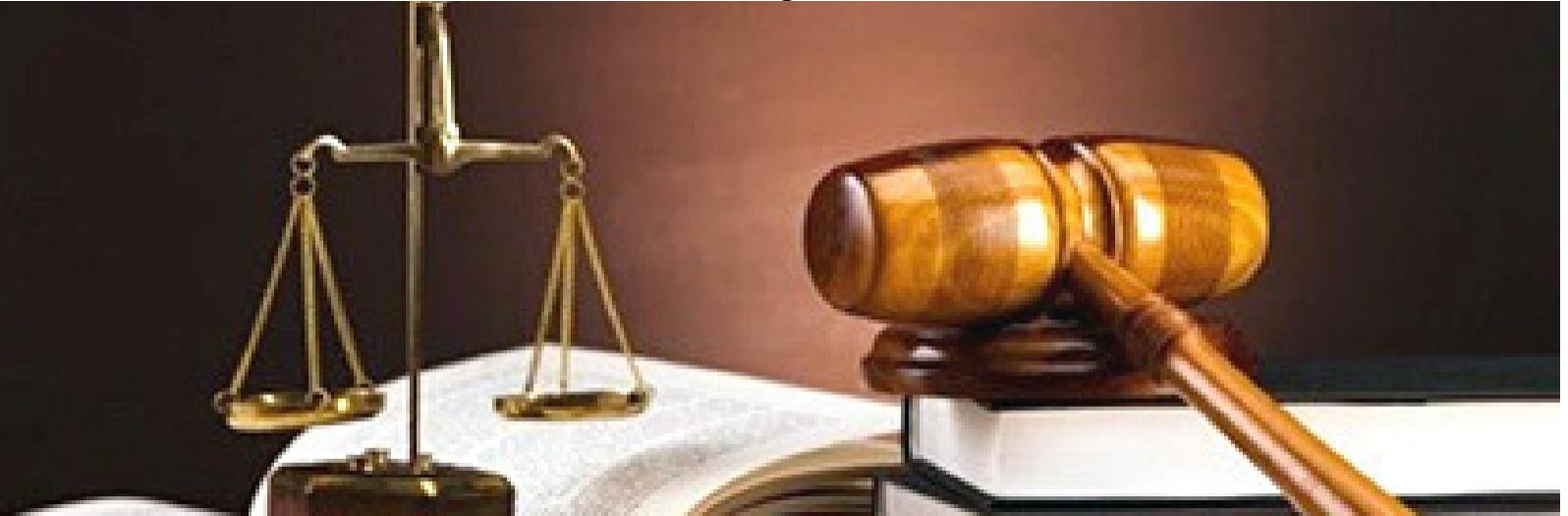


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Mr. Hemang Phophalia Vs The Greater Bombay Co-Operatives and Ors.

Brief Facts

The appellant in the case abovementioned was the ex-director and shareholder of the company, Penguin Umbrella Works Private Limited. The Greater Bombay Co-Operatives and Ors. filed an application under Section 7 of the Code for initiation of CIRP of Penguin Umbrella Works Private Limited due to default in the payment of dues. NCLT accepted the application filed.

The appellant contented that the name of the CD was struck off from the register of the Companies by the Registrar under Section 248 of the Companies Act, 2013 and hence the company was not functional and had no assets and records available and accessible.

The question that arose for consideration was whether an application under Section 7 or 9 for initiating CIRP is maintainable against a Company/ CD, If the name of the Company/ CD is struck-off from the Register of the Companies. Hence the present Appeal.



Decision

- a.** NCLAT held that NCLT being the Adjudicating Authority under the Companies Act is also the Tribunal empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of CIRP under Sections 7 and 9 of the Code. **[Para 3]**

- b.** The tribunal reiterated that, If the application is filed by the creditors within 20 years from the date the name of the Company is struck off under sub-section (5) of Section 248, the application is maintainable and not barred by limitation. **[Para 3]**

Link of the Order

<https://ibbi.gov.in/uploads/order/4fde53029a810941667bbe192d4e1a6e.pdf>

