1 filed the Company Petition under Section 7 of the I & B Code before the learned NCLT Chennai, being CP/IB/81/CHE/2023 on 19.09.2022 against the Corporate Debtor. It also filed another Company Petition, being **CP/IB/49/CHE/2023** on 05.08.2022 by invoking Section 7 of the I & B Code, 2016, against Ozone Projects (the Principal Borrower) before Ld. NCLT, Chennai. By an order dated 01.05.2023, the learned NCLT, Chennai, admitted the Ozone Projects into the Corporate Insolvency Process and appointed an Interim Resolution Professional (IRP). Aggrieved against the said order of admission of the Section 7 Application and consequent commencement of CIRP proceedings, the Suspended Director of, the Ozone Projects filed a Company Appeal being CA (AT) (CH) (Ins) No. 134/2023, before this Appellate Tribunal, where an Interim Order was granted on 10.05.2023, whereby the further proceedings were directed to be kept in abeyance.

6. As regards the Section 7 proceedings against the Corporate Debtor herein before the learned Adjudicating Authority, the Corporate Debtor was granted two weeks' time to file a reply to the Company Petition filed by Respondent No.1, but owing to the averment that the Ozone Group and India Bulls Group (the Debenture Holders), were said to be engaged in settlement talks, making efforts for an amicable settlement, the Corporate Debtor did not file a reply or a Counter Affidavit to the proceedings of the said Company Petition. The Appellant on 04.08.2023 was granted last opportunity by the learned Tribunal to file the reply/counter to the Company Petition, subject to the payment of cost of Rs. 25,000/-, which was to be deposited in the Prime Minister National Relief Fund. Despite of the order dated 04.08.2023, no Counter Affidavit was filed by the Corporate Debtor on the ground that it is contended by the Appellant that they remained under good faith that there could be a possibility of amicable settlement. Thus, admittedly, there was no reply which was filed on the merits of the Company Petition by the Appellant (i.e., the Corporate Debtor).

7. When the proceedings revived, before the learned Tribunal, and was taken up on 04.09.2023, a statement was made by the learned counsel for the Appellant that he had no instructions in the matter, in respect of the settlement talks that were in progress, and no material with respect to the same was supplied to him, to be placed on record in the proceedings in the Company Petition. As no reply was filed despite three chances given, the learned Tribunal closed the opportunity

of the Corporate Debtor to file a reply and proceeded to hear the arguments of respective parties. The Corporate Debtor filed an Application **IA No. 2675/2023** seeking for recalling the order dated 04.09.2023 that was passed by the learned NCLT closing the right of the Corporate Debtor to file an Affidavit-in-reply on merits of the Company Petition. It also filed another application under Section 65 of I & B Code, 2016, being **IA No. 2676/2023** seeking for dismissal of the Company Petition and for the imposition of penalty on Respondent No.1, for initiation of a malicious proceeding as against the Corporate Debtor. However, the proceedings were continued, and the order was reserved, calling upon the parties to file their written submission, within a period of 7 days. Finally, the order was delivered on 09.10.2023 (impugned order), admitting the Petition under Section 7 of the I & B Code, 2016, that was preferred by the Respondent and directing commencement of CIRP proceedings against the Corporate Debtor under Section 7 of the I & B Code. 2016. It is this order of the learned NCLT which is being challenged in the instant Appeal.

8. Consequently, upon the institution of the instant Company Appeal, when this Company Appeal was being argued, the learned counsel for the Appellant has contested the commencement of CIRP proceedings against the CD on the ground that, the proceedings drawn before the learned NCLT, Chennai, by Respondent No.1, would not be maintainable, for the reason being, that since the registered office of the Corporate Debtor M/s. Tuscan Consultants and

Developers Private Limited, is situated in Bangalore, the said proceedings ought to have been instituted before the learned NCLT, Bangalore, which is the competent forum available to Respondent No.1, owing to the provisions and restrictions contained under Section 60(1) of the I & B Code, 2016. If the provisions contained under Section 60(1) of the I & B Code, 2016, is read in context by the arguments that has been raised by the Ld. Counsel of the Appellant, it is that insolvency proceedings against a corporate person shall be carried on before the Ld. NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located and that therefore the application under Section 7 of the I & B Code, 2016, against the CD should have been filed before the Ld. NCLT, Bengaluru. The Appellant submits that the said application was filed before the Ld. NCLT, Chennai on the plea that CIRP proceedings had already been initiated against the Principal Borrower, Ozone Projects by filing Application under *Section 7 of the I & B Code, 2016, by Respondent before the learned NCLT, Chennai, on 05.08.2022, and* because the application against Ozone Projects was yet to be admitted, the above fact of mere filing of application under Section 7 ought not have been taken as to be the basis for the purposes of initiation of the proceedings under Section 7 of the I & B Code, 2016, before learned NCLT, Chennai, as against the Corporate Debtor of whom the present Appellant is the Suspended Director. The strength of the argument of the learned counsel for the Appellant has been that, in view of the

stipulations made under Section 60(1) and 60(2) of the I & B Code, 2016, where it has been provided that, insolvency proceedings against a Corporate person shall be carried on before that NCLT in whose the territorial jurisdiction, the registered office of such Corporate Person is situated, subject to exception made in Section 60(2) of the Code, since CIRP proceedings was yet to be commenced against Ozone Projects, there was no pending CIRP proceedings as such and therefore the proceedings against the Corporate Debtor M/s. Tuscan Consultants & Developers, (the Corporate Guarantor to Ozone projects) ought to have been initiated before the learned NCLT, Bangalore, in the light of provisions contained under Section 60(1) of the I & B Code, 2016, because of the fact that the head office of the Appellant/Corporate Debtor, was situated in Bangalore. Section 60 of the I & B Code, 2016, reads as under:-

***"60. Adjudicating Authority for corporate persons.—***

***(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.***

***(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or***

***bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.***

*(3) An insolvency resolution process or 2 [liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.*

*(4) The National Company Law Tribunal shall be vested with all the powers of the Debts Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).*

*(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—*

*(a) any application or proceeding by or against the corporate debtor or corporate person;*

*(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*

*(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*

*(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded. "*

9. What would be relevant to note at this stage from the above is that the aforesaid provision under Section 60(2) creates an exception to the general prescription of Section 60(1) permitting initiation of insolvency proceedings against a Corporate Person (e.g. Corporate Guarantor, Personal Guarantor as the case may be) before a NCLT, other than the NCLT in whose jurisdiction the registered office of such Corporate Person, is situated, provided that, the CIRP proceedings (or) liquidation proceedings of the Corporate Debtor to which such Corporate Person is linked, is already pending before such NCLT.

10. In the instant case, the following dates become relevant for consideration, for examining the applicability of Section 60(1) of the Code as it has been referred to by the learned counsel for the Appellant in the Written Submissions filed by him. The same is extracted hereunder: -

|   |  |   |
|---|--|---|
|   | <i>Ozone Projects Private Limited (Principal Borrower)</i> | <i>Tuscan Consultants &amp; Developers Private Ltd. (Corporate Guarantor)</i> |
| <i>Date of Filing of Application u/s. 7</i> | <i>5<sup>th</sup> August 2022</i>                          | <i>19<sup>th</sup> September 2022</i>   |
| <i>Date of Registration</i>                 | <i>27<sup>th</sup> February 2023</i>                       | <i>2<sup>nd</sup> May 2023</i>  |
| <i>Date of First Hearing</i>                | <i>11<sup>th</sup> April 2023</i>                          | <i>11<sup>th</sup> May 2023</i>   |

|                                   |                                |   |
|-----------------------------------|--------------------------------|---|
| <i>Date of initiation of CIRP</i> | <i>1<sup>st</sup> May 2023</i> | <i>9<sup>th</sup> October 2023<br/>(Impugned Order)</i> |
|-----------------------------------|--------------------------------|---|

11. According to the schedule of dates which has been given by the Appellant and tabulated herein above, the Application under Section 7 of the Code as against the Ozone Projects Private Limited, the Principal Borrower, at the behest of the Financial Creditor, was filed before the learned NCLT, Chennai, on 05.08.2022, the same got registered as such on 27.02.2023, the date of first hearing of the aforesaid proceedings was fixed on 11.04.2023 and the said Application was admitted by the learned NCLT on 01.05.2023. On the other hand, in the case of M/s. Tuscan Consultants and Developers Pvt. Ltd., (the Corporate Debtor), the Application under Section 7 of the Code was filed before the learned NCLT, Chennai, on 19.09.2022, the said application got registered on 02.05.2023, the first hearing was conducted on 11.05.2023, and the application was admitted by the learned NCLT on 09.10.2023 by an order which is the Impugned Order in the instant Appeal. Learned counsel for the Appellant contends that on the date when the application under Section 7 of the Code was filed against the Corporate Debtor, that is, 19.09.2022, no CIRP proceedings against Ozone Projects was pending before the learned NCLT, Chennai, as the said CIRP proceedings commenced only on 01.05.2023, that only Section 7 Application was pending and hence learned NCLT, Chennai, lacked jurisdiction to permit the filing of the Section 7 Application against the Corporate Debtor.

12. There are three terms used in the statute, as listed below, on which the entire argument of the learned counsel for the Appellant is constructed.

- a) the word '**pending**' as used under Section 60(2) of the I & B Code, 2016,
- b) the phrase '**initiation date**' as referred to under Section 5(11) of the I & B Code, 2016, and
- c) the phrase '**insolvency commencement date**' as referred to under Section 5(12) of the I & B Code, 2016.

13. The word 'Pending' has not been defined in the Code: but "initiation date" and "insolvency commencement date" have been defined under Section 5(11) and Section 5(12) of the I & B Code, 2016, and they become relevant for consideration in the instant case. The said definitions are extracted hereunder:-

*"5(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, **makes an application** to the Adjudicating Authority for initiating corporate insolvency resolution process;*

*5(12) "insolvency commencement date" means the date of **admission of an application** for initiating corporate insolvency resolution process by the Adjudicating Authority under Sections 7, 9 or Section 10, as the case may be;"*

14. The learned counsel for the Appellant has further submitted that, the proceedings drawn by Respondent No.1 before the learned NCLT Chennai, against the Corporate Debtor will be barred, on grounds of lack of jurisdiction in

the light of the provision contained under Section 60(1) and 60(2) of the I & B Code, 2016, since there is a fundamental lack of jurisdiction with the learned Adjudicating Authority, Chennai, to entertain the Application under Section 7 against the Corporate Debtor and that, as such the order, which has been passed, would amount to be an erroneous conclusion. He has further contended that he could not raise this issue of lack of jurisdiction before the Ld. NCLT, Chennai, because his right to file the reply was closed by an order dated 04.09.2023 and the recall application under Section 60(5) of the I & B Code, 2016, filed by him for recalling the said order, was dismissed, thereby closing his right to file Written Submissions and hence he was precluded to raise the objection with regards to the issue of lack of jurisdiction, and the implications of Section 60 (1) to be read with Section 60(2) of the I & B Code, 2016, before the learned NCLT. He has also submitted that his application filed under Section 65 of the Code, placing on record the conduct and the fraud perpetrated by the Respondent No.1, by indulging in evergreening of the loan account through coercion which could have had a bearing, was not considered while passing the impugned order.

15. Coming back to the issue of lack of jurisdiction of Ld. NCLT, Chennai, the learned counsel for the Appellant has argued that, if the implication of Section 60(2) of the I & B Code, 2016, is taken into consideration, it clearly prescribes that in case the CIRP or liquidation process of a Corporate Debtor is pending before a NCLT, then an application relating to insolvency resolution of a

Corporate Guarantor or Personal Guarantor shall be filed before such NCLT, that, in the instant case, only an application under Section 7 had been filed on 05.08.2022 against the Principal Borrower, pendency of such application cannot be termed as pendency of CIRP proceedings within the ambit of Section 60(2) of the code and hence the initiation of the CIRP against M/s. Tuscan Consultants & Developers Pvt. Ltd., the Corporate Debtor herein before learned NCLT, Chennai by way of CP/IB/01/CHE/2023 was bad in the eyes of law, owing to the fact that the office of the Appellant was situated in Bangalore.

16. He has submitted that the aforesaid principle could be very well culled out from the Judgement, rendered by the learned NCLAT in the matter of *State Bank of India Vs. Mahendra Kumar Jajodia* as rendered in *CA (AT) (Ins) No. 60/2022*. In particular, he has referred to para 8 of the said judgment, which is extracted hereunder: -

*" 8. The use of words 'a' and 'such' before National Company Law Tribunal clearly indicates that Section 60(2) was applicable only when a CIRP or Liquidation Proceeding of a Corporate Debtor is **pending** before NCLT. The object is that when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before 'a' NCLT the application relating to Insolvency Process of a Corporate Guarantor or Personal Guarantor should be filed before the same NCLT. This was to avoid two different NCLT to take up CIRP of Corporate Guarantor. Section 60(2) is applicable only when CIRP or Liquidation Proceeding of a Corporate Debtor is pending, when CIRP or Liquidation Proceeding are not*

*pending with regard to the Corporate Debtor there is no applicability of Section 60(2). "*

17. The above extract holds that the principles of Section 60(2) will be attracted only when there are pending proceedings against the Corporate Debtor. The Appellant's counsel contends that since herein, there was no proceeding pending against the Ozone Projects, the Principal Borrower, Section 60(2) will have no applicability, and the learned NCLT, Chennai, will have no jurisdiction to entertain the Section 7 application against M/s. Tuscan Consultants & Developers Pvt. Ltd., the Corporate Debtor.

18. He contends that, the implication of Section 60(2) of the I & B Code, 2016, will only come into play only when a CIRP or a Liquidation Proceedings against the Principal Borrower (Ozone Projects) is actually '**pending**' before the learned NCLT, Chennai, in order to draw the proceeding against the Corporate Debtor i.e., M/s. Tuscan Consultants & Developers Pvt. Ltd., by overriding the embargo of Section 60(1) of the I & B Code, 2016, and by attracting the exceptions contained under Section 60(2) of the I & B Code, 2016. What he intends to argue is that, initiation of a CIRP proceedings before the learned NCLT, Chennai, by attracting the provisions of Section 60(2) of I & B Code, 2016, is possible only when "**a CIRP or a Liquidation Proceedings against the respective Corporate Debtor (Principal Borrower in this case) is pending before the same NCLT**", and that, when CIRP or a Liquidation Process is not pending as

regard to the said Corporate Debtor, the provisions of Section 60(2) of the I & B Code, 2016, cannot be invoked.

19. The schedule of dates as given by the Appellant, shows that the CIRP process, as against the Ozone Projects, i.e., the Principal Borrower under same financial assistance agreement stood initiated from the date of filing of Section 7 Application, i.e., 05.08.2022. As against the above, the date of filing of the Section 7 application against the present Corporate Debtor (M/s. Tuscan consultants and Developers Pvt. Ltd.) is 19.09.2022, which is much later to the date of filing of Section 7 application against the Principal Borrower, that is, 05.08.2022, which makes it clear that the proceedings against the Principal Borrower is already **“pending”** adjudication before the learned NCLT, Chennai, when Section 7 application was filed against the present Corporate Debtor. Hence, in the light of the provisions contained under Section 60(2) of the I & B Code, 2016, since a prior proceedings as against the Principle Borrower, already stood instituted before the learned NCLT Chennai, on 05.08.2022, and was pending and since the liabilities were flowing from a common Debenture Trust Deed and its terms contained therein, the implication of Section 60(2) of the I & B Code, 2016, would be attracted for drawing a proceedings under Section 7 of the Code against the Corporate Guarantor to the Principal Borrower, (the Corporate Debtor herein i.e., M/s. Tuscan Consultants and Developers) before the learned NCLT, Chennai, only. For the purposes of Section 60(2) of the I & B

Code, 2016, pendency of CIRP proceedings would ordinarily mean that CIRP has been initiated by filing an application under Section 7(1) of the I & B Code, 2016 before the concerned learned NCLT and the same is pending consideration. Thus filing of Section 7 application itself against the principle borrower and pendency of the same before Learned NCLT would have to be treated to be a pendency of the proceedings, for the purpose of initiating CIRP proceedings against the Corporate Debtor before the same learned NCLT under Section 60(2) of the Code irrespective of the stipulations of Section 60(1) of the Code. Thus, the contention of the Appellant that there was no pending proceedings against the Principal Borrower on the date of filing of the Section 7 application against M/s. Tuscan Consultants & Developers Pvt. Ltd., that is 19.09.2022, is not tenable.

20. The argument being extended by the learned counsel for the Appellant in the light of the observations made in Para 8 of the Judgment of the *State Bank of India Vs. Mahendra Kumar Jajodia* is that a mere initiation of CIRP by filing a Section 7 application will not lead to pendency of CIRP proceeding, that pendency of CIRP proceedings will happen only after commencement of CIRP proceedings which is triggered by admission of the said Section 7 Application by learned Adjudicating Authority under Section 7(5)(a) of the Code and that only the pendency after commencement of CIRP will qualify to be a ‘CIRP proceeding pending’ to attract provision of Section 60(2). This interpretation is absolutely a misconception because, for the interpretation of any provision of law, we will

have to examine the same against the basic objective of the particular statute. The exception, being carved out under Section 60(2) is for the purposes to ensure that the insolvency is resolved at the earliest and does not get side tracked by multiplicity of proceedings at different NCLTs, leading to conflict of interests, situations or decisions particularly when the matter engaging consideration arises out of same transactions between the creditors and the Principal Borrower and its guarantors where the rights or the liabilities flowing from the relevant documents are required to be interpreted commonly in all connected cases. The ratio in this regard, as laid down by the Hon'ble Apex Court in para 33 of its Judgment in ***Embassy Property Development Private Limited Vs State of Karnataka & Others***, is extracted hereunder: -

*“33. Sub-section (4) of Section 60 of the IBC, 2016 states that the NCLT will have all the powers of the DRT as contemplated under Part III of the Code for the purposes of sub-section (2). Sub-section (2) deals with a situation where the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate debtor is taken up, when CIRP or liquidation proceeding of such a corporate debtor is already pending before NCLT. The object of sub-section (2) is to group together (A) the CIRP or liquidation proceeding of a corporate debtor, and (B) the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of the very same corporate debtor, so that a single forum may deal with both. This is to ensure that the CIRP of a corporate debtor and the insolvency resolution of the individual guarantors of the very same corporate debtor do not proceed on different tracks,*

*before different fora, leading to conflict of interests, situations or decisions”.*

21. The same principle is reiterated by the Principal Bench NCLAT in its Judgment in *Monica Jajoo Vs PHL Finvest Pvt. Ltd. & Anr.* (CA (AT) (Ins) No.1344 of 2022). Relevant Para 23 is extracted hereunder: -

*“23. As noted above, the transfer petition bearing No. TA(IBC)- 36(PB)/2022 was filed before the Adjudicating Authority. It is also a fact that even though this application was filed before the Adjudicating Authority (Bench-IV), it did not take the transfer application into consideration before passing both the Impugned Orders, which is a requirement of law as per section 60(1) and (2) of the IBC. Sub sections (1) and (2) of section 60 lay down a requirement of law, which stipulates and mandates that an application relating to insolvency resolution or liquidation of corporate guarantor of a corporate debtor shall be filed before ‘such’ NCLT, where a CIRP or liquidation proceedings of the ‘same’ corporate debtor is pending. This requirement of law has also been noted in the matter of State Bank of India, Stressed Asset Management Branch (supra) of this Tribunal”.*

22. Hence, in order to avoid any contradictory judgment and to facilitate an effective adjudication of the controversy arising from a common set of documents (Debenture Trust Deed in this case), the provisions of Section 60(2) would have to be made applicable and the proceedings will have to be drawn on a common platform, that is, before the NCLT where the proceeding as against the Principal Borrower is pending. Section 60(2) of the Code, thus, basically aims to keep all the proceedings before one platform and one forum where the dispute could be commonly adjudicated between the parties, that is, the creditors and the Corporate

Debtor (Principal Borrower in this case and its guarantors). In that eventuality, the argument as extended by the learned counsel for the Appellant that there would be a distinction in the instant case since the earlier proceedings as against the Principal Borrower had not commenced on the date of filing of Section 7 application against the Corporate Debtor and hence the order of Learned NCLT, Chennai is without jurisdiction, is not acceptable to this Appellate Tribunal as the same is against basic objective of the Code. As the applications praying for initiation of CIRP both against the Principal Borrower and its Corporate Guarantor (Corporate Debtor herein) on account of default are emanating from the same Debenture Trust Deed and as the application against the Principal Borrower has been filed earlier before NCLT, Chennai and is pending consideration, the proceedings in respect of the Corporate Debtor (M/s. Tuscan Consultants and Developers Private Limited) will have to be instituted before the learned NCLT, Chennai, and not before the learned NCLT, Bangalore as argued by the learned counsel for the Appellant.

23. The learned counsel for the Appellant for attempts to interpret the word '**pending**' used under Section 60(2) of the I & B Code, 2016, as pendency of the corporate insolvency resolution process which has been commenced by borrowing the provision contained under Section 5(12) of the I & B Code, 2016. This has already been answered by the Principal Bench of NCLT, New Delhi, in

the matter of IDBI Trusteeship Services Limited Vs DSS Infrastructure Private Limited (CP(IB) No.446/2023) in para 4 of its order which is extracted below:-

*"4. In order to appreciate the expression, 'pending', we may refer to Section 5(11) of the IBC, 2016, i.e., the definition of 'initiation date'. In terms of the definition, the 'initiation date' means the date on which a Financial Creditor, Corporate Applicant or Operational Creditor, as the case may be, makes an application to the Adjudicating Authority for initiating Corporate Insolvency Resolution Process [or the Prepackaged Insolvency Resolution Process], as the case may be."*

24. In the instant case, Application under Section 7 was filed against the Principal Borrower on 05.08.2022 the Application under Section 7 against the Corporate Debtor was filed on 19.09.2022. When the Application filed against the Corporate Debtor was taken up for consideration by the Learned NCLT, Chennai Bench on 17.04.2023, the Application against the Principal Borrower already stood registered, the date of such registration being 27.02.2023. Therefore, Learned NCLT, Chennai vide its order 17.04.2023, unhesitatingly took the view that since the case against the Principal Borrower (Ozone Projects) is pending before NCLT, Chennai, the case of the Corporate Guarantor, (M/s. Tuscan Consultants and Developers Private Limited) will also lie before NCLT, Chennai Bench in accordance with the provisions of Section 60(1) and 60(2) of the Code. The Learned Counsel for the Appellant seeks to controvert it by arguing that 'pendency' of CIRP has to be reckoned from date of commencement of CIRP and not from date of initiation of CIRP. He contends that on the date of

initiation, the Application alone was pending, that there is a fundamental difference between merely initiating the CIRP proceedings by filing an application under Section 7, 9 or 10 and Learned Adjudicating Authority commencing the CIRP proceedings by admitting the said application under Section 7(5) of the Code and that pendency of the CIRP proceedings should be reckoned from the date of commencement alone. The contentions of the Learned Counsel for the Appellant runs counter to the objective of the code and the purpose of Section 60(2), as both applications were flowing from the same Debenture Deed, and were based on same facts arising from the deed, governing the inter-se relation of the parties to the debenture deed and both were under consideration of Learned NCLT, Chennai. Purpose of Section 60 (2) is to avoid multiplicity of forum for deciding the similar nature of dispute and to facilitate avoidance of contradictory determination of the documents in relation to same transaction, which would not have been possible if the contention of the Appellant is accepted.

25. In the earlier part of the Judgment, we have already dealt with three expressions which required consideration in the instant Company Appeal, to determine, at what stage the implication of Section 60(2) of the I & B Code, 2016, will come into play, for the purposes of initiation of a CIRP proceeding in an event when there already exists a pending proceeding against a Corporate Debtor. However, to answer the questions raised by the Learned Counsel for the

Appellant with respect of 'initiation' and 'commencement', we will have to have reference to Section 7(6) of the I & B Code, 2016, the provision with which we are concerned Section 7 is titled as "Initiation of the Corporate Insolvency Resolution Process by Financial Creditor"; as per Section 7(1), the Financial Creditor, is to file an application for initiating the CIRP process; under Section 7 (5), Learned Adjudicating Authority passes order admitting the application, consequent to which under Section 7(6) CIRP commences. Though 'initiation', and 'commencement' may mean the same thing, that is, 'the start', they mean different things in the context of the code and hence have been independently defined under Section 5(11) & 5(12) of the I & B Code, 2016, respectively. On a joint reading of Section 5(11) to be read with Section 7(1) of the I & B Code, 2016, "date of Initiation", means, the day when the Financial Creditor files an application before a Tribunal for initiating CIRP against the Corporate Debtor. At this stage, the proceedings get '**initiated**' and it remains alive till it is finally adjudicated in the manner as laid down in the code which is either by rejection of the application or by approval of the Resolution Plan or by order of liquidation and till it is finally disposed, it will have to be described as 'pending'. In order to elaborate upon the said issue, we will have to deal with, as to what literally word 'initiation' means. In accordance with the judgment rendered by the Hon'ble Apex Court in the matter reported in *2006 Volume 13 SCC page 252, State, CBI vs Sashi Balasubramanian & Anr.*, the Hon'ble Apex Court in its para 30 of the

said judgment has dealt with, as to what does the word “initiation” in the judicial aspect actually mean. Relevant para 30 is extracted hereunder: -

*“30. "In initio" means in the beginning. The dictionary meaning of "initiation" is cause to begin. Whereas some statutes provide for grant of sanction before a prosecution is initiated, some others postulate grant of sanction before a cognizance is taken by court. However, meaning of the word may vary from case to case. In its wider sense, the prosecution means a proceeding by way of indictment or information, and is not necessarily confined to prosecution for an offence.”*

26. The word “**initiation**” has also been defined in accordance with the Webster's Third New International Dictionary, where the word 'initiate' has inter alia been defined as *"to begin or set going"* that means, it makes a beginning to perform or facilitate to take a first action or a step for drawing a proceeding. In Short Oxford English Dictionary the word 'initiate' has been defined as *"to begin or to enter upon, to introduce, or set going, to originate process"*. This expression has been dealt with in a Judgment reported in *2001 Volume 7 SCC page 549, Pallav Sheth Vs Custodian & Ors.* where it has been provided that initiating of any proceedings only aims to introduce or to lay down the first step to start the proceedings. The same expression has been given in the Black's Dictionary which defines to initiate means *"to start or to originate or to introduce"* and the said expression has been dealt in para 10 of the Judgment as reported in *2000 Volume 3 SCC page 171 Om Prakash Jaiswal Vs D.K. Mittal & Anr.* which has dealt with it describing it as to be *"in initio and initiation"*

that means, to begin. Relevant para 10 of the Judgment of Om Prakash Jaiswal is extracted hereunder:-

*“10. The expression "initiate any proceedings for contempt" is not defined in the Act. Words and Phrases (Permanent Edition) defines "initiate" to mean an introductory step or action, a first move; beginning; start, and "to initiate" as meaning to commence. Black's Law Dictionary (6th Edn.) defines "initiate" to mean commence; start; originate; introduce; inchoate. In Section 20, the word "initiate" qualifies "any proceedings for contempt". It is not the initiation of just any proceedings; the proceedings initiated have to be proceedings for contempt.”*

27. The term commencement, as contemplated under Section 7 of the I & B Code, 2016, is quite distinct to the implication of 'initiation' and that is why under Section 7(6) of the I & B Code, 2016, the word “commencement” has been introduced and used for the first time where it refers to "*the corporate insolvency resolution process shall **commence** from the date of admission of application under sub section 5*". If the provisions contained under Section 7 of the I & B Code, 2016 is read in its entirety, it is inclusive of both the expressions 'initiation' and 'commencement'. Initiation here means to start the proceedings by filing the same before the Adjudicating Authority, but the commencement starts only when the Adjudicating Authority applies its mind and admits the application under Section 7(5) and decides to commence the CIRP process as per Section 7(6) and that is why the commencement has been independently considered under Section

5(12) of the I & B Code, 2016. Relevant Sub Section (5) & (6) of Section 7 is extracted hereunder: -

*“5) Where the Adjudicating Authority is satisfied that—*  
*(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*  
*(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*  
*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*

*(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).”*

28. The moot question is as to whether CIRP proceedings will start from the date of initiation or from date of commencement. ‘Commencement’ has a special meaning under I & B Code; it finds mention in as many as 10 different sections of the code; the timeline of completion of CIRP starts from the date of commencement. The appointment of IRP, and the operation of moratorium start from date of commencement. Management of Corporate Debtor, definition of related party, eligibility of resolution applicant and many such process are influenced by date of commencement. Since CIRP is a time bound process, many

of the activities of CIRP have to be linked to a date, which is the Date of commencement of CIRP as per the Code. However, for the purpose of section 60(2), to determine whether there is a pending CIRP proceeding, it is enough to establish that CIRP proceedings has already been initiated under Section 7 to be read with section 5(11) of the Code and it is pending adjudication. Therefore, the argument of Learned Counsel for the Appellant that pendency of a CIRP proceeding has to be reckoned from the date of commencement as defined in Section 5(12) to be read with Section 7(6) of the Code cannot be accepted.

29. The word 'pendency' has been considered in various judicial platforms, which means that, it is nothing but a pending matter, which has not yet been decided, that it is pending and adjudication is remaining under consideration at the stage of 'undecided' and the proceedings of which have not been finally terminated, that it is the proceedings, which have been considered to be pending from the date of start till the date of its final determination. In fact, it would mean that an action that would not cease to be pending, until and unless it has been given a final decision and disposal.

30. The term 'pending' was considered from the prospective of a legal proceeding in a judgment rendered in *AIR 1957 Supreme Court page 503 (509)* in the matter *Asgarali Nazarali Singaporawalla Vs The State Of Bombay*, which has dealt with and described the term 'pendency', as to be the commencement or

a start of a proceedings until it is concluded. The relevant para is extracted below: -

*“20. We do not accept this contention. It cannot be denied that on July 28, 1952 the date of the commencement of the impugned Act the case of the appellant was pending before the learned Presidency Magistrate. On that day the prosecution had closed its case and the appellant had not yet been called upon to enter upon his defence. The examination of the appellant under Section 342 of the Code of Criminal Procedure took place after that date. The appellant filed his written statement on the August 14, 1952 and the addresses by the prosecution as well as the defence continued right up to September 26, 1952. The word “pending” is thus defined in Stroud's Judicial Dictionary, 3rd Edn. Vol. III, p. 2141:*

*“Pending.—(1) A legal proceeding is ‘pending’ as soon as commenced and until it is concluded i.e. so long as the court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.”*

*Similar are the observations of Jessel, M.R. In re Clagett's Estate, Fordham v. Clagett [(1882) 20 Chancery Division 637, 653] :*

*“What is the meaning of the word ‘pending’? In my opinion, it includes every insolvency in which any proceeding can by any possibility be taken. That I think is the meaning of the word ‘pending’ .... A cause is said to be pending in a court of justice when any proceeding can be taken in it. That is the test.”*

31. This will mean that Section 60(2) of the I & B Code, 2016, would apply where the proceedings has been started and not yet been concluded, meaning thereby that there are scope of passing further orders by Learned NCLT in the said proceedings. Similar view has been expressed in the judgment reported in

*AIR 1965 Supreme Court page 1449* in the matter *Raja Soap Factory and Ors. Vs. S.P. Shantharaj and Ors.*, which was dealing with in the context of the provisions contained under Section 24 of the Code of Civil Procedure, which is that **“pending proceedings in fact is not a concluded proceeding”**, and that the court having taken cognizance of it can make an order on the matter until and unless it is concluded in shape of an adjudication. In the light of what has been observed above by us, the definition of “initiation” and “commencement” ought not to be confused as ‘commencement’ has got different legislative intent and a purpose to be achieved and therefore, the word “pendency” as used under Section 60(2) of the I & B Code, 2016, will mean the period from the date of starting of the proceedings (date of initiation) by filing of the Application till it is concluded by a decision rendered by a court of law (Tribunal), in the manner prescribed by the Code, that is, rejection of Application, approval of Resolution Plan or order of liquidation as the case may be. If that be the situation, the pendency of Section 7 Application as against the Ozone Projects (Principal Borrower) before the learned NCLT, Chennai, will have to be taken as pendency of CIRP proceedings against the Principal Borrower till it is concluded by Learned NCLT, Chennai in the manner prescribed by the code and if during this period of pendency, any CIRP proceedings is contemplated to be initiated by filing an application as against M/s. Tuscan Consultants and Developers Private Limited i.e., the Corporate Guarantor to the Principal Borrower (Corporate Debtor herein) it has

to be initiated before the learned NCLT, Chennai, as contemplated under Section 60(2) of I & B Code, 2016, where the proceedings after its initiation against Principal Borrower by filing of the application were yet to be concluded by its decision, . Accordingly, the CIRP proceedings before the learned NCLT, Chennai, against Principal Borrower, would be treated to be pending and hence the order of Learned NCLT, Chennai, holding that the drawing of the proceedings against M/s. Tuscan Consultants and Developers Private Limited, the Corporate Guarantor, before the learned NCLT, Chennai, is maintainable before NCLT, Chennai in the light of the provision contained under Section 60(2) of the I & B Code, 2016, does not suffer from any error.

32. There could be another distinguishing factor, which is required to be considered, which is that, when the proceedings as against Tuscan Consultants & Developers by the Respondent before the learned NCLT, Chennai were instituted, there was a defect pointed out by the Registry qua the jurisdiction. When the matter was later taken up on 11.05.2023, the learned Tribunal had remarked that, there was already an order dated 17.04.2023, where the defects as raised by the Registry in relation to the territorial jurisdiction were directed to be overruled and the matter was directed to be listed to be considered as fresh. It has been argued by the learned counsel for the Respondent that, the defect with respect to the issue of jurisdiction was raised by registry in form of a defect and the matter has already

been dealt with by the Tribunal vide its order 17.04.2023, on a judicial side and the relevant order is extracted here under :-

**"ORDER**

*The Petitioner is represented by Ld. Counsel Mr. Angad Varma through video conferencing mode.*

*Registry raised an objection for numbering and filing of the Petition before this Bench of the Tribunal on the ground that the Respondent /Corporate Debtor in the present case the corporate guarantor is having registered office situated in Bengaluru and therefore how this Petition could be maintainable before NCLT Chennai.*

*The Financial Creditor / Applicant states that the Corporate Debtor in the present case is corporate guarantor to M/s. Ozone Projects Private Ltd having registered office following the jurisdiction of NCLT Chennai Bench. Case against Ozone Projects Private Ltd. (Corporate Debtor) is pending adjudicating before NCLT Chennai In main CP/(IB)49/2023.*

*Therefore in terms of Section 60(1) and 60(2) since the case against the Corporate Debtor / Ozone Projects is pending before NCLT Chennai the case of the corporate guarantor will also lye before NCLT Chennai Bench..*

*Section 60(2) is reproduced below:*

*"without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.*

*In view of the above, the objection of the Registry is overruled. Registry is directed to number the Section-7 Petition and list it for hearing on next available date."*

33. He has contended that the same has been accepted by the parties including the Appellant, without any demur, without raising any objection as such and subsequently when the proceeding was carried on 11.05.2023 wherein the learned Tribunal, had proceeded to hear the matter on merits, the question of jurisdiction was not contested by the Appellant before the learned NCLT and hence they cannot be permitted to agitate the same issue at this belated stage before this Appellate Tribunal, particularly, when they have not agitated the same before the learned NCLT by filing any objection to it when the question of jurisdiction was decided on 17.04.2023. It has been argued to the contrary by the learned counsel for the Appellant that even if the question of jurisdiction, decided by the order of 17.04.2023 was not challenged, it can still be agitated by the Appellant at any stage, even before NCLAT.

34. The counsel for the Respondent submits that, while passing the order on 17.04.2023 the Learned NCLT, Chennai, was dealing with an issue raised by the Registry by way of a defect about the jurisdiction of the Tribunal to deal with the matter pertaining to the Appellant, whose registered office is situated in Bangalore, but the fact remains that it was a judicial verdict dated 17.04.2023, deciding on the issue of maintainability of the proceedings before the learned NCLT, Chennai. This order has not been put to challenge, by the Appellant, and

hence he would be estopped to challenge the same at this ripe appellate stage, and more particularly when he himself despite being conscious of the fact, has not filed any pleading with regard to the question of jurisdiction as such before the learned NCLT and now he cannot be permitted to be reagitate the same by opening a new chapter altogether, according to his own whims and fancies.

35. This aspect has been argued to the contrary by the learned counsel for the Appellant, submitting that, even assuming for the time being that there was an order passed on 17.04.2023 by the learned NCLT on a judicial side holding the proceedings to be maintainable before the learned NCLT Chennai, and that he has not filed any counter/reply before the learned NCLT, specifically raising the question of jurisdiction, then too there cannot be any bar against him from agitating the question of jurisdiction before the Appellate Tribunal and for the aforesaid purpose he makes reference to the Judgment of the Hon'ble Apex Court, where it has been laid down that the question of jurisdiction, could be agitated at any stage or at any point of time and even at the stage of an appeal. This contention seems to be quite laudable, but it would be a question to be considered as to whether, it could have been considered when the Appellant himself has acceded to the question and had not raised any objection, against order dated 17.04.2023, but has rather voluntarily participated in the proceedings and have invited the order to be rendered on merits on admission of the application under Section 7 of the I & B Code, 2016. The Judgment as relied by the learned counsel

for the Appellant, is that as reported in *2020 120 taxman.com 178 (Calcutta)* in the matter of *Atin Arora Vs. Oriental Bank of Commerce*, where the single judge of the Calcutta High Court in Para 31 has observed that in the light of the provisions contained under Section 21 of the Code Civil Procedure, the question of jurisdiction could be agitated at any stage of time and Section 21 of Cr.P.C. which may not have any application in the proceedings under I & B Code, 2016. The relevant para is extracted hereunder:-

*"31. Thus, the contention of the opposite party that the objection as to the territorial jurisdiction of the Tribunal should have been raised at the first instance and that such objection was waived by nonappearance of the opposite party does not impress the court. The place of suing in case of suits filed under the Civil Procedure Code, 1908 is based on the provisions of sections 15 to 20 thereof and the plaintiff has to file the suit in accordance with the said sections and can also choose the place of suing. Under such circumstances, section 21 of the Code provides that the question with regard to territorial jurisdiction or pecuniary jurisdiction being technical questions, should be raised at the first instance. In my opinion, when the jurisdiction of the National Company Law Tribunal has been prescribed under section 60(1) of the Code and the National Company Law Tribunal within whose jurisdiction the registered office of the company is situated is to have exclusive jurisdiction over the proceedings under the Code, section 21 of the Code of Civil Procedure will not have any application."*

36. In furtherance thereto his argument, he has further made reference to a judgment which has laid down almost a similar principle, that, since the question

of jurisdiction, both pecuniary or territorial, goes to the roots of the competence of the Tribunal deciding the matter, it could be raised at any stage of time, even in the absence of the pleading raised in opposition to the effect. He supports his contention stating that there would be no legal bar as such for him to raise the issue of territorial jurisdiction, even before this Appellate Tribunal. The principles as laid down by the said judgment of Atin Arora (Supra) may not be akin in nature under the facts and circumstances of the instant Company Appeal, where despite of being conscious of the question of jurisdiction being raised, and also despite being conscious of there being a judicial order passed by the Tribunal on 17.04.2023 deciding the question of jurisdiction, not challenging it, and still choosing not to file any objection raising a question of territorial jurisdiction particularly, when it becomes a subject matter of consideration based upon the determination of facts and law, the Appellant cannot place this instant Company Appeal on a common pedestal as that of the Judgment relied by the Appellant in the matters as rendered, Atin Arora (Supra). The Appellant has relied on yet other authority, as rendered, by the Hon'ble Apex Court as reported in *2007 Volume 1 SCC page 732 Arunkumar & Ors. Vs. Union Bank of India*, where the Appellant has made reference to para 84 of the said judgment, as extracted hereunder.

*"84. From the above decisions, it is clear that existence of "jurisdictional fact" is sine qua non for the exercise of power. If the jurisdictional fact exists, the*

*authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of “jurisdictional fact”, it can decide the “fact in issue” or “adjudicatory fact”. A wrong decision on “fact in issue” or on “adjudicatory fact” would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present.”*

37. That was a case where the question of territorial jurisdiction was not even agitated by the opposite side to the proceedings at any point of time in the proceedings and it was being raised for the first time before the superior forum. It was under those facts and circumstances Hon’ble Apex Court opined that, since the jurisdiction goes to the root of the issue it could be permitted to be agitated at any point of time. But that may not be the same for case at hand, because here the Appellant had contested the issue, there is a judicial order determining the question of jurisdiction, which has not been challenged, and there is no pleading on merits of the jurisdiction. When the question of territorial jurisdiction falls to be a question of consideration under facts and law and yet the matter has been determined on its merit and that too upon contest, which was given by the Appellant, it has to be construed that he has waived of his right to file any objection to it, on any of the fact of the proceedings.

38. We are of the view, so far as the instant Company Appeal is concerned, the question of competence to decide the controversy based upon the lack of

territorial jurisdiction may not be attracted, as lack of territorial jurisdiction would mean lack of competence to decide, due to the subject being placed outside the territorial jurisdiction of the Court or the Tribunal. It is no one's case that judicially the Tribunal at Chennai didn't have jurisdiction to decide the subject; actually, it did have the jurisdiction to decide on the subject. The issue of restriction of territorial jurisdiction in this case is being agitated based on the implications of Section 60 (1) of I & B Code and the exception carved out due to Section 60(2). Basically, the question in context of territorial jurisdiction which falls for consideration is because of exception provided by Section 60(2). That means both the Tribunals would have concurrent territorial jurisdiction but which one is to be involved for subsequent proceedings would be subject to the exception provided by Section 60(2), where the restriction of jurisdiction on account of the location of Registered office of the Corporate Debtor as provided under Section 60(1) of I & B Code, 2016, determining place of suing will stand overridden due to existence and pendency of an earlier CIRP proceeding. In other words it could be said that a bar of territorial jurisdiction provided under Section 60(1) is not absolute and is rather concurrent in nature, due to the provisions of Section 60(2). Hence, none of the authorities relied by the Appellant on the issue of territorial jurisdiction would apply, because this would be a case where both the Tribunals under law would be having concurrent territorial jurisdiction, which would be a question to be raised at the earliest possible opportunity, which was

not done by the the Appellant. The issue of concurrent territorial jurisdiction has not been the bone of contentions in any of the authorities, cited by him.

39. As far as this Appellate Tribunal is concerned, we are of the view that, a question of concurrent territorial jurisdiction is a question, which has to be agitated and settled at the first given instance or an opportunity, when both Tribunals under law are competent to decide a controversy for the reason being that, a long drawn judicial proceedings should not be permitted to be carried before a forum when one party is of the opinion that the particular forum does not have a territorial jurisdiction and yet chooses contest the proceedings on merits. If a party to the proceedings, who has voluntarily participated in the proceedings knowing the purported ground of lack of competence or lack of territorial jurisdiction, it would amount that the party raising an allegation of territorial jurisdiction, had submitted to the jurisdiction of the forum before whom the proceedings were contested on merits and therefore, cannot for the first time raise a question about the competence of the territorial jurisdiction, at the stage of appeal, particularly when the issue takes the stature of “Concurrent Territorial Jurisdiction”.

40. Another issue which was being argued by the learned counsel for the Appellant is qua the question of jurisdiction being raised at any point of time. Though we have already dealt with the issue in the preceding paragraph, but the said controversies is also to be taken into consideration in the light of the

provisions contained under Section 21 of the Code of Civil Procedure, which is extracted hereunder: -

***"21. Objections to jurisdiction.—***

*1[(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.*

*2[(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.*

*(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]"*

41. The provision contained under Section 60(1) of the I & B Code, 2016, will have its general application. In a nutshell, it prescribes for that the question of jurisdiction has to be raised at the very first available instance before the proceedings moves into the stage of contest on merits and once a party to the proceedings becomes conscious of the question of lack of territorial jurisdiction of the learned Tribunal, he has to raise the said issue at an initial stage and not at the stage when the proceedings have been concluded. The aforesaid principle had

been settled by the judgment of the Hon'ble Apex Court as reported in **1981 Volume 3 SCC page 589** in the matter **Koopilan Uneen's Daughter Pathumma & Ors. Vs Koopilan Uneen's Son Kuntalan Kutty & Ors.** relevant paragraphs 5 & 6 are extracted here under: -

*" 5. In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential:*

- “(1) The objection was taken in the Court of first instance.*
- (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.*
- (3) There has been a consequent failure of justice.*

*6. All these three conditions must co-exist. Now in the present case Conditions 1 and 2 are no doubt fully satisfied; but then before the two appellate courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place of suing having been wrongly selected was made out. Not only was no attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred. We called upon learned Counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this view of the matter we must hold that the provisions of the sub-section above extracted made it imperative for the District Court and the High Court not to entertain the objection*

*whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of the finding arrived at by the High Court that the Manjeri Court had no territorial jurisdiction to take cognizance of the application praying for final decree. "*

42. The above-mentioned judgment lays down the governing principles that when there is a question raised qua the territorial jurisdiction of a Tribunal or a Court before whom the proceedings have been initiated, it is required to be considered at the first available instance.

43. For the aforesaid reasons, we do not find any merits in the **Company Appeal (AT) (CH) (Ins) No.362/2023**; the same would accordingly stand 'dismissed' and all pending Interlocutory Applications would stand 'closed'.

**[Justice Sharad Kumar Sharma]**  
**Member (Judicial)**

**[Jatindranath Swain]**  
**Member (Technical)**

**01.08.2025**  
**GKJ/MS/RS**