NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 305 of 2022

IN THE MATTER OF:

UCO Bank Flagship Corporate Branch **...Appellant**

Versus

Navin Kumar Jain **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 306 of 2022

IN THE MATTER OF:

UCO Bank Flagship Corporate Branch **...Appellant**

Versus

Jayant Kumar Jain **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 307 of 2022

IN THE MATTER OF:

UCO Bank Flagship Corporate Branch **...Appellant**

Versus

Hulash Chand Jain **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 236 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Reena Bansal **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 237 of 2022

IN THE MATTER OF:

UCO Bank Flagship Corporate Branch **...Appellant**

Versus

Shankar Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Singh, Advocate.

With

Company Appeal (AT) (Insolvency) No. 238 of 2022

IN THE MATTER OF:

UCO Bank Flagship Corporate Branch **...Appellant**

Versus

Gopal Poddar **...Respondent**

Present:

For Appellant:	Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.
For Respondent:	Mr. Rahul Singh, Advocate.

With

Company Appeal (AT) (Insolvency) No. 239 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Sanjay Prakash Bansal **...Respondent**

Present:

For Appellant:	Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.
For Respondent:	Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 247 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Sanjay Prakash Bansal **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 248 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Reena Bansal **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 249 of 2022

IN THE MATTER OF:

UCO Bank Flagship Corporate Branch **...Appellant**

Versus

Gaurav Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate.

With

<u>Company Appeal (AT) (Insolvency) No. 250 of 2022</u>

<u>IN THE MATTER OF:</u>

UCO Bank Flagship Corporate Branch **...Appellant**

Versus

Shubas Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate.

With

<u>Company Appeal (AT) (Insolvency) No. 251 of 2022</u>

<u>IN THE MATTER OF:</u>

UCO Bank Flagship Corporate Branch **...Appellant**

Versus

Gopal Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate.

With

<u>Company Appeal (AT) (Insolvency) No. 252 of 2022</u>

<u>IN THE MATTER OF:</u>

UCO Bank **...Appellant**

Versus

Sanjay Prakash Bansal **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 253 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Gunjan Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate.

With

Company Appeal (AT) (Insolvency) No. 254 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Subhas Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate.

With

Company Appeal (AT) (Insolvency) No. 255 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Shankar Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate.

With

Company Appeal (AT) (Insolvency) No. 256 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Prakash Kumar More **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Sidhartha Sharma, Mr. Arjun Asthana and Ms. Shalini Basu, Advocates.

With

Company Appeal (AT) (Insolvency) No. 257 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Gaurav Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate.

With

<u>Company Appeal (AT) (Insolvency) No. 258 of 2022</u>

<u>IN THE MATTER OF:</u>

UCO Bank **...Appellant**

Versus

Mukesh Kumar More **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Sidhartha Sharma, Mr. Arjun Asthana and Ms. Shalini Basu, Advocates.

With

<u>Company Appeal (AT) (Insolvency) No. 259 of 2022</u>

<u>IN THE MATTER OF:</u>

UCO Bank **...Appellant**

Versus

Reena Bansal **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate

With

Company Appeal (AT) (Insolvency) No. 260 of 2022

IN THE MATTER OF:

UCO Bank **...Appellant**

Versus

Gunjan Poddar **...Respondent**

Present:

For Appellant: Mr. Ashish Choudhury, Mr. Santosh Kr. Ray, Mr. Akash Tandon, Mr. Shivam Bajaj, Ms. Akanksha Tripathi, Ms. Mansi Chaudhary, Mr. Rituparna Sanyal, Advocates.

For Respondent: Mr. Rahul Kr. Singh, Advocate.

J U D G M E N T
(27th May, 2022)

Ashok Bhushan, J.

1. This batch of Appeals has been filed by the UCO Bank challenging the orders passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata rejecting the Application filed by the Bank to initiate Corporate Insolvency Resolution Process (CIRP) under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 ("Code" for short). The Adjudicating Authority by the impugned order has rejected the Application holding that the principal borrower being not under the CIRP or under liquidation, the Application under Section 95(1) is not maintainable.

2. The facts and issues in all the Appeals being common, it is relevant to notice the facts in Company Appeal (AT) (Ins.) No.305 of 2022- "UCO Bank vs. Navin Kumar Jain".

The Corporate Debtor- 'M/s. Sri Munisuvrata Agri International Limited' was advanced financial facility by the Appellant- Bank. Respondent No.1- Navin Kumar Jain, Director of the Corporate Debtor stood Personal Guarantor. For recovery of dues of Rs.97,76,57,936/- as on 31.03.2021, an Application under Section 95(1) as per Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 dated 22.04.2021 was filed by the Bank being CP (IB) No. 166(KB)2021. In the Application, both the parties appeared and were heard. The Application was rejected by following order dated 15.09.2021:-

> *"2. This is an application filed under sec. 95(1) of the IBC seeking initiation of Insolvency Resolution Process against the guarantor. It is seen that principal borrower Srimunisuvrata Agri International Limited is neither under CIRP nor under liquidation. Although applications under sec.7 against the principal borrower has been filed and are pending consideration. Sec. 60(2) of the Code requires that for an Insolvency Resolution Process to be initiated against the guarantor there must be CIRP or liquidation is pending against the principal borrower/corporate debtor. Since that requirement is not satisfied in the present case. At this point of time C.P.(IB)/166(KB)2021 is premature and is dismissed*

> *as such. Liberty, is however, granted to the petitioner to initiate appropriate proceedings in case sec.7 petition initiated against the Srimunisuvrata Agro International Limited (Principal Borrower) is admitted."*

3. Aggrieved against the order dated 15.09.2021 rejecting the Application of the Appellant, this Appeal (No.305 of 2022) has been filed. Notices were issued in the Appeal by order dated 28.03.2022. Subsequently, Company Appeal (AT) (Ins.) No.305 of 2022 along with other similar Appeals were heard.

4. We have heard Learned Counsel for the Appellant as well as Learned Counsel appearing for the Respondent(s) in this batch of Appeals.

5. Learned Counsel for the Appellant submits that the Adjudicating Authority has erroneously rejected the Application under Section 95(1) on the ground that the Principal Borrower is neither under CIRP nor under liquidation. It is submitted that under Section 60(1) even if Principal Borrower/ Corporate Debtor is not under CIRP or liquidation, Application against Personal Guarantor is maintainable under Section 60(1) and provision of Section 60(2) is for the purpose that the proceeding against the Personal Guarantor should also be initiated before the same NCLT where proceedings are pending against the Principal Borrower. It is submitted that the issue raised in the Appeal is fully covered by the judgment of this Tribunal in Company Appeal (AT) (Ins.) No.60 of 2022- ***"State Bank of India Stressed Asset Management Branch vs. Mahendra Kumar Jagodia, Personal Guarantor to Corporate Debtor"*** dated 27.01.2022 which judgment has also now been affirmed by the Hon'ble Supreme Court vide its order dated

06.05.2022 in Civil Appeal No. 1871-1872 of 2022 – ***"Mahendra Kumar Jojdia vs. State Bank of India"***. It is further submitted that the Application under Section 7 against the Principal Borrower has already been filed and pending before the Adjudicating Authority, hence, the above condition was also fulfilled.

6. Learned Counsel appearing for the Respondent refuting the submission of the Learned Counsel for the Appellant submits that the pendency of Corporate Insolvency Resolution Process or liquidation against the Principal Borrower or the Corporate Debtor is condition precedent for initiating any action against the Personal Guarantor under Section 95(1). Learned Counsel for the Respondent relied on the judgment of the Hon'ble Supreme Court in ***"Lalit Kumar Jain vs. Union of India & Ors.- (2021) 9 SCC 321"*** (Para 108). It is submitted that the Application filed under Section 7 against the Principal Borrower is not pending as on date since the Application has not yet been admitted by the Adjudicating Authority.

7. We have heard Learned Counsel for the parties and perused the record.

8. The only reason by which Applications under Section 95(1) of the Code filed by the Appellant against the Personal Guarantors have been rejected is that CIRP against the Principal Borrower has neither been initiated nor liquidation proceedings are pending against the Principal Borrower.

9. Chapter VI of the Code contains heading 'Adjudicating Authority for Corporate Persons'. Section 60 falls for consideration in the present Appeal is as follows:-

*"**60. Adjudicating Authority for corporate persons.** -(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located.*

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal.

(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of subsection (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

10. Sub-section (1) of Section 60 provides that the Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located. Who shall be the Adjudicating Authority with regard to Corporate persons including the Personal Guarantors is to be found from sub-section (1) of Section 60. The Adjudicating Authority relying on sub-section 60(2) has taken the view that since insolvency resolution process or liquidation proceedings against the Principal Borrower/ Corporate Debtor is not pending before the NCLT, hence, the Application filed by the Appellant-Bank is premature and consequently rejected.

11. The question to be answered in this Appeal is as to whether pendency of corporate insolvency resolution process or liquidation proceedings against the Principal Borrower/ Corporate Debtor is condition precedent for initiating CIRP against the Personal Guarantor. The submission is that sub-section (2) of Section 60 has to be given overriding effect over Section 60(1) and filing of Application against the Personal Guarantor is only permissible when condition under sub-section (2) of Section 60 is fulfilled. When we look into this statutory scheme of Section 60, it is clear that sub-section (1) is a substantive provision providing for that who shall be the Adjudicating Authority for Corporate Persons including Personal Guarantors. Sub-section (2) is a provision which is “without prejudice to sub-section (1)”. Thus, sub-section (2) provides that where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, shall be filed before the National Company Law Tribunal. The object and purpose of sub-section (2) is entirely different from that of sub-section (1) of Section 60. The use of expression "without prejudice to sub-section (1)" under sub-section (2) makes it clear that provision of sub-section (2) in no manner cuts down the generality of the meaning of sub-section (1). The principle for interpreting a statute where the expression "without prejudice" is used has been clearly laid down by the Hon'ble Supreme Court in several judgments.

12. In ***"Shiv Kirpal Singh vs. V.V. Giri- (1970) 2 SCC 567"***, the Hon'ble Supreme Court in para 37, laid down following:-

> *"**37. ....**That this is very wide is indicated by the opening sentence of sub-s. (2), i.e. "without prejudice to the generality of the provisions of sub-section (1)." It is well-settled that when this expression is used anything contained in the provisions following this expression is not intended to cut down the generality of the meaning of the preceding provision. This was so held by the Privy Council in King-Emperor v. Sibnath Banerji."*

13. In view of the law laid down by the Hon'ble Supreme Court in the above case, it is clear that the provision of Section 60(2) in no manner can cut down the generality of Section 60(1). Section 60(2) has been engrafted to cover the specific situation and the provision is an addition to and is supplemental to provision of Section 60(1).

14. This Tribunal had occasion to consider this very question in Company Appeal (AT) (Ins.) No.60 of 2022- "***State Bank of India Stressed Asset Management Branch"*** (supra). In the above case also the Application under Section 95(1) filed by the Bank was rejected on the same very ground that no insolvency resolution process or the liquidation is pending against the Corporate Debtor before the NCLT. This Court after noticing sub-sections (1) and (2), in paragraphs 7 to 11 made observations to the following effect:-

> *"7. Sub-Section 1 of Section 60 provides that Adjudicating Authority for the corporate persons including corporate debtors and personal guarantors shall be the NCLT. The Sub-Section 2 of Section 60 requires that where a CIRP or Liquidation Process of the Corporate Debtor is pending before 'a' National Company Law Tribunal the application relating to CIRP of the Corporate Guarantor or Personal Guarantor as the case may be of such Corporate Debtor shall be filed before 'such' National Company Law Tribunal. The purpose and object of the sub-section 2 of Section 60 of the Code is that when proceedings are pending in 'a' National Company Law Tribunal, any proceeding against Corporate Guarantor should also be filed before 'such' National Company Law Tribunal. The idea is that both proceedings be entertained by one and the same NCLT. The sub-section 2 of Section 60 does not in any way prohibit filing of proceedings under Section 95 of the Code even if no proceeding are pending before NCLT.*

8. The use of words 'a' and 'such' before National Company Law Tribunal clearly indicates that Section 60(2) was applicable only when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before NCLT. The object is that when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before 'a' NCLT the application relating to Insolvency Process of a Corporate Guarantor or Personal Guarantor should be filed before the same NCLT. This was to avoid two different NCLT to take up CIRP of Corporate Guarantor. Section 60(2) is applicable only when CIRP or Liquidation Proceeding of a Corporate Debtor is pending, when CIRP or Liquidation Proceeding are not pending with regard to the Corporate Debtor there is no applicability of Section 60(2).

9. Section 60(2) begins with expression 'Without prejudice to sub-section (1)' thus provision of Section 60(2) are without prejudice to Section 60(1) and are supplemental to sub-section (1) of Section 60.

10. Sub-Section 1 of Section 60 provides that Adjudicating Authority in relation to Insolvency or Liquidation for Corporate Debtor including Corporate Guarantor or Personal Guarantor shall be the NCLT having territorial jurisdiction over the place where the Registered Office of the Corporate Person is located. The substantive provision for an Adjudicating Authority is Section 60, sub-Section (1), when a particular case is not covered under Section 60(2) the Application as referred to in sub-section (1) of Section 60 can be very well filed in the NCLT having territorial jurisdiction over the place where the Registered Office of corporate Person is located.

11. The Adjudicating Authority erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor are pending the application under Section 95(1) filed by the Appellant is not maintainable. The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor are pending before the NCLT. In result, we set aside the order dated 05th October, 2021 passed by the Adjudicating Authority. The Application filed by the Appellant under Section 95(1) of the Code is revived before the NCLT which may be proceeded in accordance with the law."

15. It is relevant to notice that against the judgment of this Tribunal dated 27.01.2022, Civil Appeal No. 1871-1872 of 2022 was filed in which initially an interim order was passed by the Hon'ble Supreme Court on 21.03.2020. However, Civil Appeal subsequently came to be dismissed on 06.05.2022. The order of the Hon'ble Supreme Court on 06.05.2022 is as follows:-

"We have heard learned Solicitor General and learned senior counsel for the parties and perused the record. We do not see any cogent reason to entertain the Appeals. The judgment impugned does not warrant any interference. The Appeals are dismissed."

16. The dismissal of Civil Appeal by the Hon'ble Supreme Court on 06.05.2022 clearly approved the view taken by this Tribunal in "***State Bank of India Stressed Asset Management Branch"*** (supra).

17. We may now notice the judgment of the Hon'ble Supreme Court in ***"Lalit Kumar Jain***" (supra). The Hon'ble Supreme Court in the above case had occasion to consider the provisions of the Code including Section 60. The Notification dated 15.11.2019 issued by the Ministry of Corporate Affairs in exercise of powers conferred by sub-section (3) of Section 1 of the Code came for consideration by which Notification several provisions relating to only as far as they relate to Personal Guarantors of Corporate Debtors have been enforced. The said Notification was challenged before the High Court and the Hon'ble Supreme Court by several Petitioners. In the above context, the Hon'ble Supreme Court noticed the provisions of the Code. Provisions of Section 60 were amended by Act 26 of 2018 wherein in sub-section (2) of Section 60 added few words. The Hon'ble Supreme Court in ***"Lalit Kumar Jain***" (supra) noticed that even before amendment of Section 60(2), the Adjudicating Authority for insolvency process and liquidation of Corporate Persons including Corporate Debtors and Personal Guarantors was NCLT. In paragraph 99, following has been observed:-

> *"99. In addition to amending Section 2, the same Amendment also amended Section 60(2). Interestingly, though "personal guarantor" was not defined, and fell within the larger rubric of "individual" under the Code, the adjudicating authority for insolvency process and liquidation of corporate persons including corporate debtors and personal guarantors was the NCLT- even under the unamended Code. The amendment of Section 60(2) added a few concepts. This is best understood on a juxtaposition of the unamended and the amended*

provisions: The unamended Section 60 (2) read as follows:

> *"(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy proceeding of a personal guarantor of the corporate debtor shall be filed before the National Company Law Tribunal." The amended Section 60 (2) reads as follows:*
>
> *"(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal"*

18. Paragraph 108 on which reliance was placed by the Counsel for the Respondent is to the following effect:-

> *" **108.** The impugned notification authorises the Central Government and the Board to frame rules and regulations on how to allow the pending actions*

against a personal guarantor to a corporate debtor before the Adjudicating Authority. The intent of the notification, facially, is to allow for pending proceedings to be adjudicated in terms of the Code. Section 243, which provides for the repeal of the personal insolvency laws has not as yet been notified. Section 60(2) prescribes that in the event of an ongoing resolution process or liquidation process against a corporate debtor, an application for resolution process or bankruptcy of the personal guarantor to the corporate debtor shall be filed with the concerned NCLT seized of the resolution process or liquidation. Therefore, the Adjudicating Authority for personal guarantors will be the NCLT, if a parallel resolution process or liquidation process is pending in respect of a corporate debtor for whom the guarantee is given. The same logic prevails, under Section 60(3), when any insolvency or bankruptcy proceeding pending against the personal guarantor in a court or tribunal and a resolution process or liquidation is initiated against the corporate debtor. Thus if A, an individual is the subject of a resolution process before the DRT and he has furnished a personal guarantee for a debt owed by a company B, in the event a resolution process is initiated against B in an NCLT, the provision results in transferring the proceedings going on against A in the DRT to NCLT."

19. The Hon'ble Supreme Court in paragraph 108 held that intent of the notification was to allow for pending proceedings to be adjudicated in terms of the Code and resulting in transfer proceedings from DRT to NCLT. The Hon'ble

Supreme Court in paragraph 108, as quoted above, has not laid down any proposition that unless an Application of insolvency resolution process or liquidation against the Principal Borrower/ Corporate Debtor is pending before NCLT, no Application under Section 60(1) can be filed against the Personal Guarantor. The Hon'ble Supreme Court noticed Section 60(2) and the objects therein.

20. We, thus, are of the view that the judgment of the Hon'ble Supreme Court in ***"Lalit Kumar Jain***" (supra) does not support submissions of Learned Counsel for the Respondent raised before us.

21. One of the submissions raised before us is that the Application under Section 7 has been filed against the Principal Borrower as is the case in Company Appeal (AT) (Ins.) No. 305 of 2022, hence, the condition under Section 60(2) is also fulfilled. It is submitted that the mere fact that Application is not admitted does not lead to conclusion that Application is not pending. We having already held that there is no pre-condition of pendency of insolvency resolution process or liquidation against the Corporate Debtor for filing an Application under Section 60(1), there is no necessity to dwell on the submission any further.

22. In view of the foregoing discussions, we are of the view that the Adjudicating Authority committed error in rejecting the Application under Section 95(1) filed by the Appellant against the Personal Guarantor. The impugned orders passed by the Adjudicating Authority in all these Appeals are set aside and the Application under Section 95(1) filed by the Appellant before the Adjudicating Authority is revived to be proceeded with further in accordance with law.

23. All the Appeals are allowed to the above extent. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Shreesha Merla]
Member (Technical)

New Delhi
Anjali