NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1102 of 2024

Arising out of Order dated 01.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench VI in C.P.(IB) No.427/ND/2021)

IN THE MATTER OF:

Ms. Sangita Arora
C 1/10, Sector 36, Noida
Gautam Budh Nagar 201303
Uttar Pradesh ... Appellant

Versus

1. IFCI Limited
   IFCI Tower, 61, Nehru Place
   New Delhi 110019

2. Reetesh Kumar Agarwal
   Resolution Professional,
   In the matter of Personal Insolvency of
   Ms. Sangita Arora
   531, Plot No 8, SG Shopping Mall
   Community Centre, Sector 9 Rohini
   New Delhi 110085 ... Respondents

Present:

For Appellant : Mr. Gaurav Mitra, Mr. Lokesh Malik, Mr. Adit Singh, Advocates

For Respondents : Mr. Amish Tandon, Ms. Anushree Kulkarni, Advocates

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by Personal Guarantor, challenging order of the Adjudicating Authority, National Company Law Tribunal, New Delhi,

Bench VI dated 01.05.2024, by which order, on an Application filed under Section 95, sub-section (1) by the IFCI Bank Ltd., the Adjudicating Authority has appointed the RP to submit a Report under Section 99 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**"). The Appellant aggrieved by the order dated 01.05.2024, has filed this Appeal.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) IFCI advanced a Rupee Term Loan of Rs.150 crores and a Corporate Loan of Rs.100 crores to the Corporate Debtor. The Appellant executed Deed of Personal Guarantees in favour of the IFCI securing of Rupee Term Loan of the Corporate Debtor, Supertech Limited.

(ii) Supertech Limited committed default in payment of loan, IFCI recalled both the loans and both the Personal Guarantees issued by the Appellant and Demand Notice was issued.

(iii) Application under Section 95 was filed by IFCI on 02.06.2021 for initiating CIRP against the Appellant.

(iv) Another Financial Creditor, i.e., PNB Housing Finance Ltd. ("**PNBHFL**") filed Application under Section 95 on 24.07.2021, which, was registered on 02.08.2021. However, no order has yet been passed in the Application filed by PNBHFL. Thereafter on

the Application of IFCI, the impugned order was passed, appointing the RP.

(v) The Appellant aggrieved by the order dated 01.05.2024 has filed this Appeal.

3. We have heard Shri Gaurav Mitra, learned Counsel appearing for the Appellant and Mr. Amish Tandon, learned Counsel appearing for the Financial Creditor.

4. Shri Gaurav Mitra, learned Counsel appearing for the Appellant submits that an Application was filed by PNBHFL against the Personal Guarantor, which was registered on 02.08.2021 and when the Application of the PNBHFL was registered on 02.08.2021, the Application was complete and interim moratorium was enforced on the Application filed by PNBHFL, hence, no order could have been passed by the Adjudicating Authority in the Application filed by IFCI (Respondent No.1 herein). It is submitted that after interim moratorium is triggered, there is prohibition from initiating any proceedings against the Personal Guarantor by any of its creditors. It is submitted that the order passed by Adjudicating Authority, impugned in the Appeal is without jurisdiction. It is submitted that mere filing of the Application does not make the Application complete, unless it is defect free and registered by the Adjudicating Authority. It is submitted that Application filed by Respondent No.1, came to be registered only on 09.08.2021, i.e., subsequent to the registration of Application filed by PNBHFL, hence, no order

could have been passed. The learned Counsel for the Appellant has put heavy reliance on the judgment of Kerala High Court in ***Jeny Thankachan vs. Union of India & Ors. [WP(C) No.31502 of 2023]*** decided on 17.11.2023.

5. Learned Counsel for the Respondent, refuting the submissions of learned Counsel for the Appellant, submits that Application filed by IFCI was prior in time to the Application filed by PNBHFL. The Appellant e-filed the Application on 02.06.2021, which e-filing was complete and e-filing number itself was generated on 02.06.2021. The Application was, however, registered on 09.08.2021 and the Application by PNBHFL was filed subsequently on 24.07.2021 and was registered on 02.08.2021. It is submitted that moratorium under Section 96 shall commence immediately after filing of the Application. The filing of the Application contemplated under the NCLT Rules 2016 is the date of e-filing and moratorium shall not be suspended till the Application is registered and numbered. The registration of Application and numbering of the Application is ministerial acts, which has no consequences on the filing. All legal consequences, shall commence immediately on filing of the Application, as per the procedure prescribed. It is submitted that a three Member Bench of this Tribunal in **Company Appeal (AT) (Insolvency) No.721 of 2022 – Krishan Kumar Basia vs. State Bank of India** has already decided the controversial issue and has held that the date of filing of the Application is the date, when it is e-filed and the filing of the petition is not the date when the Application is registered. It is submitted that the issue

raised in the Appeal is fully covered by the judgment of three Member Bench of this Tribunal. Reliance on judgment of Kerala High Court by the Appellant is misplaced.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. The only issue, which has been raised by the Appellant in the present Appeal is that another creditor, i.e. PNBHFL has filed an Application on 24.07.2021 under Section 95, sub-section (1) against the Appellant, which Application was registered on 02.08.2021, hence, the moratorium has commenced in the Application filed by the PNBHFL, prior to registration of the Application filed by IFCI. Hence, the order passed by the Adjudicating Authority, appointing RP in the Application of IFCI is without jurisdiction. The dispute between the parties is on the question as to whether the filing of Application shall be treated from the date of e-filing, or from the date, on which the Application is registered and numbered by the Registry. There is no dispute between the parties regarding the date, on which the Application filed by the PNBHFL, which was subsequent to the Application filed by the IFCI, i.e., on 24.07.2021, but it was registered on 02.08.2021, earlier to 09.08.2021, when the Application of Respondent No.1 registered. The three Members' Bench of this Tribunal in **Krishan Kumar Basia** has considered the same very issue and noted the relevant rules and procedure. In **Krishan Kumar Basia**'s case, the relevant rules, which were considered and applicable

for filing the Application were the NCLT Rules, 2016 and the procedure as provided in Rules 20 to 24. In paragraph 12 of the judgment, relevant rules have been noticed. Paragraph 12 is as follows:

> "**12.** Now we revert to Rule 20 to 24. Rule 20 deals with the "procedure', which is to the following effect:
>
> > "***20. Procedure.****-(1) Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form;*
> >
> > *(2) The cause title shall state "Before the National Company Law Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.*
> >
> > *(3) Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.*
> >
> > *(4) Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given.*
> >
> > *(5) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.*

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.

(7) These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his legal heirs or representative, as the case may be, if more than one shall be shown by subnumbers.

(8) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(9) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred."

Rule 21 provides for *'particulars to be set out in the address for service'*; Rule 22 provides for *'initialling alteration'*; and Rule 23 deals with *'Presentation of petition or appeal',* which is to the following effect:

*"**23. Presentation of petition or appeal.-** (1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same. (2) Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.*

(3) All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.

(5) In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative. (6) The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum of appeal."

Rule 23, sub-rule (1) provides that every application etc. be presented in triplicate by the appellant in the prescribed form with stipulated fee **at the filing counter**.

8. Section 96 of the Code uses the expression – "*when an application is filed under Section 94 and 95*". We need to notice the meaning of expression 'filed'. Sub-rule (2) of Rule 14 of NCLT Rules defines the word 'filed', which is as follows:

"**(14) "filed"** means filed in the office of the Registry of the Tribunal;"

9. This Tribunal in **Krishan Kumar Basia**'s case has noticed the relevant rules and in paragraph 14, 15, 16, 17 and 18 held following:

"**14.** When we read Rule 2 (14) along with Rule 23 of NCLT Rules, it is clear that Application is treated to be filed when it is filed in the Office of the Registry at the filing counter. Thus, filing on behalf of the Appellant/ Applicant is complete as soon as the Application is presented at the filing counter of the Office of the Registry. What is required to be done by the Applicant by filing an Application is provided in Rules 22 to 24 and 26, which the Applicant has to comply with while

submitting the Application. The submission, which has been pressed by the learned Counsel for the Appellant is that the Application cannot be held to be filed unless it is numbered by the Registry, that is, only when the Application is found defect free and accorded a numbering by the Registry. Thus, a filing within the meaning of 2019 Rules read with NCLT Rules, is the filing at the filing counter or the filing is to be treated to be filing only when it is numbered by the Office of the Registry, is a question to be answered.

15. The learned Counsel for the Appellant submits that the Application is to be considered as 'filed' only when it complies with NCLT Rules 22 to 24 and 26 and an Application which is presented to the Registry and not complied with the aforesaid provisions is marked 'defective' cannot be treated to have been filed. Any petition, which is marked defective is evidence of it not being 'filed' and it may be considered to be filed only when it becomes defect free and numbered. Hence, whether petition is filed or not is determined by the numbering of the petition, as otherwise, it is defective and cannot be treated as filed. The act of numbering of the petition is the sole evidence to show and determine that petition is filed in terms of the Rules. Thus, filing under Section 96 means filing not merely a bunch of papers, but an act of filing as provided under Rule 10 of the 2019 Rules. The learned Counsel, thus, submits that since the petition of Appellant under Section 94 was numbered earlier in point of time, the State Bank of India's petition, which was numbered subsequently is to be treated as non-est and could not have been considered by the Adjudicating Authority. The learned Counsel for the Appellant in support of his submission has relied on judgment of this Tribunal in ***Ravi Ajit Kulkarni v. State Bank of India in Company Appeal (AT) (Ins.) No.316 of 2021*** decided on 12th August, 2021.

16. The expression 'filing' is defined in several statutes. We may first notice the dictionary meaning of filing. In ***P Ramanatha Aiyar –***

Advanced Law lexicon (6th Edition Vol. 2, D-1) defines the 'filing' as follows:

> "**Filing.** Delivery of a paper to the proper officer to be kept on file; placing and leaving a paper among the files; placing a paper in the proper official custody; presenting a paper at the proper office and leaving it there, deposited with the papers in such office; placing a paper in the proper official's custody by the party charged with this duty, and the making of the proper indorsement by the officer."

17. The expression 'filing' has been used in NCLT Rules; IBC, as well as 2019 Rules as noted above. Rule 10 deals with filing of application and documents. Rule 10, in turn refers to Rule 20 to 24 and 26 of NCLT Rules. Rule 10, sub-rule (2) further provides that Application and accompanying documents shall be filed in electronic form, as and when such facility is made available. In the facts of the present case, it is clear that electronic facility is available in the NCLT, Principal Bench, New Delhi, where Applications have been filed in electronic form. The Adjudicating Authority has itself in the impugned order noticed the filing in paragraph 11 and 12, which indicate that Application under Section 95, sub-section (1) was efiled on 01.10.2021 before the NCLT, on which date filing number was given. It is relevant to note paragraph 12 of the impugned judgment, which is to the following effect:

> "12. On conjoint reading of these two documents show that date of filing of application by the SBI against Krishan Kumar Basai is 01/10/2021 and filing number if 07101020/7186/2021, where as filing number of respondent is 07101020/7885/2021. Admittedly, the date of application filed by the Applicant is prior to the date of filing of the application by the Respondent under Section 95 of the IBC, 2016. Of course, the application filed on behalf of the Applicant was not listed earlier, rather it was listed after the listing of the application filed by the Respondent."

18. When as per Rule 10, sub-rule (2), when an electronic facility is available and an Application is filed in electronic form, the filing is complete as soon as it is registered electronically, we do not find any support from the statutory scheme to the submission of learned Counsel for the Appellant that petition would be treated as filed when it is numbered by the Registry. Numbering of an Application by Registry is a process, which is undertaken by the Registry as per the relevant rules and instructions. Several consequences ensue on filing of the Application in the Registry, if it is accepted that the filing shall be dependent on numbering of the Application by the Registry. It will lead to uncertainty regarding date of filing. When statutory consequences are provided, there has to be certainty regarding such consequences. We cannot accept any interpretation, which may lead to uncertainty regarding the date of filing, resulting in uncertainty, regarding enforcement of the Interim Moratorium. Interim Moratorium has serious consequences, which consequences flow immediately after filing of the Application. If we accept the submission of the Appellant that filing is postponed till it is numbered, it will lead to uncertainty and allow the Guarantors and other Respondents to delay the moratorium by pleading that filing is not complete, since the Application has not yet numbered. The statutory scheme, thus, does not in any manner support the submission of learned Counsel for the Appellant. Numbering of Application is essential for different purpose and cannot be equated with the filing as contemplated by the Rules."

10. In **Krishan Kumar Basia** judgment, the judgment of Hon'ble Supreme Court in **Vidyawati Gupta and Ors. vs. Bhakti Hari Nayak and Ors.** was also noticed in paragraph 23 and 24. Paragraph 23 and 24 of the **Krishan Kumar Basia**'s are as follows:

"**23.** In this reference, we may notice one judgment of the Hon'ble Supreme Court in (2006) 2 SCC 777 – Vidyawati Gupta and Ors. vs. Bhakti Hari Nayak and Ors. The Hon'ble Supreme Court in the above case had occasion to consider the question as to when a plaint is treated to be filed. The High Court had occasion to consider the rules, provisions of CPC as well as Calcutta High Court (Original Side) Rules. In the above case, a suit was filed before the Original Side of the Calcutta High Court on 26.07.2002. An interim injunction was also granted on 02.04.2004 by the learned Single Judge. An Appeal was filed before the Division Bench, where a submission was made that the plaint was not filed in accordance with the provisions of Order 6 as amended from 01-07-2002, hence the plaint could not have been entertained and interim injunction granted by Single Judge is without jurisdiction. The said contention was accepted by the Division Bench and Division Bench allowed the Appeal holding that plaint was not presented as per the amended provisions of Order 6. It was pointed out before the Division Bench that plaint was not accompanied by an affidavit. In paragraph 22, the Hon'ble Supreme Court has noticed the relevant submissions, which was made before the Division Bench of the High Court, it is useful to notice the said submissions in paragraph 22, which is as follows:

> "***22.*** *Before the Division Bench, it was submitted on behalf of the appellants that prior to 1-7-2002, Section 26 of the Code merely indicated that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. The manner in which such plaint was to be prepared and presented has been provided for in detail in Orders 6 and 7 of the Code. It was submitted on behalf of the appellants that with effect from 1-7-2002 certain amendments were effected to the aforesaid provisions of the Code by Act 46 of 1999 which made it mandatory that in every plaint, facts would have to be proved by an affidavit. It was submitted that sub-section (2) was added to Section 26 by*

way of amendment incorporating the said provision. Correspondingly, amendments were also introduced in Order 6 Rule 15 relating to verification of pleadings and sub-rule (4) was inserted mandating that the person verifying the pleading was also required to furnish an affidavit in support of its pleadings. In addition to the above, Order 4 of the Code, which deals with the institution of suits, was also amended and sub-rule (3) was added to Rule 1 and it was specifically stipulated that the plaint to be filed in compliance with the provisions of Orders 6 and 7 would not be deemed to have been duly instituted unless it complied with the requirements specified in sub-rules (1) and (2). It was the further case of the appellants that having regard to the provisions of Chapter 7 Rule 1 of the Original Side Rules, the reference made in sub-rule (3) of Rule 1 Order 4 of the Code would also include the amendments brought about in the said orders with effect from 1-7-2002. Consequently, it was urged that since the amended requirements of sub-rule (4) of Rule 15 Order 6 had come into operation with effect from 1-7-2002 and since the suit had been instituted thereafter on 26-7-2002, the same could not be said to have been duly instituted within the meaning of sub-rule (3) of Rule 1 Order 4 of the Code. It was urged that the entire proceedings from the filing of the plaint and the entertaining of the interlocutory applications by the learned Single Judge was without jurisdiction and was liable to be declared as such"

The findings of the Division Bench of the Calcutta High Court has been noted in paragraph 26:

*"**26.** After considering the various provisions of the Code along with the relevant amendments introduced in the Code with effect from 1-7-2002 and the relevant provisions of the letters patent and after considering various decisions cited at the Bar, in particular the decision of this Court in State of M.P. v. M.V. Narasimhan [(1975) 2 SCC 377 : 1975 SCC (Cri) 589 : AIR 1975 SC 1835] the*

appeal court came to the conclusion that the instant case stood on a different footing from the various decisions cited in view of the express provisions of Order 4 Rule 1(3) of the Code, as amended. Relying on the interpretation of the expression "duly" used in Order 4 Rule 1(3) in a decision of this Court in LIC of India v. D.J. Bahadur [(1981) 1 SCC 315 : 1981 SCC (L&S) 111] and the decision of the House of Lords in East End Dwellings Co. Ltd. v. Finsbury Borough Council [(1951) 2 All ER 587 (HL)] the Division Bench was of the view that unless the plaint complied with the requirements of the amended provisions, there would be no due institution of the plaint. The Division Bench held that if a plaint is filed without compliance with the requirement of the amended provisions, in the eye of the law no plaint can be said to have been filed and the same is non est. However, having regard to the various decisions cited, including the decision of this Court in Salem Advocate Bar Assn. [(2003) 1 SCC 49] it was also held by the Division Bench that from the moment the error is rectified, the plaint will be deemed to have been properly instituted but the rectification could not relate back to a period when in view of the deeming clause there was no due institution of the plaint. On the aforesaid reasoning, the Division Bench held that the suit could not be dismissed nor could the plaint be rejected because of non-compliance with the amended provisions since the omission had been remedied by the filing of an affidavit by the respondent-plaintiff. It was held that after the defect was removed the suit must be deemed to have been duly instituted with effect from 28-7-2004 and not before that date and consequently the interlocutory order that had been passed by the learned Single Judge at a point of time when the suit had not been duly instituted could not survive.

The judgment of the Division Bench of the Calcutta High Court was questioned before the Hon'ble Supreme Court and submission was

made that the defect, if any, in the plaint is a mere irregularity and can be cured by the amendment and consequently when the verification in the plaint is amended, the plaint must be taken to be presented not on the date of the amendment, but on the date when it was first presented. It was submitted that Division Bench of the Calcutta High Court erred in holding that having regard to the provisions of sub-rule (3) of Rule 1 Order 4 of the Code, the suit will be deemed to have been instituted on the date on which the defects stood cured and not from the date of initial presentation of the plaint.

The Hon'ble Supreme Court allowed the Appeal and set-aside the Division Bench judgment of the High Court holding that any omission in respect of the plaint shall not render the plaint invalid and that such defect or omission was curable and plaint shall also date back to the presentation of the plaint. In paragraph 50, the Hon'ble Supreme Court also held that amendments were procedural in nature and non-compliance therewith would not automatically render the plaint as non-est. In paragraph 50 and 55 following has been laid down:

> *"**50.** The intention of the legislature in bringing about the various amendments in the Code with effect from 1-7- 2002 were aimed at eliminating the procedural delays in the disposal of civil matters. The amendments effected to Section 26, Order 4 and Order 6 Rule 15, are also geared to achieve such object, but being procedural in nature, they are directory in nature and non-compliance therewith would not automatically render the plaint non est, as has been held by the Division Bench of the Calcutta High Court.*
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> ***55.** The appeal is accordingly allowed and the impugned order under challenge is set aside. Consequent upon the views expressed by us, the plaint as filed on behalf of the appellants herein must be deemed to have been presented on 26-7-2002 and not on 28-4-2004 and the interim order passed by the learned*

Single Judge on 2-4-2004, stands revived. The Division Bench of the Calcutta High Court is directed to reconsider and hear the appeal filed by the respondents herein on merits as expeditiously as possible."

24. The above judgment of the Hon'ble Supreme Court also clearly laid down the principal that even if there is any defect in the Application, which is subsequently cured, the date of presentation of the Application shall remain the same and shall not be dependent on the date when defects are cured. We, thus, are of the considered opinion that Adjudicating Authority after due consideration has taken correct view of the matter in holding that filing of the Application under Section 95 by the State Bank of India is on a date when Application was filed and allotted number electronically and the submission of the Appellant that date of filing of the Application shall be the date when Application is numbered has rightly been rejected."

11. The three Member Bench of this Tribunal in **Krishan Kumar Basia**'s case has approved the view of the Adjudicating Authority that filing of the Application under Section 95 by the State Bank of India is on the date when the Application was filed and the date shall not be the date when the Application is numbered.

12. Applying the above ratio in the present case, we have to hold that filing of the Application by IFCI, was prior in time and the mere fact that Application filed by PNBHFL was registered earlier is inconsequential and moratorium shall commence on filing of the Application by IFCI. It is further to be noticed that present is not a case that any skelton Application was filed by IFCI. Copy of the Application, which was e-filed on 02.06.2021 has been brought on

record by the Appellant itself as Annexure A-4, which Application is a complete Application, running into 229 pages, where all relevant documents including the Demand Notice was brought on record. Deed of Personal Guarantee; Recall Notice as well as Notice for invocation of Personal Guarantee were also brought on record. Thus, in the present case, there was no such defect in the Application, where it can be termed as a skelton Application.

13. Now, we come to the judgment of the Kerala High Court **Jeny Thankachan vs. Union of India & Ors.** (supra), which has been relied by the learned Counsel for the Appellant. The Kerala High Court had occasion to consider the issue as to whether on an Application filed under Section 94 by the Corporate Debtor the proceedings under Section 13(2) of SRFAESI Act, 2002, which was initiated by the Bank, shall be deemed to have been stayed. In the above case, the Bank has initiated proceedings under Section 13(2) of the SRFAESI Act. In the above case, proceedings under Section 14 of the SRFAESI Act were filed before Chief Judicial Magistrate, who has passed an order on 30.06.2020. Before the Chief Judicial Magistrate, an affidavit was filed stating that an Application under Section 94 of the IBC was filed on 21.08.2023 before the NCLT, hence proceedings pending before the Chief Judicial Magistrate has to be stayed. The arguments of Petitioner was noticed in paragraph 19 and 20. In the above context, the Kerala high Court took the view that interim or final moratorium under Section 96 shall commence only

when Application filed by the Debtor would be complete in all respect. It was observed that filing of the Application as contemplated under Section 96, should be defectless and devoid of any procedural lapse. In paragraph 24, 25, 26 and 27, following have been observed by the Kerala High Court:

> "**24.** Therefore, for an interim or final moratorium under Section 96 to come into force, the application filed by the debtor should be complete in all respects and without any procedural defects. In the case of the petitioner herein, the petitioner has only uploaded Ext.P4 application, which by itself cannot be treated as filing of an application as contemplated by Section 96.
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> **25.** In view of the serious consequences that will follow on filing of an application under Section 96 by a debtor, on the creditors who will be disabled and disentitled from initiating or proceeding with any debt recovery legal mechanism, Section 96 should be construed strictly. Mere uploading of an application under Section 96 of the IBC 2016 cannot be taken as filing of an application. The filing of an application as contemplated under Section 96 should be defectless and devoid of any procedural lapses. Only when an application is filed without any defects and satisfying the statutory procedural requirements of filing and only when the adjudicating authority numbers the application, there can be a legal and acceptable filing of application.
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> **26.** In the case of the petitioner, admittedly the NCLT has not treated the application as a valid application by assigning regular case number to the application. As long as the petitioner's application is not duly numbered by the NCLT, the interim moratorium contemplated under Section 96(1)(b)(i) cannot come into operation. Therefore, the petitioner is not entitled to contend that the respondents cannot go ahead with the securitisation proceedings.
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> **27.** The argument of the petitioner that the IBC 2016 shall have overriding effect over the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 cannot be of any avail to the petitioner. It is true that in view of Section 238 of the IBC 2016, the IBC 2016 will have overriding effect. But,

> Section 238 of the IBC 2016 cannot oust the operation of the Act, 2002 for the reason that the IBC 2016 and the Act, 2002 operate in different fields. Therefore, unless there is any repugnancy between the provisions of the IBC 2016 and the provisions of the Act, 2002, there is no question of IBC 2016 overriding the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in totality.

14. We may notice that observations made by Kerala High Court that interim moratorium shall commence only when Application is defect free and has been registered, has been made without noticing the statutory scheme as delineated in NCLT Rules, 2016. The date of filing the Application has to be determined as per statutory Rules governing for filing of Application under Section 95. We have already noticed the judgment of three Member Bench of this Tribunal in **Krishan Kumar Basia** decided on 14.07.2022, i.e. much before the judgment delivered by the Kerala High Court on 16.11.2023. There being three Members' Bench judgment of this Tribunal covering the issue, we see ourselves bound by the said judgment and we are not persuaded to accept the view of the Kerala High Court in **Jeny Thankachan**'s case as noted above. It is to be noted that the three Members' Bench judgment of this Tribunal, which dealt with the issue, has not been brought to the notice of the Kerala High Court, when the judgment dated 16.11.2023 was delivered by the Kerala High Court. We are bound to follow the three Members' judgment of this Tribunal in **Krishan Kumar Basia**.

15. In view of the aforesaid, we do not find any substance in submission of the Appellant that order passed by Adjudicating Authority dated 01.05.2024 appointing RP, is without jurisdiction. No grounds have been made to interfere with the impugned order. The Appeal is dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

NEW DELHI

1st July, 2024

Ashwani