IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 23098 OF 2026

Universal Textile Waterproof Co.(India), a Registered Partnership firm having its office at B-12, Ghanshyam Chamber, Link Road, Opp.Citi Mall, Andheri (West). Mumbai - 400052, through its partner Amrit Rajani. .. Petitioner

Versus

1. Central Registrar of Co-operative Societies, a statutory body incorporated u/s. 4 of the Multi State Co-operative Societies Act, 2002 having its office at Floor-I, Atal Akshay Urja, CGO Complex, New Delhi.

2. Commissioner of Cooperation and Registrar of Co-operative Societies, Maharashtra State Government having its office at 2nd floor of new Central Bldg, Opp B J Medical College, Camp, Pune 411001.

3. Shyam V. Tinaikar, an adult Indian Inhabitant, appointed as an Arbitrator and having its office at NKGSB Co-op Bank Limited, Laxmi Sadan, VP Road, Girgaum, Mumbai 400004.

4. NKGSB Co-operative Bank Ltd, a scheduled co-operative bank registered under provisions of Multi State Co-operative Societies Act, 2002 having its office at 361, V. P. Road, Girgaum, Mumbai 400004. .. Respondents

WITH

WRIT PETITION (L) NO. 26560 OF 2026

1. Amrit Rajani. An adult inhabitant, having its address at Flat No.1001, Kanta Apartment, East Avenue, Santacruz (W), Mumbai 400054.

2. Pooja Rajani, An adult inhabitant, having her address at Flat No.1001, Kanta Apartment, East Avenue, Santacruz,

.. Petitioner

Versus

1. Central Registrar of Co-operative Societies, a statutory body incorporated u/s. 4 of the Multi State Co-operative Societies Act, 2002 having its office at Floor-I, Atal Akshay Urja, CGO Complex, New Delhi.

2. Commissioner of Cooperation and Registrar of Co-operative Societies, Maharashtra State Government having its office at 2nd floor of new Central Bldg, Opp B J Medical College, Camp, Pune 411001.

3. Shyam V. Tinaikar, an adult Indian Inhabitant, appointed as an Arbitrator and having its office at NKGSB Co-op Bank Limited, Laxmi Sadan, VP Road, Girgaum, Mumbai 400004.

4. NKGSB Co-operative Bank Ltd, a scheduled co-operative bank registered under provisions of Multi State Co-operative Societies Act, 2002 having its office at 361, V. P. Road, Girgaum, Mumbai 400004.

.. Respondents

…

Mr Charles D'Souza with Manaswi Agrawal, Sharanya Shivraman, Pragati Gothi, Rupak Sawangikar and Vishal Latange i/b Meraki Chambers for the petitioner in both the petitions.

Tilak

Ms. Gauri Sawant, AGP with Smt. Nazia Shaikh, AGP for the State in both the petitions.
Mr. Joel Carlos for respondent no.4 in both the petitions.

CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ
RESERVED ON : 08th SEPTEMBER, 2026
PRONOUNCED ON : 01st OCTOBER, 2026

JUDGMENT:- (Per Bharati Dangre, J)

1. The two Writ Petitions has the involvement of Multi State Co-operative Societies Act, 2002, (for short 'MSCS Act') as the petitions raise a challenge to the order passed by the Central Registrar of Co-operative Societies, unilaterally appointing an Arbitrator alleged to be at the instance of NKGSB Co-operative Bank (for short 'NKGSB Bank').

Writ Petition (L) No. 23098 of 2026 is filed by the Registered Partnership Firm of Mr. Amrit Rajani and Ms. Pooja Rajani, whereas Writ Petition (L) No. 26560 of 2026 is filed by Mr.Amrit Rajani and Ms.Pooja Rajani in their capacities as partners of Universal Textile Waterproof (India) (for short 'Universal Co.'), claiming to be the guarantors to the debt availed by the partnership firm.

The respondent no.4 is a Multi State Co-operative Bank who has invoked the provisions of the Section 84 of the MSCS Act, and upon the arbitration proceedings having commenced, both the Writ Petitions seek quashing and setting aside of the impugned order dated 9/3/2026 appointing an Arbitrator in relation to the alleged dispute between the petitioners in both the petitions and the Bank.

As the Arbitrator has proceeded with the arbitration proceedings and issued summons, a prayer is made to restrain the arbitrator for taking any steps in the arbitral proceedings. A declaration is also sought that the arbitral proceedings initiated pursuant to the impugned order dated 9/3/2026 is illegal, void *ab initio*, *coram non judice* and *non est* in the eyes of law.

2. We have heard learned counsel Mr. D'Souza for the petitioners in both the Writ Petitions, whereas Mr. Joel Carlos would represent the Central Registrar of Co-operative Societies, whereas the Commissioner of Co-operation and Registrar, Co-operative Societies is represented by the learned AGP.

By consent of the parties, we deem it appropriate to issue Rule and by making it returnable forthwith, we have taken up the Writ petitions for hearing.

3. The partnership firm – Universal Textile Waterproof Co. (India) availed loan facility from the NKGSB Bank and on 6/11/2012, a sanction letter was issued in its favour extending the term loan in the sum of Rs. 6,00,00,000/- (Rupees Six Crores). A term loan agreement was entered into on 8/11/2012.

Mr. Amrit Rajani and Ms. Pooja Rajani, being the partners of the firm, stood as guarantors for the facility availed by the firm.

The Bank issued a notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI

Act') in the wake of the default, on 11/9/2019.

Pursuant to the demand notice, the application was filed under Section 14 of the SARFAESI Act, to seek assistance of the Additional Chief Judicial Magistrate, Esplanade, Mumbai for taking physical possession of the property.

4. While the above proceedings would take its normal course, in and around 2022, the applications for personal insolvency resolution process was filed by the Central Bank of India and IFCI Limited against Mr. Amrit Ashok Rajani before the National Company Law Tribunal (NCLT), Mumbai vide Company Petition No.730/2022 and Company Petition No.209/2022 respectively on 11/2/2022 and 16/2/2022.

The aforesaid proceedings being filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (for short, 'IBC') sought initiation of personal insolvency resolution process against Mr. Amrit Ashok Rajani, and it resulted into imposition of moratorium under Section 96 since the date of filing of the proceedings. By order dated 3/12/2024, the NCLT also appointed a Resolution Professional.

Similarly, against Pooja Rajani, Company Petition No.1266/2022 was filed by Think Hard India Private Ltd, on 14/10/2022 by invoking Section 95 of the IBC to initiate personal insolvency resolution process and by order dated 6/2/2023, Resolution Professional was appointed. In the wake of the proceedings being initiated, from the date of its initiation, Interim Moratorium under Section 96 of the IBC was

triggered.

It is also stated in the petition that Company Petition No.1266/2022 was dismissed by NCLT, Mumbai. However, the financial creditor instituted an Appeal before the National Company Law Appellate Tribunal (for short 'NCLAT'), New Delhi, which set aside the order passed by the NCLT Mumbai and revived the proceedings, as a result the moratorium imposed under Section 96 of the IBC was also restored and is subsisting as on date.

5. In the meanwhile, the Addl. Chief Judicial Magistrate, Esplanade, passed an order on 27/10/2023 on the application filed by the Bank under Section 14 of the SARFAESI Act, and appointed a Commissioner to hand over the physical possession of the subject property. A notice was thereafter issued scheduling physical possession of the subject property which gave rise to filing of an application by the individual partners as well as the partnership firm in the form of Securitization Application No.1/2024 before the Debt Recovery Tribunal-II (for short, 'DRT-II') Mumbai under Section 17 of the SARFAESI Act. During its hearing, on 1/3/2024, the Bank agreed for deferring the taking over of the physical possession of the subject property and therefore, DRT-II directed that no physical possession of the subject property would be taken till the pendency of the proceedings for the personal insolvency process of the individual partners Amrita Rajani and Pooja Rajani.

6. Parallel to the aforesaid proceedings, the Bank filed Commercial Arbitration Petition No. 66/2025 by invoking Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'Act of 1996') seeking reliefs in respect of the alleged rent receipt from the subject property and this application was disposed of on 24/6/2026 directing the partnership firm- Universal Textile Waterproof Co., (India) to make certain disclosures.

Being aggrieved by the said direction, it filed Commercial Arbitration Appeal (L) No. 23719 of 2026 which is informed to be pending hearing and adjudication.

7. In the meanwhile, the Commissioner of Cooperation and Registrar of Co-operative Societies, Maharashtra State, Pune in exercise of the powers conferred by Central Government appointed Shri Shyam V. Tinaikar as an Arbitrator for NKGSB (Multi-State Scheduled Bank, Mumbai) in respect of its offices located in State of Maharashtra.

The appointment of the Arbitrator was to settle any dispute touching the constitution/management or business of the Multi-State Co-operative Society, in respect of its offices located in Maharashtra State as per the provisions of the Act of 1996 read with Section 84 of the MSCS Act, and the notification issued by the Central Government, Ministry of Agriculture, New Delhi.

The order categorically mention that the provisions of the Act of 1996 shall apply to all arbitrations under the MSCS Act

and the appointment of the Arbitrator for the Multi-State Co-operative Society was valid for a period of one year, or till the date of expiry of the empanelment of the panel of arbitrators, whichever is earlier. The order was accompanied with the list of pending cases.

8. Pursuant thereto, the Arbitrator gave the declaration under Section 12(1) of the Act of 1996, declaring that he had no relationship with either of the parties, their employees, managers or nobody else connected to them in any manner, and that he had not given any legal advice or any expert opinion on the present dispute to either of the parties, nor he was involved with either of them in the past.

9. The petition is accompanied with a fresh order issued by NKGSB, re-validating the appointment of Mr. Tinaikar, and with reference to the order dated 19/12/2024, where it is stated that the term of the Arbitrator was valid for a period of one year but the Bank had identified 13 new disputes and it was requested to appoint Mr. Tinaikar as Arbitrator for settlement of the said disputes relating to the bank. Thus, a request was made to re-validate the order dated 2/2/2024 for appointment of Mr. Tinaikar as Arbitrator for the pending disputes. The request letter was accompanied with the list of disputes to be referred to the Arbitrator under Section 84 of the MSCS Act against distinct borrowers.

It is this appointment/revalidation of the Arbitrator which is the subject matter of challenge in the two writ petitions, one

by the borrower firm and one by the partners who stood Guarantors for the loan facility extended by the Bank.

10. Mr. D'Souza, in support of the relief prayed in the petition, has raised a strong objection to the appointment of the Arbitrator, which according to him, is a unilateral appointment and he would submit that he had addressed a communication to the Arbitrator seeking details of the number of arbitrations being handled by him and particularly, seeking details of the number of arbitration proceedings involving NKGSB, where he was acting as an arbitrator. He also sought disclosure on several aspects like his relationship with the Bank, and also as to whether in the past three years, he was appointed as an Arbitrator by the Bank or its affiliate, and whether he had served in the past three years as an Arbitrator in another arbitration or a related issue involving NKGSB Co-operative Bank or its affiliate.

11. Mr. D'Souza would also place reliance upon the additional affidavit affirmed by Shri Amrit Ashok Rajani, Partner of Universal Co., placing on record the response received by him when necessary information was sought under the Right to Information Act, from the office of the Commissioner of Co-operation and Central Registrar of Co-operative Societies, and he could gather the information that the Arbitrator was appointed at the instance of respondent no.4, and he has placed on record certain documents with the additional affidavit, which according to him, reflect that the appointment was made

at the behest of the Bank.

12. Mr. D'Souza would raise objection to the appointment of the arbitrator, primarily on two counts; (a) The appointment of Arbitrator is in utter violation of Section 21 of the Act of 1996, in absence of invocation of the arbitration and (b) in the wake of the partners of the partnership firm- Universal Textile Waterproof Co.(India), undergoing insolvency proceedings and the moratorium being triggered under section 96 of the IBC, being in force, the arbitration proceedings cannot continue against the petitioners.

He would rely upon the decision of the Apex Court in case of **Regenta Hotels Private Limited vs. Hotel Grand Centre Point & Ors,**[1] in support of his contention that the commencement of arbitral proceedings is a statutory event which is defined exclusively under Section 21 of the Act and the receipt of request from the respondent to refer the dispute to arbitration, sets the proceedings in motion and no application, i.e., whether under Section 9 or Section 11 constitutes commencement. According to him, it is further held that the statutory consequences tied to the commencement, including the mandate under Section 9(2) of the Act must be assessed solely with reference to the date of receipt of request invoking arbitration under Section 21 of the Act. According to him, the only exception carved out under Section 21 pertaining to the arbitral agreement itself, provides that unless otherwise agreed by the Parties, the date of commencement of arbitral

1 92026) 4 SCC 142

proceedings, must be the date on which notice or request invoking arbitration is received by the Respondent.

He would also place reliance on the decision of the learned Single Judge of the Delhi High Court in **Alupro Building Systems Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd.**[2] decided on 28/02/2017, which has highlighted the importance of Section 21 of the Arbitration Act, and it is held that, the notice under Section 21 is mandatory, the object behind the said provision being clear that the party to the Arbitration Agreement against whom claim is made should know what the claim is, and this notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred or barred by any law or untenable in fact, and/or there are counter claims and so on. Apart from this, the Delhi High Court Judgment, according to Mr.Dsouza, also highlight its intended purport with reference to sub section (6) of Section 11 of the Act, as for the purpose of this provision, without the notice under Section 21 of the Act, party seeking reference of disputes to arbitration will be unable to demonstrate that there was a failure by one party to adhere to the procedure and accede to the request for the appointment of an Arbitrator, and the trigger for the Courts jurisdiction under Section 11 is failure by one party to respond.

12. Reliance is also placed upon another Judgment of Delhi High court in **Monika Oli vs. CL Educate Ltd.**[3] when the Court examined the issue whether "Legal demand-cum- Cease/Desist

2 2017 SCC OnLine Del 7228
3 (2023) 1 HCC (Del) 21

Notice" can qualify as a notice invoking arbitration under Section 21 of the Act, and a conclusion is reached that a proper notice under Section 21 of the Act was not served upon the petitioner, and, therefore, the dictum laid down in the case of **Shriram Transport Finance Company Limited vs. Narender Singh**,[4] will become applicable.

13. Our attention is also invited by the learned counsel to the decision of this Court in case of **Nanda Takwane & Ors. vs. State of Maharashtra & Ors.**[5] to which one of us (Bharati Dangre, J.) is a party, where the term 'debt' was the focal attention and this arose in the background that for the financial facility being availed from the Bank for the purpose of business the petitioner stood as the personal guarantor for the loan availed by Siddheshwar Industries Pvt. Ltd, (SIPL), by executing a personal guarantee and the personal property was mortgaged for securing the repayment. Initiation of corporate insolvency proceedings against SIPL resulted in imposition of moratorium under Section 14, prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor.

The facts reveal that the State Bank of India, another creditor preferred an Application under Section 95 of the IBC against Smt. Nanda Takwane, a personal guarantor of SIPL, and the proceedings under IBC were initiated, being a personal guarantor to the corporate debtor.

4 (2022) 6 HCC(Del) 275
5 2026 SCC ONLine Bom 5212

Based on this factual scenario that the interim moratorium was imposed in relation to all the debts, it is held that there was a complete embargo on any legal action or proceedings pending in respect of any debt and on the creditors or the debtors in initiating any legal action or proceeding in respect of any debt.

It is in the wake of the aforesaid factual aspect and on construing the effect of the provisions of moratorium imposed under Section 14 and Section 96, a distinction was drawn in the light of the decision of the Apex Court in **State Bank of India vs. V. Ramkrishnan,**[6] as it was held that, protection of moratorium under Section 96 along with Section 101 is far wider than that under Section 14 as in that pending legal proceedings in respect of the debt and not the debtor, are stayed.

14. Our attention is also invited to the decision of the Apex Court which is delivered two days after the decision in Nanda Takwane (supra), i.e. in the case **Dineshchand Surana vs. UCO Bank**[7] which has answered the issue whether the proceedings under Section 158 of the NI Act are protected during moratorium period provided under Part III of the IBC.

15. The arguments advanced by the petitioner are met with vehement opposition from Mr. Carlos, who would invite our attention to the scheme under the MSCS Act, and in specific, Section 84 and 85. He would place reliance upon the latest

6 AIR 2018 SC 3876
7 2026 SCC OnLine SC 987

decision of the Apex Court in **Bhagheeratha Engineering Limited vs. State of Kerala**[8] and in specific, the observation as regards the purport of Section 21 of the Act, as it is observed that the said provision is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation, and in no uncertain words it is declared thus :

> "There is no mandatory pre-requisite for issuance of Section 21 notice prior to the commencement of arbitration. Issuance of s\ a Section 21 notice may come to the aid of the parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in Arbitration if the claim is otherwise valid and disputes arbitrable."

He would also place before us a decision of the learned Single Judge in case of **Tata Capital Housing Finance Limited vs. Inderjeet Sahni & Ors.**[9] (CARBA(L) 35431/2025) clarifying the position revolving around Section 21.

On the second contentious issue, as regards the imposition of Interim Moratorium under Section 96 of the IBC, in the wake of an application by the creditor to initiate insolvency resolution process, he would invite our attention to sub-section (4) inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2026 with effect from 6/4/2026. He would rely upon the decision of the learned Single Judge in **Tata Capital Financial Services Limited vs. Neel Motors LLP & Ors.**[10] and the submission advanced was that the amendment to Section 96 having been effected, reading it in the manner

8 (2026) 5 SCC 758
9 CARBA 620/21
10 CARBP 620/2021

canvassed on behalf of the petitioner would end up giving the amendment a retrospective effect, and it was so urged in the wake of the phrase, "where an application is filed" indicating that the Section would only apply to individual insolvency resolution proceedings initiated after May 26, 2026.

The learned Single Judge according to Mr.Carlos has interpreted the term 'is filed' to include within its sweep anything that has been filed and is continuing to remain under adjudication under IBC.

Applying the aforesaid principle, according to Mr.Carlos, the Interim Moratorium do not apply to the guarantors of corporate debtor, and, therefore, the arbitration proceedings can continue.

Apart from this, he would also invoke the principle laid down in **Kalpesh Shantikumar Mehta & Ors. vs. NKGSB Co-op. Bank Ltd. & Anr.**[11] decided by one of us (Bharati Dange, J) while sitting in Single jurisdiction on 09/01/2023, as the petitions were filed by the individuals to avail certain credit facilities from NKGSB Bank and the other petitioners stood guarantors to the said facility. The objection was raised to the disclosure made by the Arbitrator who had acted as Sole Arbitrator in various disputes, and in the wake of the multiple arbitrations being entrusted to the sole arbitrator reasonable doubt was raised about his impartiality and independence specifically in the backdrop of Fifth Schedule of the Act of 1996, which provided guidelines in determining whether the

11 CARBP 220/2022

circumstances exist which gives rise to a justiciable doubt about the independence or impartiality of the Arbitrator, and this question was answered in the background of the provisions of the scheme of the Act.

16. We shall deal with the two significant objections raised by Mr.D'souza in reference of the dispute by the Central Registrar of Co-operative Societies for arbitration by invoking Section 84 of the Multi-State Co-Operative Societies Act, 2002, *in seriatim.*

The first objection being that there is no invocation of arbitration as contemplated under Section 21 of the Act of 1996, need to be appreciated in light of the scheme of the MSCS Act, which is intended to serve the interest of members in more than one State and aim at facilitating the formation and democratic functioning of the Co-operatives as people institution based on self help and for enabling them to promote their economic and social betterment. The Act defines 'Central Registrar' to mean the Central Registrar of Co-operative Societies and include any Officer empowered to exercise his powers.

17. Chapter IX in the said Statute provides for the mechanism for settlement of disputes and Section 84 prescribe that if any dispute touching the constitution, management or business of a Multi-State Co-operative Society, arises - (a) among members, past members and persons claiming through members, past members and deceased members, or (b) between a member, past members and persons claiming

through a member, past member or deceased member and the Multi-State Co-operative Society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or (c) between the Multi-State Co-operative Society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the Multi-State Co-operative Society, or (d) between the Multi-State Co-operative Society and any other Multi-State Co-operative Society, between a Multi-State Co-operative Society and liquidator of another Multi-State Co-operative Society or between the liquidator of one Multi-State Co-operative Society and the liquidator of another Multi-State Co-operative Society, such dispute shall be referred to arbitration.

Sub-section (2) has set out as to what would amount to the dispute touching the constitution, management or business of a Multi-State Co-operative Society and it is very relevant to note as to what disputes are covered in the said provision. We, therefore, deem it appropriate to reproduce sub-section (2), which reads thus :-

> "(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-state cooperative society, namely:-
>
> (a) a claim by the multi-state cooperative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not; (b) a claim by a surety against the principal debtor where the multi-State

co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a multi-state cooperative society."

18. By virtue of sub-section (4) of Section 84, when the dispute is referred to arbitration, the same shall be settled or decided by the Arbitrator who shall be appointed by the Central Registrar and if any question arises, whether a dispute referred to arbitration is or is not a dispute touching the constitution, management or business of a Multi-State Co-operative Society, the decision of the Arbitrator thereon shall be final and shall not be called in question in any Court.

Sub-section (5) of Section 84 reads thus :

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

19. In the Scheme of Section 84, when the disputes of the nature that are set out therein are to be resolved through arbitration by an Arbitrator to be appointed by the Central Registrar, the procedure governing the settlement of disputes as per sub-section (5) is the one prescribed in the Arbitration Act unless otherwise provided in the MSCS Act.

In this regard, it is also necessary to refer to Section 85, which prescribe the period of limitation in case of a dispute referred to arbitration, however, the said Section contains a

non-obstante clause and hence the provision therein will have to be read irrespective of whatever is contained in the Limitation Act, 1963. Section 85 reads thus :-

> "85. Limitation-
> (1) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to arbitration shall,-
> (a) when the dispute relates to the recovery of any sum including interest thereon due to a multi-State co-operative society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;
> (b) save as otherwise provided in clause (c), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) or clause (d) of sub-section (1) of section 84. be six years from the date on which the act or omission, with reference to which the dispute arose, took place;
> (c) when the dispute is in respect of an election of an officer of a multi-State co-operative society, be one month from the date of the declaration of the result of the election.
> (2) The period of limitation in case of any dispute, except t hose mentioned in sub-section (1), which are required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit and the arbitrator a civil court.
> (3) Notwithstanding anything contained in sub-sections (1) and (2), the arbitrator may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the arbitrator that he had sufficient cause for not referring the dispute within such period."

20. Reading of Section 84 and 85 collectively would thus lead to an inference that the arbitration to be conducted by the Arbitrator appointed by Central Registrar shall follow the procedure prescribed under the provisions of the Arbitration Act, however, when the question arises as to what shall be the period of limitation in case of a dispute referred to arbitration, the limitation is governed by Section 85 of the Act. Section 85 begins with a non-obstante clause and shall have effect, notwithstanding anything contained in the Limitation Act, 1963, but subject to the provisions of the Act.

Tilak

In relation to a dispute relating to recovery of any sum including interest thereon due to a Multi-State Co-operative Society by a member thereof, the limitation shall be computed from the date on which such member dies or ceases to be the member of the society. Sub- clause (b) and (c) also set out the period of limitation in relation to the disputes covered by the said provision.

Sub-section (2) of Section 85 has prescribed that the period of limitation in case of any dispute which is not covered in sub-section (1), shall be regulated by the provisions of the Limitation Act, as if the dispute was a Suit and the Arbitrator a Civil Court.

21. Suffice it to note that since we are concerned with the dispute between the Petitioners viz. the borrower and its personal guarantors and the Bank, it relate to recovery of a sum along with the interest, the facility being advanced by NKGSB Bank, the limitation is the one prescribed by clause (a) of sub-section (1) of Section 85 and it is to be computed from the date on which the member dies or ceases to be the member of the society.

Though it is not in dispute that the procedure to be adopted by the arbitrator shall be the one which is set out by the Arbitration Act, 1996 and in normal parlance, the specific provision contained in the said Act would govern the proceedings before the Arbitrator appointed by the Central Registrar under Section 84, however, it is worth to note that in

the wake of non-obstante clause contained in Section 84 as well as the same being reiterated in Section 85 prescribing the period of limitation, we will have to appreciate the contention of the learned counsel Mr.D'souza on applicability of Section 21 of the Arbitration & Conciliation Act 1996, which reads thus :-

> "21. Commencement of arbitral proceedings :- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

22. Though Section 21 is construed and understood as invocation of limitation, the provision when carefully read in fact prescribe the date on which the arbitral proceedings in respect of a particular dispute commence and Section 21 prescribe that the proceedings shall commence on the date on which a request for that dispute to be referred to arbitration is received by the Respondent.

Time and again the provision has been construed to be a mandate of law and when the proceedings were initiated without following the said procedure i.e. invocation of arbitration under Section 21, the Arbitration Application filed under Section 11 was held to be not maintainable.

The Apex Court in **Regenta Hotels Private Limited** (supra) with its focus on Section 21 of the Act of 1996, noted that the provision under Section 21 of the Act is consistent with Article 21 of the Model Law of UNCITRAL and it was observed that issuance of notice under Section 21 is required to be interpreted broadly and not for the purpose of limitation

only, but for other purposes also. Time and again it has been held that for the purpose of determining which law would apply for computing limitation, the date of commencement is invariably the date on which the notice invoking arbitration is received by the Respondent and it was further clarified that the procedural route adopted thereafter i.e. whether the parties agree on an Arbitrator or whether Section 11 application becomes necessary, is irrelevant to the date of commencement, which remains tethered exclusively to Section 21 of the Act of 1996.

By having an in-depth consideration of the precedents revolving around Section 21, the Apex Court observed thus :-

> "24. Upon perusal of the binding decisions of this Court and provisions of the Act, there is no doubt left with regard to the correct conceptualization of "commencement of arbitral proceedings" under the Act. The settled position as emerged is that the commencement of arbitral proceedings is a statutory event defined exclusively under Section 21 of the Act, wherein the respondent's receipt of a request to refer the dispute to arbitration sets the arbitral proceedings in motion and no judicial application i.e. whether under Section 9 or Section 11 petition, constitutes commencement. Therefore, the statutory consequences tied to commencement, including the mandate under Section 9(2) of the Act, must be assessed solely with reference to the date of receipt of request invoking arbitration under Section 21 of the Act."

> "26. The only exception that is carved out in Section 21 pertains to the arbitral agreement itself, providing that unless otherwise agreed by the parties, the date of commencement of arbitral proceedings must be from the date when notice or request invoking arbitration is received by the respondent. Therefore, as per the mandate of Section 9(2) of the Act, the arbitration proceedings shall commence within a period of ninety days from the date of such interim order or within such further time as the court may determine, and such commencement will be the date on which notice invoking arbitration is received by the respondent in consonance of Section 21 of the Act."

23. Mr.Carlos has placed before us a Judgment in

Bhagheeratha Engineering Limited (supra) delivered on 05/01/2026, and we find that the two Judge bench of the Apex Court has specifically held that Section 21 is concerned only for determining commencement of the dispute for the purposes of reckoning limitation and there is no mandatory prerequisite for issuance of Section 21 notice prior to the commencement of arbitration.

The question that was specifically framed for consideration by their Lordships reads thus :

> "34.2(b) Was the non-issuance of a notice under Section 21 of the A&C Act by the appellant fatal for it to pursue its claim before the Arbitrator?"

The aforesaid question was answered in following words:-

> "39. Secondly, the object of Section 21 of the A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of arbitration. Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in arbitration if the claim is otherwise valid and the disputes arbitrable."

The earlier decision in case of **ASF Buildtech (P) Ltd. vs. Shapoorji Pallonji & Co. (P) Ltd.**[12] was invoked where it was held that there is no invocation under Section 21 of the Act of 1996 for raising any other dispute or claim which is covered under the arbitration agreement in absence of any such notice and Section 21 is procedural rather than jurisdictional- it does not serve to create or validate arbitration agreement itself, nor is it a precondition for the existence of the Tribunal's

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jurisdiction, but merely operates as a statutory mechanism to ascertain the date of initiation for reckoning the limitation.

The decision in **Adavya Projects (P) Ltd. vs. Vishal Structurals (P) Ltd.**[13], to which a reference was made in **Bhagheeratha Engineering Limited** (supra) is also very important to take note of and we quote the relevant observations:-

> "41. More recently in Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd.5, this Court reiterating the purpose and significance of a notice under Section 21 had the following to observe: (SCC p. 702, para 24)
>
> > "24. At this point, it is important to note this Court's decision in State of Goa v. Praveen Enterprises wherein it was held that the claims and disputes raised in the notice under Section 21 do not restrict and limit the claims that can be raised before the Arbitral Tribunal. The consequence of not raising a claim in the notice is only that the limitation period for such claim that is raised before the Arbitral Tribunal for the first time will be calculated differently vis-à-vis claims raised in the notice. However, non-inclusion of certain disputes in Section 21 notice does not preclude a claimant from raising them during the arbitration, as long as they are covered under the arbitration agreement. Further, merely because a respondent did not issue a notice raising counterclaims, he is not precluded from raising the same before the Arbitral Tribunal, as long as such counterclaims fall within the scope of the arbitration agreement." "

24. In the wake of the aforesaid, when we juxtaposed Section 21, prescribing the date on which the particular dispute is said to have commenced, being the date on which the request for that dispute to be referred to the arbitration is received by the Respondent, with Section 84 we must note that Section 84, which has prescribed for reference of disputes to arbitration, is a statutory mechanism. That is the reason why Section 84 contains a non-obstante clause and shall operate irrespective of

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whether such mechanism of arbitration is otherwise available in any other law for the time being in force or any other mode for settlement of disputes is prescribed. But if any dispute, touching the constitution, management or business of a Multi-State Co-operative Society arises, then by virtue of Section 84 it is imperatively referred to arbitration.

By virtue of sub-section (2), claim by Multi-State Co-operative Society for any debt or demand due to it from a member or a nominee, heir or legal representative of a deceased member whether such debt or demand is admitted or not or a claim by a surety against the principal debtor as well as any dispute arising in connection with the election of officers of Multi-State Co-operative Society, such type of disputes mandatorily must go for arbitration to be conducted by the Arbitrator to be appointed by the Central Registrar.

In terms of sub-section (5), save as otherwise provided under the Multi-State Co-operative Societies Act, 2002, the provisions of Arbitration and Conciliation Act, 1996 shall apply for the procedure to be followed. However, Section 85 of the MSCS Act itself has set out the period of limitation in respect of disputes relating to the recovery of any sum including interest thereon due to a Multi-State Co-operative Society by a member thereof, which shall be computed from the date on which such member dies or ceases to be a member of the society. Therefore, in such contingency, when it is not necessary to look into the provisions of Section 21 of the Act of 1996, since sub-

section (5) of Section 84 clearly stipulates that the procedure prescribed under the Act of 1996 shall govern the arbitration proceedings conducted under Section 84, save as otherwise provided under the MSCS Act and Section 85 has specifically prescribed the period of limitation, we see no reason why in absence of invocation of arbitration clause as it is contemplated under Section 21, the arbitration proceedings shall not be permitted to continue.

Finding no merit and substance in the submission of Mr.D'souza, we reject the said contention.

25. Coming to the second objection raised by Mr.D'souza about the imposition of interim moratorium against the Petitioners in Writ Petition No.26560 of 2026, who are the personal guarantors to the borrower i.e. the partnership firm-Universal Textile Waterproof Co., (India), it is necessary to take into consideration the provisions of Section 96 of the IBC.

It is not in dispute that individual guarantors Amrit Rajani and Pooja Rajani are undergoing CIRP upon the claim being instituted against them under Section 95 by the Corporate Creditor.

As a consequence thereof, filing of such an Application result into an interim moratorium under Section 96 which imposes embargo on initiation or continuation of such proceedings. Section 96 reads thus :

> "96. Interim moratorium-
> (1) When an application is filed under section 94 or section 95 -
> (a) an interim moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of

admission of such application; and
(b) during the interim-moratorium period-
(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.
(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

26. The facts before us disclose that the proceedings are initiated against Amrit Rajani and Pooja Rajani, the partners of the partnership firm- Universal Textile Waterproof Co., (India), which resulted into triggering of moratorium under Section 96 of the IBC, and the argument canvassed on behalf of the Petitioners is that issuance of summons to the individual partners during subsistence of interim moratorium is not permissible. The argument canvassed is that Section 96(1)(b) of IBC bars the creditors of the personal guarantor from initiating any legal action or proceeding in respect of the 'debt' of such personal guarantor.

By relying upon the decision of the Apex Court in case of **Dilip B. Jiwrajka v. Union of India & Ors.** [14] it is reiterated that the moratorium is protective in nature and attaches to the debt itself and not merely to the debtor. Relying upon the principle position, an argument is canvassed that during the subsistence of the interim moratorium under Section 96 of IBC, no legal action can be initiated in respect of the debt, and this includes

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conduct of arbitral proceedings.

27. As far as the legal proposition flowing from the provisions in the IBC, 2016, imposition of moratorium under Section 14 or Section 96 cannot be disputed. It is no doubt true that on the application being referred under Section 95, interim moratorium shall commence in relation to all the debts and it shall continue to have its effect when the application is admitted. By virtue of clause (b) of sub-section (1) of Section 96, during the interim moratorium period, any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed, and the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

By virtue of sub-section (2), it is clarified that where the application has been made in relation to a firm, the interim moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application. However, what is pertinent to note is the insertion of sub-clause (4) in Section 96, which has been inserted by the Amendment Act of 2026, (6 of 2026) and a clarification is issued to the effect that the provisions of Section 96 shall not apply where an application is filed for initiating an insolvency resolution process in respect of a 'personal guarantor to a corporate debtor', which came into effect on 26/05/2026.

The said provision received an interpretation in case of **Tata Capital Financial Services Limited** (supra), where the

learned Single Judge (Somasekhar Sundaresan, J.), in his Judgment dated 24/07/2026, had an opportunity to deal with insertion of sub-section (4) in Section 96 of the IBC and about its effect.

An argument advanced that "where an application is filed" was indicative of its application to an individual insolvency resolution proceeding initiated after 26 May 2026, i.e. from the date of coming into effect of the amendment, and that it shall not be made applicable to filings that are already made as on that date, as it would result into a retrospective effect being given to the provision, was rejected upon analysis of the said provision, and the learned Judge recorded thus :-

> "11. Having heard the parties and having examined the record and the provisions of law with their assistance, in my opinion, the phrase "where an application is filed" would bring within its sweep anything that is filed and is pending with the Adjudicating Authority as of that date. If the intention had been to bring within the sweep of Section 96(4) only filings made after the introduction of the provision, the legislature would have consciously used language to that effect. Equally, while it is arguable that the legislature has not used clarificatory language in the provision to indicate that it covers applications already filed and to be filed, in my opinion, this provision would squarely fit within the ambit of a retroactive application. The reading of the words "is filed" as including those that have been filed and are pending, will not give retrospective effect, but will have prospective effect from the date on which the provision takes effect. Therefore, in my opinion, any Application that is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor would not fall within the ambit of Section 96(1) and related provisions with effect from May 26, 2026. In other words, anything that "is filed" would include within its sweep anything that has been filed and is continuing to remain under adjudication under the IBC."
>
> "17. I am also conscious that by legislative design, in a given situation, a lender with substantial interest may constitute a significant majority vote in the Committee of Creditors that would oversee the resolution process, and therefore in litigation between the individual undergoing insolvency and such creditor, there can arise a conflict of interest with the same

creditor controlling both parties to the litigation. However, this is a matter of legislative design and the Court cannot import its notions of fairness in applying clearly articulated provisions of law. Besides, the absence of automatic moratorium under Section 96 for guarantors of corporate debtors undergoing corporate insolvency resolution process would only cover the temporary time period until the moratorium commences under Section 101 when the application filed under Section 95 of the IBC is adjudicated."

In light of the aforesaid, definitely the moratorium has no effect as far as the personal guarantor to the corporate debtor is concerned and in such a situation, since the partnership firm cannot derive any benefit, since its partners are subjected to CIRP, in our view the the argument of Mr. D'Souza on the second aspect, is also without any merit and deserve rejection.

28. As far as the aspect of lack of impartiality of the arbitrator being appointed to conduct multiple arbitrations, and therefore, the appointment being in violation of the Fifth, Sixth and Seventh Schedule of the Act of 1996, the issue has already been dealt extensively by one of us (Bharati Dangre, J) sitting singly, in **Kalpesh Shantikumar Mehta & Ors.** (supra) , and the very said argument was turned down by making the following observations :-

"25 The MSCS Act contemplate appointment of an arbitrator by the Central Registrar/Commissioner of Co-operative Societies, who is empowered to exercise his power and there is no appointment by any party or an affiliate i.e. either by the disputant bank/borrowers/ guarantors. The right of appointment vest only in the statutory authority i.e. Central Registrar and the Arbitration contemplated under the MSCS Act is distinct from the contractual arbitration, where the parties to the *lis* are at liberty to choose an Arbitrator amongst themselves, it being a chosen forum or if they fail to make the appointment in certain circumstances, they can seek an appointment of Arbitrator from the Court.

In contrast, under the MSCS Act, what is necessarily contemplated is a statutory arbitration, with the power of appointment of Arbitrator being reposed in an authority created under the statute itself

i.e. 'Central Registrar' appointed under sub-section (1) of Section (4) of the Act, which would include any Officer empowered to exercise the power of Central Registrar. Hence, there is no appointment of Arbitrator by any party and the petitioners are under the misconception, that the appointment is made by the Bank, who is the disputant, aggrieved by non-payment of the dues.

When the procedure for appointment adopted by the Central Registrar, is minutely looked into, it is evident that it maintain a panel of Arbitrators, which is constituted every three years and since the powers are delegated to the respondent no.3, the Commissioner, the panel is maintained by him and this Panel is re-constituted every three years. The empanellment is undertaken, by following a specific procedure of empanelling qualified persons to act as Arbitrators. The Commissioner for Co-operation and Registrar of Co-operative Societies has no interest in the subject matter, but he choose an Arbitrator from the panel prepared by him and assign to a particular arbitrator, distinct number of cases filed by a particular disputant and as it could be seen from the appointment order in the present case, the Arbitrator is appointed for 10 disputes, which are mentioned in the order of appointment issued, with a clear understanding that the provisions of the Arbitration Act shall apply to the arbitration proceedings and even the fees and other expenses of the Arbitrator shall be governed by Act of 1996.

The order of appointment also contemplate that immediately after his appointment, the Arbitrator shall submit a brief report regarding any adverse remarks, strictures or orders passed by the competent Court against him, if any.

The reason for such a disclosure is obvious, being to ascertain whether the Arbitrator has faced any adverse action at the hands of a competent court, in which circumstances he may be considered to be incompetent to act as an Arbitrator, if his appointing authority feel so.

Not only this, the Arbitrator has also made a disclosure statement in form of 'self declaration of the prospective Arbitrator' as required to be done u/s.12(1)(a) and (b) and Sixth Schedule of Arbitration and Conciliation Act, 1996. In this statement, he has disclosed the number of arbitrations which he has undertaken as well as his prior experience in arbitration proceedings. This include his various arbitration assignments from 2005 onwards. There is also a disclosure that the prospective Arbitrator was an arbitrator for the Disputant Bank from 2010 till March 2020."

"27 In the present case, in my considered opinion, I need not go that far to ascertain whether the Arbitrator would be in a position to complete the proceedings with the number of arbitrations assigned to him, since the disclosure contemplated under clause no.22 of Schedule V is for inference of a circumstance of impartiality of an arbitrator who was appointed, by one of the parties or an affiliate of one of the parties on more than two occasions in past three years.

28 The axe of impediment or the embargo would not fall upon an

Arbitrator appointed by the respondent no.3, i.e. Commissioner of Co-operation and Registrar, Co-operative Society, M.S. as he is not appointed by any of the parties to the dispute or by an affiliate of the disputant and therefore, he having more than two arbitrations assigned to him, would not create any legal impediment on his part. The Arbitrators from the Panel prepared by respondent no.3 have experience in dealing with the disputes being referred to them, which has arisen on the default attributed to the borrowers and guarantors, as against the facility extended to them by the Bank, and in the wake of the expertise possessed by them, the dispute can be conveniently adjudicated and which may not consume considerable length of time and since the Arbitrator is exclusively devoted to the similar nature of work, who shall take up the proceedings of similar nature, it would definitely not create a disqualification in him, to act as an Arbitrator.

Hence, I am not persuaded to accept the argument advanced by the counsel for the petitioners that the Arbitrator has incurred a disqualification, and therefore has become *de jure,* unable to perform his functions as an arbitrator, requiring his mandate to be terminated and the prayer for substituting him by a new Arbitrator, which is the relief prayed in the Petition, deserve to be granted."

29. It is also worth to note that a challenge raised to constitutional validity of Section 84 was also rejected by a division bench of this court in **M/s. J. Square Steels Pvt. Ltd. Aurangabad vs. Union of India**[15]**.**

In any case we find that there is a declaration given by the Arbitrator, under Section 12(1)(a) and (b) of the Sixth Schedule of the Arbitration and Conciliation Act, 1996, and in our view, merely because the Arbitrator is appointed for more than one disputes, do not operate as a bar for him being appointed as Arbitrator, as a person can be appointed as an Arbitrator for number of references to be made over to him by a particular bank and the appointment order itself refer to his appointment for settlement of disputes relating to NKGSB Bank and the period of his appointment is extended from time to time.

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30. In the wake of the aforesaid, we do not find any merit in the contention advanced on behalf of the petitioners to avoid their participation in the arbitration proceedings before the Arbitrator, appointed in terms of Section 84 of the Multi-State Cooperative Societies Act, 2002.

Finding no merit and substance in both the petitions, the petitions are dismissed.

Rule is discharged. No order as to cost.

(ASHISH S. CHAVAN, J) **(BHARATI DANGRE, J.)**

Tilak