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Advocates & Solicitors

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Securities Exchange Board of India vide notification dated March 03, 2023, has issued Master Circular for Foreign Venture Capital Investors (FVCIs)

- SEBI vide notification dated March 03, 2023, has issued Master Circular for Foreign Venture Capital Investors.
- This Master Circular shall come into force from the date of its issue. This Master Circular rescinds the following circulars/directions issued by SEBI with regard to FVCI still date:
 - i. SEBI Circular No. IMD/DOF-1/FVCI/CIR.No.1/2009 dated July 03, 2009.
 - ii. SEBI Circular No. SEBI/IMD/DOF-1/FVCI/CIR-1/2010 dated January 12, 2010.
 - iii. SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/75 dated July 06, 2017.
- This Master Circular is issued in exercise of powers conferred under Section 11(1) and Section 11A of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
- The Master Circular is herein attached.

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Securities Exchange board of India vide circular dated February 28, 2023, has issued Securities And Exchange Board of India (Depositories And Participants) (Amendment) Regulations, 2023

- SEBI vide circular dated February 28, 2023, has issued Securities And Exchange Board of India (Depositories And Participants) (Amendment) Regulations, 2023.
- As per new amendment SEBI has introduced definition of Non-Independent Director under SEBI vide circular dated February 28, 2023, has issued Securities And Exchange Board of India (Depositories And Participants) (Amendment) Regulations, 2023.
- "Non-Independent Director" means a director elected or nominated by the shareholders who are neither depository participants nor their associates and agents
- The circular is herein attached.

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NCLAT's decision on whether an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is barred by Section 69(2) of the Partnership Act, 1932

The NCLAT Principal Bench comprising of Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member), has held that an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is not akin to a suit and bar under Section 69(2) of the Partnership Act, 1932 is not attracted.

BRIEF FACTS OF THE CASE

The Appellant had filed an appeal against the order dated 09.06.2022 passed by the



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Adjudicating Authority (NCLT, Cuttack) whereby the Appellant's Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was dismissed on account of the Applicant being an unregistered Partnership seeking to enforce a right against a third party.

Appellant contended that the Adjudicating Authority accepted the submission that the Application is not barred by Limitation but on the interpretation of Section 69(2) of the Partnership act, 1932, error has been committed in treating the Application akin to a Suit. The Appellant further contended that Section 69(2) of Partnership Act is not attracted where an Application under Section 9 IBC is filed since Section 9 IBC Application is not a suit to apply Section 69(2) of the Partnership Act.

Placing reliance on the Apex Court's judgment in Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited and Anr. (2019) 10 SCC 572, which held that Article 62 of the Limitation Act, 1963 apply only to suits. An application filed under Section 7 IBC would fall only within the residuary Article 137, Limitation Act.

NCLAT Judgement: The NCLAT allowed the appeal and held that the period of limitation for filing Application under Sections 7, 9 & 10 of IBC is provided under Article 137 of the Limitation Act, 1963. Article 137 of the Limitation Act, 1963 provides for filing of Application, where no period of limitation is provided.

Appellate Tribunal further held that an application under Section 9 of IBC cannot be said to be a suit and analogy of Hon'ble Supreme Court judgment in Hargovindbhai

Dave's case is fully applicable to the application filed under Section 9 IBC also.



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Tribunal further relied on a judgment of the Hon'ble Supreme Court in B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633 that provision of Section 5 Limitation Act are also fully applicable in Section 7 & 9 IBC applications. Section 5 Limitation Act is not applicable in a suit which is also a clear indication that Application under Section 7 & 9 are not a suit.

Appellate Tribunal held that the Adjudicating Authority has committed error in rejecting Section 7, IBC Application on the ground that it is barred by 69(2) of the Partnership Act.

Case Title: Rourkela Steel Syndicate V. Metistech Fabricators Pvt. Ltd

Case No: Company Appeal (AT)(Insolvency) No. 924 of 2022

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