

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1522 of 2023

(Arising against the impugned order dated 5th September 2023 passed by the National Company Law Tribunal, Mumbai Bench in Company Petition (I.B) No.145(MB) 2023)

IN THE MATTER OF:

Clarion Health Food LLP

...Appellant

Versus

Goli Vada Pav Pvt. Ltd.

through Interim Resolution Professional

Mr. Vinod Radhakrishna Nair,

A-108 OM Rachna CHS Ltd. Sector 17, Vashi, Navi

Mumbai – 400705.

...Respondent No. 1

Vista Process Pvt. Ltd

M-75, MIDC Taloja, Post box no. 49,

Panvel, Raigad 410208.

...Respondent No. 2

Present:

For Appellant : Mr. Rakesh Kumar, Mr. Aditya Shukla, Ms. Preeti Kashyap, Mr. Ankit Sharma, Mr. Varun Pandit, Mr. Yash Tewari, Mr. Yash Dhawan, Advocates.

For Respondents : Mr. Swarupama Chaturvedi, Sr. Advocate, Ms. Saumya Kapoor, Mr. Aayush Shivam & Ms. Kavita Chaturvedi, Advocates for R-1/RP.

Mr. Jehan Mehta, Mr. Akshay & Mr. Dyuti Ghai, Advocates for R-2.

J U D G M E N T
(20th November, 2024)

INDEVAR PANDEY, MEMBER (T)

This appeal has been filed by Clarion Health Food LLP under section 61 of the Insolvency and Bankruptcy Code, 2016. (in short '**Code**') challenging the Impugned Order of Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-II) in Company Petition (I.B.) No. 145 (MB) 2023 passed on 05.09.2023 filed under the provisions of the Section 9 of the Code.

2. The Adjudicating Authority (in short '**AA**') has admitted the petition filed by Vista Processed Foods Pvt. Ltd. (Respondent No.2/**Operational Creditor**) against Goli Vada Pav Pvt. Ltd. (**Corporate Debtor**) for the initiation of the CIRP under Section 9 of the Code, based on an operational debt of Rs. 3,56,04,233/- that the CD failed to pay.

3. The brief facts of the case are as follows:

- i. The Appellant M/s. Clarion Health Foods LLP is Limited Liability Partnership firm and is major shareholder holding 63.64% of paid-up share capital of Corporate Debtor M/s. Goli Vada Pav Pvt Ltd./Respondent No.1.
- ii. The Vista Processed Foods Pvt. Ltd., Operational Creditor/Respondent No.2 filed Petition No. CP (IB) 145(MB) 2023 before the AA under Section 9 of the Code. The petition was filed against Respondent No. 1, Goli Vada Pav Pvt Ltd, alleging a default in payment of Rs. 3,56,04,233/-. The

petition was filed on 29.01.2023 and registered on 16.02.2023 after detailed hearing the AA admitted the CP No. (IB)-145(MB) 2023 and initiated the CIRP process against the CD by order dated 05.09.2023.

- iii. The appellant though the majority shareholder of CD, did not know about initiation of CIRP against the CD as he was not a party in the case and it was not represented on the board of the CD.
- iv. The Appellant had filed a Company Petition on 05.01.2023 against the CD before the NCLT under Sections 166, 241, 242, 243, 244, and 447 of the Companies Act, 2013. The aforesaid petition was registered on 08.02.2023 as CP-28/2023.
- v. In the aforesaid Company matter CP-28/2023, the Respondent no.1 submitted copy of impugned order dated 05.09.2023, by which AA admitted the application under section 9 of the code against the CD and submitted that on account of admission of CIRP proceedings against the CD the company petition of the Appellant CP-28/2023 needs to be dismissed. The Appellant was not provided an opportunity of representation in the Petition preferred by Operational creditor under section 9.
- vi. The appellant has filed this application in the above background and has submitted that this company appeal may be taken on record and the impugned order dated 05.09.2023 passed by Ld. AA in CP No. (IB)-145(MB) 2023 be quashed and set aside.

4. In the present appeal this Bench on 12.09.2024 passed the following order:

“12.09.2024: This appeal is filed by the shareholder of the Corporate Debtor. Counsel for the respondent has raised preliminary issue about the maintainability of appeal by the appellant and has relied upon two decisions of this Court rendered in Company Appeal (AT) (Ins.) No. 66 of 2017 ‘Mr. Chetan Sharma v. Jai Lakshmi Solvents (P) Ltd.’ decided on 10.05.2018 and Company Appeal (AT) (CH) (Ins.) No. 142 of 2022 ‘Nirej Vadakkedathu Paul & Ors. v. Sunstar Hotels and Estates Pvt. Ltd. & Anr.’ decided on 27.02.2023.

2. However, Counsel for the appellant has vehemently argued that the appellant had filed the Company Petition No. 28 of 2023, under Section 241-242 of the Companies Act, 2013 (in short ‘Act’) and the CP (IB) No. 145/2023 under IBC, 2016 was filed subsequently. Whereas, counsel for the respondent has submitted that the demand notice was issued under Section 8 on 15.10.2022 and another notice was also issued on 29.10.2022 which is prior on time to filing of the petition under the Act, therefore, there was no question of any collusion.

3. Counsel for the respondent has also relied upon the following Judgments:

(i) Ashish Gupta v. Delagua Health India Pvt. Ltd. in CA (AT) (Ins.) No. 17 of 2022 passed by NCLAT, Delhi Bench.

(ii) *Ashmeet Singh Bhatia v. Pragati Impex India Pvt. Ltd. & Anr. in CA (AT) (Ins.) No. 1413 of 2023 passed by NCLAT, Delhi Bench.*

(iii) *Ashu Dutt v. Celadon Real Estate Advisors Pvt. Ltd. in CP (IB) No. 3848 of 2019 passed by Ld. NCLT, Mumbai.*

(iv) *Trimex Industries Pvt. Ltd. v. Bhuwan Madan, RP Sathavahana Ispat Ltd. in CA (AT) (CH) (Ins.) No. 130 of 2023 passed by NCLAT, Chennai Bench.*

4. *We have heard counsel for the parties on the issue of maintainability of the appeal to decide as to whether the appellant is an aggrieved person for filing the appeal under Section 61 of the code.”*

Submissions of Appellant

5. The Appellant, holding a majority 63.64% stake in the CD filed a petition (C.P. No. 28 of 2023) under Section 241-242 of the Companies Act, 2013 on 05.01.2023 against the (a) Corporate Debtor and (b) Srinivasan Venkatesh Gurumurthy Srinivasan Iyer (Promoter, CEO and Managing Director of CD) and representative of other shareholders. Shortly thereafter, on 29.01.2023 Respondent No. 2 filed a petition under Section 9 of the Code in the NCLT, Mumbai, which the CEO of the CD defended on behalf of the CD. The CD admitted the debt, but did not inform the Appellant or the same NCLT Bench hearing the CP-28/2023 about this Section 9 petition. The Section 241-242 petition was filed on 05-01-2023, registered on 08.02.2023 and listed on 13.02.2023, where company was represented, but the fact of Section 9 proceedings was never mentioned in the Court by the CD.

6. It is the submission of the appellant that in the hearing on 13.06.2023 the Section 9 petition hearing went unopposed, leading to its admission on 05.09.2023. On 16.10.2023, the CD informed the NCLT about the Section 9 petition's admission during the Section 241-242 proceedings.

7. The counsel for appellant stated that this would demonstrate that the Appellant was actively pursuing the Section 241-242 petition, but the CD withheld information about the Section 9 proceedings from both the NCLT and the Appellant until much later.

8. The Appellant submitted that as a majority shareholder in the CD, which is a closely held company, he has now filed this appeal before this Hon'ble Tribunal against the NCLT Mumbai's order dated 05.09.2023, which admitted the CD into the CIRP process under Section 9 of the Code. The counsel asserted that there was collusion between the Operational Creditor (OC) and the CD to secure this admission. Notably, the suspended director of the CD has not appealed the impugned order, leaving the Appellant as the party directly affected and thereby justifying its locus to appeal.

9. The counsel for the Appellant highlighted that in the Extraordinary General Meeting (EOGM) held on 28.08.2022, its representative was appointed as a director of the CD, although the MD and CEO of CD did not implement this appointment, thereby preventing the Appellant's representative from assuming a position on the suspended board.

10. It is the submission of the Appellant that if it had been informed of the insolvency filing, it would have discharged the OC's debt to protect its substantial investment of Rs. 21 crores in the CD. The Appellant contends that these circumstances collectively demonstrate its status as an “aggrieved person” under Section 61 of the Code entitling it to file the present appeal.

11. The counsel for appellant has placed reliance on Section 61 of the Code. The relevant extract has been reproduced as under:

“1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O, may be filed on grounds of material irregularity or fraud committed in relation to such an order.”

12. It was contended by the counsel for the appellant that the relevant section of the Insolvency and Bankruptcy Code does not bar shareholders from filing an appeal as an “aggrieved person.” This position is supported by examples where shareholders have intervened in original proceedings under Sections 7, 9, and 10 of the Code. However, the present case is distinct, as the appeal is filed by the majority shareholders, who were unaware of the Section 9 petition that initiated the CIRP process. This unusual circumstance, compounded by the fact that the majority shareholder is actively pursuing a separate petition under

Sections 241 and 242 of the Companies Act, warrants special consideration from the Hon'ble Tribunal and suggests that the Appellant's standing should not be evaluated merely as a typical shareholder.

13. The counsel for Appellant during the course of arguments had referred the definition of person aggrieved. The Appellant also placed reliance upon the judgement passed by the Hon'ble Tribunal in the matter of "**Trimex Industries Pvt. Ltd. Vs. Bhuvan Madan, RP of Sathavahana Ispat Ltd.**" bearing **Ref. (CH) No. 01 of 2023 in Company Appeal (AT) (Ins.) No. 130 of 2023** which has referred the definition of person aggrieved. The same is being reproduced herein below:

*"4. He submitted that Hon'ble Supreme Court in a case reported in (2013) 4 SCC 465 **Ayaaubkhan Noorkhan Pathan Vs State of Maharashtra and Others** He has relied on para 10 of the Hon'ble Supreme Court Judgement which is reproduced herein below:-*

"10.A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R Chanji V. Home Insurance Co of New York, and State of Rajasthan & Ors V. Union of India & Ors).,)".

5. He has further placed reliance on para 25 in a case reported in (2011) 7 SCC 616 **A Subhash Babu Vs State of A.P.** which is reproduced herein below:

“25...The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.”

14. The Counsel for the appellant also referred to the judgement passed by this Hon'ble Tribunal in **“Ashish Gupta Vs Delagua Health India Pvt. Ltd.” Bearing Company Appeal (AT) (Ins.) 17 of 2022**. In the aforesaid matter, the majority shareholder had sought intervention in the CIRP proceedings. The same was agitated by the opposite party. The contention of the majority shareholder was that the aforesaid petition was collusive in nature. The Application filed by the majority shareholder was allowed. The Appeal filed against the said order was challenged before this Appellate Tribunal. The Appeal was dismissed with the observation that the interest of the majority shareholders should be protected in CIRP proceedings. The relevant extract is reproduced herein below:

“13. In view of the peculiar circumstances of the present case where the Section 8 Demand Notice could not be responded to by the Corporate Debtor company for reasons beyond their control and a collusive petition having been filed, Respondents No.2 and 3 being

majority shareholders of the Corporate Debtor Company deserve to be heard. It is a well settled canon of natural justice that anything which eludes or frustrates the recipient of justice should be avoided and reasonable opportunity of hearing be allowed to advance the cause of justice. We are of the view that Respondents No.2 and 3 being majority shareholders holding 98.98% share of the Corporate Debtor company, they deserve a chance to safeguard the rights and interests of the Corporate Debtor and their respective stakeholders given that the Appellant and KKV had in collusion foisted an abnormal situation by their resignation from the Corporate Debtor company causing a void and leaving none on the Board of Directors to defend the interests of Respondent No.1/Corporate Debtor company. To add to this, KKV was unauthorisedly representing the Corporate Debtor company before the Adjudicating Authority even after having submitted his resignation thus causing serious miscarriage of justice for the Respondent No.1. Hence, in the interest of justice, we are of the view that the present appeal filed before this Tribunal by Respondents No.2 and 3 deserves to be considered on merit.”.

15. Further the appellant submitted that the judgment in **Ashish Gupta vs. Delagua Health India Pvt. Ltd. (Company Appeal 17 of 2022)**, delivered on 01.02.2023, was not considered in the subsequent judgment in Sunstar Hotels Pvt. Ltd. delivered on 27.02.2023. This led to differing views from the tribunal on a similar issue. That the Appellant would further like to refer the judgement in the matter of **Ashmeet Singh Bhatia vs. Pragati Impex India Pvt. Ltd.**

(Company Appeal 1413 of 2023), the tribunal allowed a person with a stake in a related group company to intervene in CIRP proceedings on grounds of alleged fraud. Based on the above precedent, the appellant argues that majority shareholders, as affected parties, should be considered "persons aggrieved" under Section 61 of the Code, allowing them to appeal insolvency orders without prior notice or involvement.

16. The appellant has submitted that the prime contention of the Respondents is that the present Appeal is not maintainable in terms of section 61 of the Code, as the Appellant has no locus to file the present appeal being the shareholders of the CD. The Respondents have relied upon the following judgement to support their such contention:

Nirej Vadakkedathu Paul & Ors. Vs Sunstar Hotels and Estates Pvt. Ltd. bearing Company Appeal (AT) (Ins.) No. 142 of 2022 passed by the Hon'ble National Company Law Appellate Tribunal, Chennai Bench; and

Chetan Sharma Vs Jai Lakshmi Solvents (P) Ltd. & Anr bearing Company Appeal (AT) (Ins.) No. 66 of 2017 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi.

17. The appellant argues that the aforesaid judgments particularly, the judgement of the Sunstar Hotels & Estates Pvt. Ltd. though has decided the issue on the locus of the shareholder for filing an Appeal under Section 61 of the

Code. However, the facts of the present matter with respect to testing the locus of the shareholders is entirely different.

18. The counsel for the appellant has submitted that his appeal is very much maintainable in view of the aforesaid findings.

Submission of Respondents

19. The counsel for Respondent No.1 stated that the Appellant has challenged the Hon'ble NCLT's decision, claiming the issue revolves around the interpretation of "dispute" under Section 5(6) of the code, which defines "dispute" specifically as a matter between debtor and creditor. Respondent No. 1 further questioned the petition's maintainability in its reply, which the Appellant argues, is irrelevant given the absence of any pre-existing dispute as required under the code.

20. The counsel for the respondent places reliance on the judgement of the Hon'ble Supreme Court in the matter of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353** which provides following in Paragraph No. 34:

"34.... the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act).

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected.”

21. The counsel further submitted that this Hon’ble Tribunal in its judgement in the matter of **Chetan Sharma Vs. Jai Laxmi Solvents (P) Ltd. & Anr. in CA(AT)/(Ins) No. 66 of 2017, and other connected cases decided on 10.05.2018**, has held in paragraph 15 of the judgement that it is a settled law that unilateral ‘transfer’ of liability does not constitute a ‘dispute’ within the meaning of Section 5(6) of the I&B Code. That the dispute under Section 5(6) of the Code has to be between the Corporate debtor and the Operational Creditor and an inter-se dispute between two groups of shareholders of the Corporate Debtor does not constitute a dispute in reference to Operational Creditors.

22. In the judgement of this Hon’ble Tribunal in the matter of **Axis Bank Vs. Lotus Three Developments & Ors., ((2018) SCC OnLine NCLAT 914)**, has held

following in Paragraph 6:

“6. From the aforesaid decision, it is clear that the Adjudicating Authority is only to satisfy that the default has occurred and that the ‘Corporate Debtor’ is entitled

to point out that the default has not been occurred in the sense that the debt is not due. No other person has a right to be heard at the stage admission of the application under Section 7 and 9 of the I&B Code including the ‘shareholders’ or the ‘personal guarantor’ etc.”

23. The counsel further submitted that the present petition is on similar facts and averments as it can be seen in para 28 of the judgement of this Hon’ble Tribunal in the matter of ***Nirej Vadakkedathu Paul & Ors. Vs. Sunstar Hotels and Estates Private Ltd. & Anr., (2023 SCC Online NCLAT 102)***. In this case it was held that shareholders cannot maintain derivative actions. It must be reiterated that the Appellant herein has preferred the present appeal as an independent shareholder aggrieved by the admission order for the commencement of Corporate Insolvency Resolution Process, however, the Appellant has no locus to file the present Appeal as per established principles of law as decided by Hon’ble Courts. In the Case of ***Nirej Vadakkedathu Paul*** (supra) the Hon’ble NCLAT considered that the “shareholders” cannot be aggrieved merely by the admission of the ‘Corporate Debtor’ into ‘Corporate Insolvency Resolution Process’. Such objection may render the object of I & B Code, 2016 illusory, since any shareholder of any ‘Corporate Debtor’ against which Insolvency proceedings have been initiated can then seek to maintain a derivative action and sabotage a valid CIRP initiated by the Adjudicating Authority.

24. In the judgement of this Hon'ble Tribunal in the matter of **Axis Bank Vs. Lotus Three Developments & Ors., ((2018) SCC OnLine NCLAT 914)**, has held following in Paragraph 6:

"6. From the aforesaid decision, it is clear that the Adjudicating Authority is only to satisfy that the default has occurred and that the 'Corporate Debtor' is entitled to point out that the default has not been occurred in the sense that the debt is not due. No other person has a right to be heard at the stage admission of the application under Section 7 and 9 of the I&B Code including the 'shareholders' or the 'personal guarantor' etc."

25. The Respondent No. 1 submitted that the disputes related to shareholder oppression or mismanagement under the Companies Act, 2013 are distinct issues governed by separate statutory provisions and fall outside the purview of the Code. As a special statute, the IBC prevails over the Companies Act pursuant to Section 238, as affirmed by the Hon'ble Supreme Court in **Innoventive Industries Ltd. v. ICICI Bank (2018)**, which held that the resolution process under the IBC takes precedence over any conflicting laws. The cases cited by the appellant are distinguishable on factual grounds and, therefore, do not apply to the present matter. Furthermore, the CIRP is approaching finalization, with the Committee of Creditors set to decide on a resolution plan for submission to the Hon'ble NCLT, in accordance with IBC mandates.

26. The counsel for the Respondent No. 2 has submitted that this appeal challenges order of AA on the basis of a "pre-existing dispute" between the

Appellant and the CD, the relevant sections of the appeal where the "pre-existing dispute" is detailed are in paragraphs 7.10, 7.15, 8(a)(i), 8(a)(ii) 8(iv), and 9.2 of the appeal. The Appellant claims that this dispute led to a company petition filed in January 2023 under Sections 241 and 242 of the Companies Act, 2013. During the hearing, the Appellant's advocate also alleged, for the first time, collusion and fraud between the Corporate Debtor and the Respondent. However, this argument is not part of the original pleadings, and under settled law, arguments outside the pleadings cannot be considered.

27. The Respondent No. 2/ OC argues that the appeal is not maintainable and legally barred, as it has been filed by a shareholder of the Corporate Debtor who lacks the requisite locus to do so. The Respondent emphasizes that the Appellant is only a shareholder of the CD, as stated in Paragraph 7.1 of the Appeal. To support this argument, Respondent No. 2 refers to the decision in **Nirej Vadakkedathu Patel & Ors. v. Sunstar Hotel and Estates Pvt. Ltd. & Anr.**, where the Hon'ble Tribunal addressed a similar issue. In that case, independent shareholders appealed against the CIRP order, alleging collusion, but the Tribunal held that shareholders lack the locus to challenge a CIRP order under Section 7 of the Insolvency and Bankruptcy Code. Consequently, the Tribunal dismissed the appeal as non-maintainable to uphold the objectives of the Code.

28. The counsel further submitted that the Appellant relies on multiple cases to support their arguments, but each cited judgment is inapplicable due to differing circumstances. In **Ashish Gupta v. Delagua Health India Pvt. Ltd.**, the judgment centred on a pre-existing dispute and unique conditions where

shareholders, instead of the Board, represented the Corporate Debtor at the admission stage of CIRP; however, in this case, the Corporate Debtor was represented consistently, and a detailed reply was filed. Similarly, in **Ashmeet Singh Bhatia v. Pragati Impex India Pvt. Ltd.**, the issue related to Section 65 powers, not CIRP, thus irrelevant for this appeal. In **Trimex Industries Pvt. Ltd. v. Bhuvan Madan**, the Tribunal addressed the need for leave to appeal under Section 61, with no challenge on whether the Appellant was an “aggrieved person,” making it unrelated to the present appeal. Lastly, the judgment in **Ashu Dutt v. Celadon Real Estate Advisers Pvt. Ltd.** from the NCLT, Mumbai Bench, pertains to a different scenario involving an application under Section 9, which was dismissed due to the lack of operational debt and a pre-existing dispute. This judgment does not support the Appellant's case as the operational debt claimed here is unrelated to any management disputes.

29. The Respondent No. 2 argues that the Appeal should be dismissed as it is misconceived. The Appellant's only argument in the Appeal relates to a supposed pre-existing dispute between the Appellant, a shareholder, and the Corporate Debtor, which has no bearing on Respondent No. 2 (the Operational Creditor). The operational debt of Rs.3,56,04,233/- is undisputed, and the Hon'ble NCLT confirmed this in its Admission Order. This Tribunal in **Chetan Sharma v. Jai Lakshmi Solvents (P) Ltd. (2017)** clarified that disputes under Section 5(6) of the Code must be between the CD and the OC, and not among shareholders. Even if fraud is alleged by one shareholder against another, this does not absolve the CD from paying OC. In this case, Respondent No. 2 sent a demand notice

under Section 8 of the code on 15.10. 2022, followed by a corrigendum on 29.10.2022. The CD replied on 4.11. 2022. Later, in January 2023, the Appellant initiated proceedings under Sections 241 and 242 of the Companies Act, 2013, unrelated to Respondent No. 2. Respondent No. 2's proceedings under Section 9 were independently represented by advocates for the CD, negating claims of collusion or fraud. Thus, even considering the Appellant's allegations of fraud raised at the hearing, the Appeal lacks merit based on established legal principles in *Chetan Sharma v. Jai Lakshmi Solvents (P) Ltd.* (supra)

30. The Appellant who is merely a shareholder in the CD lacks standing to file an appeal challenging the initiation of the CIRP against the CD as per the tribunal's previous rulings in ***Nirej Vadakkedathu Patel & Ors. v. Sunstar Hotel and Estates Pvt. Ltd. & Anr.*** It is established law that shareholders cannot appeal such orders. Additionally, the appeal only raises issues concerning a pre-existing dispute between the Appellant and the Corporate Debtor, not between the Operational Creditor (Respondent No. 2) and the CD. This approach aligns with the judgment in *Chetan Sharma v. Jai Lakshmi Solvents (P) Ltd. & Anr.*, which states that only disputes directly involving the Operational Creditor and the Corporate Debtor can be grounds for dismissing a Section 9 application. Claims of fraud and collusion, raised by the Appellant's advocate during the hearing, are unsupported by the record and were not part of the initial pleadings. Moreover, Respondent No. 2 issued a Demand Notice before any alleged disputes between the Appellant and Corporate Debtor arose. Since the operational debt owed to Respondent No. 2 is undisputed, it is urged

that the appeal be dismissed for lack of maintainability and, alternatively, on the merits.

Analysis and findings

31. We have heard the Ld. Counsels in detail and examined the documents including written submissions filed by parties.

32. The first and main contention of the appellant is that there was a pre-existing dispute between the appellant and Corporate Debtor/Respondent No.1 for which the appellant had preferred Company Petition No. 28/2023 against the CD prior to the application by the Respondent No.2 for initiation of CIRP against the CD. The contention of the appellant is that the Respondent No.1 did not bring this fact about the pendency of existing Company Petition to the notice of AA. It is due to malafide intention of Respondent No.1 that the Corporate Debtor could not be saved under Section 241 and 242 of Companies Act. He further contended that the AA passed the impugned order in ignorance of Company Petition No. 28/2023.

33. We are aware that the disputes related to shareholder oppression or mismanagement under the Companies Act, 2013 are distinct issues governed by separate statutory provisions and fall outside the purview of the Code. As a special statute, the IBC prevails over the Companies Act pursuant to Section 238, which has been affirmed by the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank (2018)***, which held that the resolution process under the IBC takes precedence over any conflicting laws. Hence, the contention

of appellant regarding resolution of Company Petition under Section 241 & 242 of Companies Act, 2013 before the CIRP petition does not hold water.

34. We have seen that the Respondent No.2/Operational Creditor issued its demand notice under Section 8 of IBC on 15.10.2022 and issued a subsequent corrigendum notice on 29.10.2022. The same was replied by the CD on 04.11.2022. It is only thereafter in January 2023 that the appellant filed proceedings under Section 241 & 242 of Companies Act, 2013 against the CD. The Respondent No.2 filed the petition under Section 9 on 29.01.2023. We also notice that it is the same Bench of NCLT which was hearing both Company Petition as well as CIRP petition. The bench has passed a reasoned order after hearing all the parties. The relevant extracts of the judgement of AA are extracted below:

“14. We have heard the contentions raised by the Counsel for the parties and have also gone through the records.

15. The only defense raised by the Counsel for the Corporate Debtor in this case is that the Application is barred by time. It has also been pointed out by the Counsel for the Corporate Debtor that the Operational Creditor has wrongly claimed interest as there is no mention of any interest clause either in the invoices or in the purchase orders. It has further been contended on behalf of the Corporate Debtor that the balance confirmations relied upon by the Operational Creditor are not signed or executed by on behalf of the Corporate Debtor and the said confirmations appear to have been forged and fabricated by the Operational Creditor to cover up the period of limitation.

16. As regards the agreement to pay interest in the event of non-payment of invoice amounts by the Corporate Debtor within the due date, it is pertinent to point out that as per clause 18 of the manufacturing

agreement dated 06.12.2016, the Operational Creditor was entitled to charge interest as per its prevailing borrowing bank rates for any overdue and unpaid invoices calculated from the due date to the date of payment. Therefore, it cannot be said that the Operational Creditor was not entitled to claim interest.

17. *So far as the question as to whether the Application has been filed within the period of limitation is concerned, as per the ledger (Annexure L) annexed with the Petition, the invoices were issued between 02.08.2018 and 30.06.2021. A perusal of the ledger further shows that some payments were made by the Corporate Debtor from time to time against the invoices raised by the Operational Creditor. The Operational Creditor has further relied upon three balance confirmations Annexed as Annexure F with the Application whereby the Corporate Debtor is purported to have acknowledge its liability to pay the outstanding amounts of Rs. 2,57,00,271/- as on 31.03.2020, Rs. 2,68,20,777/- as on 31.03.2021 and Rs. 2,68,20,867.11/- as on 31.03.2022. The balance confirmations are dated 18.08.2020, 12.07.2021 and 08.07.2022. If the balance confirmations are taken into consideration, whereby the outstanding amounts have been unequivocally acknowledged on behalf of the Corporate Debtor, the instant Application u/w 59 of the Code has to be held to have been filed within the period of limitation.*

18. *It has been contended on behalf of the Corporate Debtor that the said balance confirmations are bogus, forged and fabricated document which are not signed by any persons duly authorized by the Corporate Debtor. However, in the reply filed on behalf of the Corporate Debtor no such plea has been taken that the balance confirmations were not executed on behalf of the Corporate Debtor or that the persons who signed the balance confirmations were not authorized to do so on behalf of the Corporate Debtor. In the absence of specific plea in the reply filed by the Corporate Debtor, the argument that the balance confirmations forged and fabricated by the Operational Creditor to cover up the period of limitation cannot be sustained in the eyes of law. It is pertinent to mention that the balance confirmations are duly referred to in the Application and copies thereof were also annexed with the Application u/s 9 of the code.*

Therefore, it was imperative on the part of the Corporate Debtor to have denied specifically in the reply that the said confirmations were not executed or signed by duly authorized persons on behalf of the Corporate Debtor. It is well settled that if the facts pleaded in the Application are not specifically denied in the reply, the same are deemed to have been admitted. Therefore, this contention raised on behalf of the Corporate Debtor is also liable to be rejected.

19. *No other points have been raised on behalf of the Corporate Debtor.*

20. *As a result of the foregoing discussion, we are of the considered view that the Operational Creditor has been able to establish the existence of the Operational debt due on account of supply of goods to the Corporate Debtor in respect of which default has been committed by the latter. It has also been established that the instant Application has been filed within the limitation. Therefore, we find the instant Application to be a fit one to be admitted u/s 9 of the Code, 2016.”*

35. We observe that NCLT has passed the order after hearing both the parties and it's an order complying with relevant provisions of the code. The debt and default are on record and there was no pleading of pre-existing dispute in this case.

36. The respondents on the other hand have cited the Judgment of this Tribunal in **Chetan Sharma Vs. Jai Laxmi Solvents (P) Ltd. & Anr. In CA (AT) (Ins) No. 66 of 2017**. In view of the fact that the appellant has quoted Section 5 (6) of the Code regarding the existing dispute between the appellant and CD relating to oppression and mismanagement under Companies Act. The relevant paras 15, 16 & 20 of the Judgment supra are extracted below:

“15. It is a settled law that unilateral transfer' of liability does not constitute a 'dispute' within the meaning of Section 5(6) of the I&B Code'.

The 'dispute' under Section 5(6) of the 1&B Code' has to be between the 'Corporate Debtor' and the 'Operational Creditors' and an inter-se dispute between two groups of shareholders of the 'Corporate Debtor' does not constitute a 'dispute' in reference to 'Operational Creditors'.

16. On perusal of the documents, we find that there is no pre-existing dispute between the 'Corporate Debtor' and the 'Operational Creditors'.

20. The Appellant- Mr. Tilak Raj Sharma has already purchased the full stake of the other partner i.e. Mr. Dinesh Arora as pleaded by the 'Operational Creditors' and not disputed by the Appellant. Mr. Tilak Raj Sharma, provided exit to Mr. Dinesh Arora from the Company ('Corporate Debtor') before the takeover of the management by Mr. Tilak Raj Sharma Group in the year 2016. If there is any fraud played by one or other shareholders or ex shareholders of the 'Corporate Debtor', the aggrieved shareholder may take appropriate step against the other shareholder but that will not absolve the 'Corporate Debtor' of its liability of payment to 'Operational Creditors'."

37. It can be seen from the above that this Appellate Tribunal has, in the case of Chetan Sharma (supra) categorically held that the dispute under Section 5(6) of Code has to be between the Corporate Debtor and Operational Creditor not a dispute between two groups of shareholders. This Hon'ble Tribunal has further held that even in case of any fraud played by one of the shareholders against one or other shareholders or ex-shareholders of Corporate Debtor, while the aggrieved may take appropriate steps against the shareholder, the same does not absolve Corporate Debtor of its payment to Operational Creditors.

38. We observe from the above discussion that the contention of Appellant about pre-existing dispute between Appellant and CD has no effect on CIRP proceedings which has been admitted in compliance with provisions of the Code.

39. In his verbal submission the counsel for appellant has also raised the issue of fraud/ collusion between Director of CD and Respondent No.2 for the first time. However, this argument is not part of the original pleadings, and under settled law, arguments outside the pleadings cannot be considered. We also observe that the Appellant has not been able to adduce any document or record in support of such contentions. We, therefore, do not find any merit in this contention.

40. The main contention of the appellant in the hearing was that he is the 'person aggrieved' under Section 61 of the Code and therefore, he has locus to file this appeal and the same is maintainable before this Appellate Tribunal. The appellant has cited several Judgments of this Tribunal to support his case. The respondents on the other hand contended that in the CIRP proceedings shareholders have no locus under Section 9 of the Code and therefore this appeal is not maintainable. They have also cited several Judgments of this Tribunal to support their contention.

41. In order to examine this critical issue of locus and maintainability, we have to look into various provisions of the I&B Code 2016 carefully. The relevant provisions connected to this issue are:

- **“3 (23) “person” includes—**
(a) an individual;

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

(emphasis supplied)

- **Section 5 (20).** "Operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;
- **Section 5 (21).** "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;
- **Section 6.** Persons who may initiate corporate insolvency resolution process. – Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.”

(emphasis supplied)

- **Section 9.** Application for initiation of corporate insolvency resolution process by operational creditor.-(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub- section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under

sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

- **“Section 61. Appeals and Appellate Authority.** — (1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(emphasis supplied)

42. Section 3 (23) of the Code defines ‘person’ which includes an ‘individual’. This Section does not specifically mention shareholder however ‘individual’ is a wider term and can include ‘shareholder’.

43. Section 6 of the Code prescribed as to who can initiate ‘Corporate Insolvency Resolution Process’. It includes a ‘Financial Creditor’ or an ‘Operational Creditor’ or the ‘Corporate Debtor’ itself. This definition is restrictive and includes only ‘Creditors’ both ‘Financial Creditors’ & ‘Operational Creditors’ and the ‘Corporate Debtor’.

44. It is the case of the appellant that being majority shareholder, if Corporate Insolvency Resolution Process is allowed to continue their financial interest will be adversely affected and therefore, they are aggrieved by the impugned order and would fall under the category of ‘person aggrieved’ under Section 61 of the Code and therefore there they have the locus and their appeal is maintainable.

45. In this regard, this Tribunal in the case of ‘Nirej Vadakkedathu Paul’ (supra) made the following findings in paragraph 88:

“During averments, it has been brought to the notice of this ‘Appellate Tribunal’ one judgment of Delhi High Court on derivative action on behalf of the Corporate Debtor under I & B Code, 2016. In the case of ICP Investments v. Uppal Housing, 2019 SCC OnLine Del 12371, following has been recorded in the judgment :-

“18. The IRP appointed with respect to Umang, under the law having powers/ authorities as aforesaid, I have wondered about the maintainability of a derivative action on behalf of Umang.

20. It is felt that once the affairs of the Umang are taken over by an IRP, the Directors of Umang can no longer be blamed for not taking the requisite steps to seek redress for the wrong if any done to Umang, and a derivative action by plaintiff, as a majority shareholder, for the benefit of Umang would not be maintainable. The plaintiff now has to approach the IRP for taking action against Uppal and it is the IRP who has to, if finds any merit in the grievance of the plaintiff, take appropriate remedy on behalf of Umang.

Moreover, if the plaintiff remains dissatisfied with the decision of IRP, has remedy before the NCLT.

22. I must however note that the aforesaid cases involved a company which was at the stage of liquidation, as distinct from Umang in the present case, against which only the insolvency process has begun. However, considering the duties and role of

the IRP under the IBC as discussed hereinabove, the principle in each of the aforesaid cases i.e., of the management of the company, on whose fraud/mismanagement a derivative action becomes maintainable, being no longer in power/control, and consequently a derivative action being no longer maintainable, also applies to the present case.”

23. I also find a Single Judge of the High Court of Madras in Jai Rajkumar v. Stanbic Bank Ghana Ltd. 2018 SCC OnLine Mad 10472 to have held a suit by way of a derivative action to be not maintainable when the company, for whose benefit derivative action was initiated, was under insolvency. It was held that it is for the RP to act on behalf of the corporate debtor and to initiate suitable proceedings if any deemed necessary for the benefit of the corporate debtor and its creditors.

24. I respectfully concur.

(emphasis supplied)

➤ *It infers that the ‘Appellants’ even as “shareholders” cannot be aggrieved merely by the admission of the ‘Corporate Debtor’ into ‘Corporate Insolvency Resolution Process’. Such objection may render the object of I & B Code, 2016 illusory since any shareholder of any ‘Corporate Debtor’ against which Insolvency proceedings have been initiated can then seek to maintain a derivative action and sabotage a valid ‘Corporate Insolvency Resolution Process’ initiated by the Adjudicating Authority.*

➤ *As discussed prima-facie there is no specific law which allows any shareholder of the ‘Corporate Debtor’ to challenge the admission of ‘Corporate Insolvency Resolution Process’ of the ‘Corporate Debtor’, once the debt due and default is established by the ‘Adjudicating Authority’, in an application*

made by the 'Financial Creditor' filed under Section 7 of the I & B Code, 2016 before the 'Adjudicating Authority'.

➤ Theoretically, even a 'person' aggrieved by the 'impugned order' challenges admission of 'Corporate Insolvency Resolution Process', it is not going to resolve the issues under any relevant law and the whole exercise with such appeal become futile, purposeless and will only cause delay in resolution, for which the 'Resolution Plan' has already been approved by the 'Committee of Creditors' and is under consideration of the 'Adjudicating Authority'.

➤ Similarly, this 'Appellate Tribunal' also take note of its earlier order, where it has been held that an investor in a 'Corporate Debtor' cannot claim to be an 'aggrieved person' for preferring an appeal against an order against insolvency petition in Company Appeal as held in CA (AT) (Insolvency) No. 296 of 2017 in the matter of **Anant Kajare Vs. Eknath Aher & Anr.** wherein the relevant para reads as under: -

"4. Heard learned counsel for the Appellant. Admittedly, the Appellant is an Investor therefore, the Appellant cannot claim to be an 'aggrieved person' for preferring appeal against the order dated 2nd May, 2017 passed by Adjudicating Authority whereby the application under Section 9 of the 'I&B Code' was admitted. In fact, the Appellant being an investor is entitled to file its claim before the 'Insolvency Resolution Professional'."

(emphasis supplied)

➤ The term 'investor' has not been defined in the I & B Code, 2016 as well as in the Companies Act, 2013. A reference, therefore, has been made to 'Investopedia' where investor has been defined as under: -

“What Is an Investor?”

An investor is any person or other entity (such as a firm or mutual fund) who commits capital with the expectation of receiving financial returns. Investors rely on different financial instruments to earn a rate of return and accomplish important financial objectives like building retirement savings, funding a college education, or merely accumulating additional wealth over time.

A wide variety of investment vehicles exist to accomplish goals, including (but not limited to) stocks, bonds, commodities, mutual funds, exchange-traded funds (ETFs), options, futures, foreign exchange, gold, silver, retirement plans, and real estate. Investors can analyze opportunities from different angles, and generally prefer to minimize risk while maximizing returns.

Investors typically generate returns by deploying capital as either equity or debt investments. Equity investments entail ownership stakes in the form of company stock that may pay dividends in addition to generating capital gains. Debt investments may be as loans extended to other individuals or firms, or in the form of purchasing bonds issued by governments or corporations which pay interest in the form of coupons.”

(emphasis supplied)

➤ *Therefore, a shareholder is also technically speaking an “investor”/ “owner”, who owns limited investment in the company to the extent of share*

capital subscribed by him. Therefore, the judgement of Anant Kajare (Supra) is applicable in the present appeal as discussed in preceding paragraphs.

➤ *Having considered all the averments made by the ‘Appellants’ as well as the ‘Respondents’, including various Written Submissions made available to this ‘Appellate Tribunal’ and after careful consideration of various judicial pronouncements of the Hon’ble Supreme Court of India as well as this ‘Appellate Tribunal’, comes to concrete conclusion without any hesitation that in the present ‘Appeals’, the ‘Appellants’ do not have any ‘Locus’, and therefore the present ‘Appeals’, are ‘not maintainable’. This ‘Appellate Tribunal’, therefore, does not find any ‘Error’ / ‘Legal Infirmary’, in the ‘impugned order’, on this issue.”*

46. It is seen from the above that equity shareholders are investors in the company and they are owners of the company to the extent of their proportionate shareholding. They provide risk capital to the company, accordingly when a company is liquidated, they have the last priority in the liquidation state after all other stakeholders are paid. This can be seen from Section 53 (1) of the Code which is reproduced below:

“Section 53. Distribution of assets. -(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:-

- (a) *the insolvency resolution process costs and the liquidation costs paid in full;*
- (b) *the following debts which shall rank equally between and among the following: -*
 - (i) *workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*
 - (ii) *debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;*
- (c) *wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
- (d) *financial debts owed to unsecured creditors;*
- (e) *the following dues shall rank equally between and among the following: -*
 - (i) *any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*
 - (ii) *debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
- (f) *any remaining debts and dues;*
- (g) *preference shareholders, if any; and*
- (h) *equity shareholders or partners, as the case may be.*"

(Emphasis supplied)

47. As owners the equity shareholders are biggest beneficiaries when the company does well. Their capital is multiplied due to increase in share prices and by receipt of dividends. On the other hand, if the company performs badly and goes in liquidation, the equity shareholders loose their entire share capital. The owners of the company have a major role to play in the proper functioning of the company, as equity shareholders are represented through the Board of Directors (BoD) and the BoD holds the management accountable for its proper functioning. If the company is admitted in CIRP, then it also reflects the failure of BoD on behalf of Equity Shareholders to hold the management accountable and hence they should be prepared to bear the loss of the capital. This structure is the primary reason due to which the equity shareholders have not been allowed to initiate the CIRP process. As soon as the CIRP petition is admitted and IRP is appointed, the functions of the BoD are taken over by IRP. As a representative of Shareholders erstwhile Directors of CD are allowed to intervene and file appeals under Section 61, but the individual or even majority shareholders are not allowed to pursue derivative action. This comes out very clearly from the judgements of this appellate Tribunal in Nirej Paul (Supra) and Anant Kajare (Supra). The Shareholders or Investors in CD are not to be treated as “person aggrieved” under the IBC.

48. The appellant has in support of his averments has cited several Judgments of this Tribunal, the same are discussed in detail here.

(i) Ashish Gupta Vs. Delagua Health India Pvt. Ltd. bearing Company Appeal (AT) (Ins.) 17 of 2022.

In the aforesaid matter, the majority shareholder had sought intervention in the CIRP proceedings. The same was agitated by the opposite party. The contention of the majority shareholder was that the aforesaid petition was collusive in nature. The Application filed by the majority shareholder was allowed. The Appeal filed against the said order was challenged before this Appellate Tribunal. This Tribunal had dismissed the Appeal with the observation that the interest of the majority shareholders should be protected in CIRP proceedings. The relevant extract is reproduced herein below:

“13. In view of the peculiar circumstances of the present case where the Section 8 Demand Notice could not be responded to by the Corporate Debtor company for reasons beyond their control and a collusive petition having been filed, Respondents No.2 and 3 being majority shareholders of the Corporate Debtor Company deserve to be heard. It is a well settled canon of natural justice that anything which eludes or frustrates the recipient of justice should be avoided and reasonable opportunity offering be allowed to advance the cause of justice.

We are of the view that Respondents No.2 and 3 being majority shareholders holding 98.98% share of the Corporate Debtor company, they deserve a chance to safeguard the rights and interests of the Corporate Debtor and their respective stakeholders given that the Appellant and KKV had in collusion foisted an abnormal situation by their resignation from the Corporate Debtor company causing a void and leaving none on the Board of Directors to defend the interests of Respondent No.1/ Corporate Debtor company.

To add to this, KKV was unauthorisedly representing the Corporate Debtor company before the Adjudicating Authority even after having

submitted his resignation thus causing serious miscarriage of justice for the Respondent No.1. Hence, in the interest of justice, we are of the view that the present appeal filed before this Tribunal by Respondents No.2 and 3 deserves to be considered on merit.”.

- However, we observe that in this particular case, the peculiar circumstances were that the Board of Directors of the Corporate Debtor had resigned and therefore there was no representation in CIRP proceedings on behalf of the Corporate Debtor. Accordingly, the shareholders were permitted to defend the Corporate Debtor before the Hon'ble NCLT. Pertinently, this was at the stage of the admission of the Corporate Debtor in CIRP and not in appeal after institution of the CIRP. In the present case, the Corporate Debtor was represented throughout the proceedings before the Hon'ble NCLT and their submissions were duly considered by the NCLT. Therefore, we hold that the aforesaid ratio is not applicable in the present appeal.

(ii) *Ashmeet Singh Bhatia Vs Pragati Impex India Pvt. Ltd. & Anr. bearing Company appeal (AT) (Ins) 1413 of 2023.* In this case while examining the locus standi of any person under Section 61 of the Code, have gone to the extent that even an allottee of a different company of the group company were allowed to intervene in the CIRP proceedings of another company to contend that the CIRP proceedings were fraudulent. If, the Hon'ble Tribunal can go to any extent to check whether, the person is aggrieved or not, in that case, why the majority shareholder, who are the effected party and without their presence/ information, if the insolvency order is passed, they would in any case

be highly aggrieved. Accordingly, it is stated that in the present peculiar facts and circumstances, the majority shareholders of the CD would be squarely covered under the definition of any person aggrieved in terms of section 61 of the Code.

- We find that the reliance on Ashmeet Singh Bhatia (supra) is misplaced, as in this particular case, the issue related to an application under Section 65 of the Code alleging fraud and collusion between the CD and FC with documentary evidence of circular transaction. The appeal was not against the order of CIRP, and the observations made therein are categorically in respect of the exercise of powers under Section 65. The ratio of the aforesaid case is not applicable in the present case.

(iii) Trimex Industries Pvt. Ltd. Vs. Bhuvan Madan, RP of Sathavahana Ispat Ltd” bearing Ref. (CH) No. 01 of 2023 in Company Appeal (AT) (Ins.) No. 130 of 2023. The appellant placed reliance on para 4 of the Judgment (supra) which is extracted below:

“Para 4 :

*He submitted that Hon’ble Supreme Court in a case reported in (2013) 4 SCC 465 **Ayaaubkhan Noorkhan Pathan Vs State of Maharashtra and Others** He has relied on para 10 of the Hon’ble Supreme Court Judgement which is reproduced hereinbelow: - “10.A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. **The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose***

right or interest has been adversely affected or jeopardised. (Vide: *Shanti Kumar R Chanji V. Home Insurance Co of New York, and State of Rajasthan & Ors V. Union of India & Ors*.,.)”.

The appellant’s argument is that the definition of 'aggrieved person' under Section 61 should include any party whose legal interests are impacted by the outcome of insolvency proceedings, even if not directly named as a party in the original application. The restrictive interpretation conflicts with the broader intent of the IBC to allow for effective appeals by any stakeholder with a demonstrable interest, especially in complex insolvency scenarios where indirect impacts on third-party rights are substantial. Thus, the scope of 'aggrieved person' must not be so narrowly construed as to exclude genuine stakeholders who have a legitimate legal or financial interest in the outcome of the case.

- However, the facts of the Trimex Industries (supra) are distinguished from the present case, as the question before this Tribunal in Trimex Industries (supra) was whether an application seeking leave to file an appeal under Section 61 of IBC was necessary. There was no dispute with regards to whether the Appellant was an "aggrieved person" within the meaning of the Code, and the said case does not deal with locus of a person not falling under the definition of 'aggrieved person' but only deals with the question of requirement of such a leave application. The same is therefore of no relevance for the present appeal.

49. In view of the discussion above, we are of the view that the appellant being a shareholder of the company is not the “aggrieved party” as per the provisions of the Code. The appellant has no locus to file this appeal and the same is not maintainable. Accordingly, the appeal is dismissed. Pending I.As if any are closed. There would be no order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

sa