IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 25.01.2023

Orders Pronounced on : **30.03.2023**

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P.No.2513 of 2022
and C.M.P.No.12925 of 2022

Rohit Nath @ Rohit Rabindra Nath .. Petitioner

Versus

KEB Hana Bank Ltd.,
No.29, Bannari Amman Towers,
4th Floor, Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004. .. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order, dated 8th July, 2022 passed by the Debt Recovery Tribunal - II, Chennai in I.B.C.No.1 of 2022.

For Petitioner : Mr.V.Prakash, Senior Counsel
for M/s.R.Sowmya

For Respondent : Mr.P.Vinod Kumar

ORDER

D.BHARATHA CHAKRAVARTHY, J.

A. The Question :

We are called upon to decide the question as to whether the bankruptcy proceedings, pending on the file of the Debt Recovery Tribunal (hereinafter referred to as '*DRT*') against the petitioner / *personal guarantor* has to be transferred to the file of the National Company Law Tribunal (hereinafter referred to as '*NCLT*') in view of the subsequent institution and pendency of an insolvency resolution process of the corporate debtor?

B. The brief facts leading to filing of the petition :

2. The pre-eminent facts, on which the present proceedings arise, is that during the years 2016 -2018, a Company namely, *Alectrona Energy Private Ltd.,* borrowed a sum of Rs.35,00,00,000/- as working capital demand loan from *KEB Hana Bank Ltd.,* the respondent in the petition and also availed foreign letter of credit to the tune of Rs.5,40,97,392.45 ps. The Company defaulted in payment and the loan accounts were classified as Non-Performing Assets as on 29.08.2018. As per the application by the respondent bank / creditor to initiate bankruptcy process, dated 23.02.2022, a total sum of Rs.60,61,13,173.26 ps remains due and payable, of which, a

sum of Rs.39,37,90,400/- is the secured debt and a sum of Rs.21,23,22,773.26 ps is the unsecured debt.

2.1. While so, on 15.11.2019, the Government of India issued a notification announcing 01.12.2019 as the appointed date, from which, the provisions of *The IBC* to come into force insofar as they relate to the personal guarantors of the corporate debtors. The Government of India also notified the *Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019* which also came into effect from 01.12.2019. Similarly, the Government of India notified another set of rules for the bankruptcy process namely, the *Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019*.

2.2. On 09.03.2020, the respondent bank filed an application in I.B.C.SR.No. 2643 of 2020 under Section 95 of *The IBC* before the *DRT-II*, Chennai initiating insolvency resolution proceedings against the petitioner / personal guarantor in respect of the unsecured portion of the debt due. The *DRT-II*, Chennai admitted the application filed by the respondent bank and

also appointed a Resolution Professional to carry out the insolvency resolution process. In the meanwhile, the petitioner filed Writ Petition. (Civil).No.1276 of 2020 before the Hon'ble Supreme Court of India challenging the constitutional validity of the notification of the Government of India, dated 15.11.2019, inasmuch as the provisions of *The IBC* were notified against the personal guarantors (to corporate debtors) alone. There was an interim order granted by the Hon'ble Supreme Court of India, by which, the above insolvency resolution proceedings were kept in abeyance. On 21.05.2021, the Hon'ble Supreme Court of India dismissed the above Writ Petition along with batch of Writ Petitions upholding the validity of the notification issued by the Central Government holding that there is *intelligible differentia* between the individual guarantors and the personal guarantors (to corporate debtors), by the judgment in ***Lalit Kumar Jain Vs. Union of India and Ors.***[1].

2.3. Thereafter, the petitioner filed a Civil Revision Petition under Article 227 of the Constitution of India in C.R.P.(PD).No.1289 of 2021 pleading to strike off the petition, challenging the jurisdiction of the *DRT* to entertain the application filed by the respondent bank relating to the insolvency resolution process of the petitioner / personal guarantor.

1 (2021) 9 SCC 321

2.4. The contention of the petitioner was that in view of the Section 60(1) of *The IBC*, even in the absence of any insolvency resolution proceedings against the corporate debtor, the proceedings against the personal guarantor would lie only to the file of the *NCLT*. By a judgment, dated 28.07.2021, this Court dismissed the said C.R.P.(PD).No.1289 of 2021 holding that the *DRT* has jurisdiction to entertain and proceed with the matter. The contention of the petitioner, by citing Section 60(1) of *The IBC*, was specifically dealt with and negatived.

2.5. When the matter stood thus, the respondent bank filed an application under Section 7 of *The IBC* before the *NCLT* to commence corporate insolvency resolution process against the Company namely, *Alectrona Energy Private Ltd.*, on 11.08.2021 in CP(IB)/196(CHE)/2021 .

2.6. While so, the *DRT* proceeded to hear the application against the petitioner/personal guarantor and passed a final order under Section 114 of *The IBC* rejecting the repayment plan submitted by the petitioner. Thereafter, on 23.02.2022, the respondent bank filed an application under Section 121(1)(b) read with Section 123 of *The IBC* read with Section 7(2)

of the *Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019* before the *DRT* against the respondent for commencement of bankruptcy process against the petitioner in I.B.C. No. 1 of 2022.

2.7. On 01.03.2022, the *NCLT* admitted the application filed by the respondent bank in CP(IB)/196(CHE)/2021 against the corporate debtor and placed the corporate debtor under corporate insolvency resolution process by appointing an Interim Resolution Professional who was later confirmed as Resolution Professional.

2.8. Thereafter, on 01.07.2022, the petitioner herein filed a memo before the *DRT* questioning the maintainability / continuation of the application filed by the respondent on 23.02.2022 for bankruptcy process before the Tribunal on the ground that subsequent application filed for insolvency resolution against the corporate debtor was taken on file and the same has been pending before the *NCLT* and therefore, the proceedings are to be transferred to the file of the *NCLT* in view of Section 60(3) of *The IBC*. The said memo was taken up for hearing by the *DRT* and by an order dated 08.07.2022 in I.B.C.No.1 of 2022, the petition / memo filed by the

respondent was rejected. The Tribunal reasoned that there is a dichotomy between the individual insolvency resolution / corporate insolvency resolution process and the *bankruptcy* / liquidation process and held that the authority, which considered the resolution process, should continue with the bankruptcy process. The Tribunal placed reliance on paragraph Nos.100, 108 and 114 of the judgment of the Hon'ble Supreme Court of India in ***Lalit Kumar Jain***'s case (cited *supra*) to arrive at the said conclusion. Aggrieved by the same, the present Civil Revision Petition is filed before this Court on 29.07.2022.

2.9. It is pertinent to state here that, pending the present Civil Revision Petition on 03.08.2022, the *DRT* also had received confirmation from the Insolvency and Bankruptcy Board of India regarding the appointment of a Bankruptcy Trustee against the petitioner and on 08.08.2022, the *DRT* had also proceeded to pass the bankruptcy order against the petitioner under Section 126 of *The IBC* and appointed the Bankruptcy Trustee to carry out the bankruptcy process in relation to the petitioner.

C. The Submissions :

3. Heard *Mr.V.Prakash*, learned Senior Counsel appearing on behalf of the petitioner and *Mr.P.Vinod Kumar*, learned Counsel appearing on behalf of the respondent bank.

3.1. *Mr.V.Prakash*, learned Senior Counsel appearing on behalf of the petitioner would submit that this is the only petition under *The IBC* which is pending before the *DRT* in the whole country. The very definition of the term 'personal guarantor' under *The IBC* would denote an individual guarantor of a corporate debtor. The said category was carved out from among the individuals only because their case of insolvency / bankruptcy has to be dealt along with the corporate resolution process of the corporate debtor. Therefore, the Government of India issued a notification bringing the relevant provisions of *The IBC* into force, while, the other individuals, who stand as guarantors to individual debtors, are still being dealt with only as per the original Acts, namely, *The Presidency Towns Insolvency Act, 1909* and *The Provincial Insolvency Act, 1920*, as the case may be and the proceedings against them continues before the respective Courts.

3.2. Learned Senior Counsel would submit that, a careful reading of Section 60(1) of *The IBC* would show that even in the absence of any resolution process or petition against the corporate debtor, still the insolvency / bankruptcy process of personal guarantors can only be instituted before the *NCLT* and the *DRT* has no jurisdiction at all. In this regard, the earlier finding of this Court is absolutely erroneous even on a plain reading of Section 60(1) of *The IBC*, and therefore, the dictum thereupon need not be followed. In any case, subsequently, an application for insolvency resolution process against the corporate debtor has been filed and the same is pending before the *NCLT*. Therefore, as per Section 60(3) of *The IBC*, the insolvency / bankruptcy process of the personal guarantor is automatically liable to be transferred to the file of the *NCLT*, and thus, the order of the *DRT* is erroneous.

3.3. Learned Senior Counsel relied upon a decision of the Hon'ble Supreme Court of India in ***Embassy Property Developments Private Limited Vs. State of Karnataka and Ors.***[2], more specifically paragraph Nos.32 to 35, to contend that it is the *NCLT* which has been vested with all the powers of the *DRT* whenever the matters arise under Sections 62 or 63 of *The IBC*. Strongly relying upon paragraph No.34 of the said judgment,

2 (2020) 13 SCC 308

he would submit that the very purpose of Sections 60(2) and 60(3) of *The IBC* is to ensure that the insolvency resolutions of the corporate debtors and its guarantors are to be dealt with together. He would submit that the legislative intent is very categorical and clear that both proceedings should be dealt with together which would be in the best interests of the debtor, guarantor as well as the creditor. The said paragraph Nos.32 to 35 of the said judgment are extracted hereunder:-

> " ***32.*** *In contrast, sub-sections (4) and (5) of Section 60 of the IBC, 2016 give an indication respectively about the powers and jurisdiction of the NCLT. Section 60 in entirety reads 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 the 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 the 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 such 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 Debts Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (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 (36 of 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."

33. *Sub-section (4) of Section 60 of the IBC, 2016 states that the NCLT will have all the powers of the DRT as contemplated under Part III of the Code for the purposes of sub-section (2). Sub-section (2) deals with a situation where the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate debtor is taken up, when CIRP or liquidation proceeding of such a corporate debtor is already pending before NCLT. The object of sub-section (2) is to group together (A) the CIRP or liquidation proceeding of a corporate debtor, and (B) the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of the very same corporate debtor, so that a single forum may deal with both. This is to ensure that*

the CIRP of a corporate debtor and the insolvency resolution of the individual guarantors of the very same corporate debtor do not proceed on different tracks, before different fora, leading to conflict of interests, situations or decisions.

34. *If the object of sub-section (2) of Section 60 is to ensure that the insolvency resolutions of the corporate debtor and its guarantors are dealt with together, then the question that arises is as to why there should be a reference to the powers of the DRT in sub-section (4). The answer to this question is to be found in Section 179 of the IBC, 2016. Under Section 179(1), it is the DRT which is the adjudicating authority in relation to insolvency matters of individuals and firms. This is in contrast to Section 60(1) which names the NCLT as the adjudicating authority in relation to insolvency resolution and liquidation of corporate persons including corporate debtors and personal guarantors. The expression "personal guarantor" is defined in Section 5(22) to mean an individual who is the surety in a contract of guarantee to a corporate debtor. Therefore the object of sub-section (2) of Section 60 is to avoid any confusion that may arise on account of Section 179(1) and to ensure that whenever a CIRP is initiated against a corporate debtor, NCLT will be the adjudicating authority not only in respect of such corporate debtor but also in respect of the individual who stood as surety to such corporate debtor, notwithstanding the naming of the DRT under Section 179(1) as the adjudicating authority for the insolvency resolution of individuals. This is also why sub-section (2) of Section 60 uses the phrase "notwithstanding anything to the contrary contained in this Code".*

> ***35.*** *Sub-section (2) of Section 179 confers jurisdiction upon DRT to entertain and dispose of : (i) any suit or proceeding by or against the individual debtor, (ii) any claim made by or against the individual debtor, and (iii) any question of priorities or any other question whether of law or facts arising out of or in relation to insolvency and bankruptcy of the individual debtor. Clauses (a), (b) and (c) of sub-section (2) of Section 179 are identical to clauses (a), (b) and (c) of sub-section (5) of Section 60. Therefore the only reason why sub-section (4) is incorporated in Section 60 is to ensure that NCLT will exercise jurisdiction — (1) not only to entertain and dispose of matters referred to in clauses (a), (b) and (c) of sub-section (5) of Section 60 in relation to the corporate debtor, (2) but also to entertain and dispose of the matters specified in clauses (a), (b) and (c) of sub-section (2) of Section 179, whenever the contingency stated in Section 60(2) arises.*"

3.4. *Mr.V.Prakash*, learned Senior Counsel, also relied upon another judgment of the Hon'ble Supreme Court of India in ***Lalit Kumar Jain***'s case (cited *supra*). The learned Senior Counsel laid great emphasis on paragraph No.108 to contend that it is only the *NCLT* which would be the adjudicating authority for personal guarantors. It is essential to extract paragraph Nos.108, 109 and 110 which read as hereunder:-

> " ***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 NCLT concerned seized of the resolution process or liquidation. Therefore, the adjudicating authority for personal guarantors will be 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.

109. *This Court in* ***V. Ramakrishnan [SBI v. V. Ramakrishnan****, **(2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458**] , noticed why an application under Section 60(2) could not be allowed. At that stage, neither Part III of the Code nor Section 243 had not (sic) been notified. This meant that proceedings against personal guarantors stood outside NCLT and the Code.*

The non obstante provision under Section 238 gives the Code overriding effect over other prevailing enactments. This is perhaps the rationale for not notifying Section 243 as far as personal guarantors to corporate persons are concerned. Section 243(2) saves pending proceedings under the Acts repealed (PIA and PTI Act) to be undertaken in accordance with those enactments. As of now, Section 243 has not been notified. In the event Section 243 is notified and those two Acts repealed, then, the present notification would not have had the effect of covering pending proceedings against individuals, such as personal guarantors in other forums, and would bring them under the provisions of the Code pertaining to insolvency and bankruptcy of personal guarantors. The impugned notification, as a consequence of the non obstante clause in Section 238, has the result that if any proceeding were to be initiated against personal guarantors it would be under the Code.

110. *In the opinion of this Court, there was sufficient legislative guidance for the Central Government, before the Amendment of 2018 was made effective, to distinguish and classify personal guarantors separately from other individuals. This is evident from Sections 5(22), 60, 234, 235 and unamended Section 60. In* ***V. Ramakrishnan*** *[****SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458****] this Court noted the effect of various provisions of the Code, and how they applied to personal guarantors: (SCC pp. 410-11, paras 22-24)*

> *"22. We are afraid that such arguments have to be turned down on a careful reading of the sections relied upon. Section 60 of the Code, in sub-section (1) thereof, refers to insolvency resolution and liquidation for both*

corporate debtors and personal guarantors, the adjudicating authority for which shall be the National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate person is located. This sub-section is only important in that it locates the Tribunal which has territorial jurisdiction in insolvency resolution processes against corporate debtors. So far as personal guarantors are concerned, we have seen that Part III has not been brought into force, and neither has Section 243, which repeals the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. The net result of this is that so far as individual personal guarantors are concerned, they will continue to be proceeded against under the aforesaid two Insolvency Acts and not under the Code. Indeed, by a Press Release dated 28-8-2017, the Government of India, through the Ministry of Finance, cautioned that Section 243 of the Code, which provides for the repeal of the said enactments, has not been notified till date, and further, that the provisions relating to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part III of the Code are yet to be notified. Hence, it was advised that stakeholders who intend to pursue their insolvency cases may approach the appropriate authority/court under the existing enactments, instead of approaching the Debts Recovery Tribunals.

23. It is for this reason that sub-section (2) of Section 60 speaks of an application relating to the "bankruptcy" of a personal guarantor of a corporate debtor and states that any such bankruptcy proceedings shall be filed only before the National Company Law Tribunal. The argument of the learned counsel on behalf of the respondents that "bankruptcy" would include SARFAESI proceedings must be turned down as "bankruptcy" has reference only to the two Insolvency Acts referred to above. Thus, SARFAESI proceedings against the guarantor can continue under the SARFAESI Act. Similarly, sub-section (3) speaks of a bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal, which shall stand transferred to the adjudicating authority dealing with the insolvency resolution process or liquidation proceedings of such corporate debtor. An "adjudicating authority", defined under Section 5(1) of the Code, means the National Company Law Tribunal constituted under the Companies Act, 2013.

24. The scheme of Sections 60(2) and (3) is thus clear — the moment there is a proceeding against the corporate debtor pending under the 2016 Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the corporate debtor, be transferred to the

National Company Law Tribunal or, if initiated after such proceedings had been commenced against the corporate debtor, be filed only in the National Company Law Tribunal. However, the Tribunal is to decide such proceedings only in accordance with the Presidency Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be. It is clear that sub-section (4), which states that the Tribunal shall be vested with all the powers of the Debts Recovery Tribunal, as contemplated under Part III of this Code, for the purposes of sub-section (2), would not take effect, as the Debts Recovery Tribunal has not yet been empowered to hear bankruptcy proceedings against individuals under Section 179 of the Code, as the said section has not yet been brought into force. Also, we have seen that Section 249, dealing with the consequential amendment of the Recovery of Debts Act to empower Debts Recovery Tribunals to try such proceedings, has also not been brought into force. It is thus clear that Section 2(e), which was brought into force on 23-11-2017 would, when it refers to the application of the Code to a personal guarantor of a corporate debtor, apply only for the limited purpose contained in Sections 60(2) and (3), as stated hereinabove. This is what is meant by strengthening the corporate insolvency resolution process in the Statement of Objects of the Amendment Act, 2018.""

3.5. The learned Senior Counsel further relied upon the paragraph Nos.22 and 23 of a judgment of the Hon'ble Supreme Court of India in ***State Bank of India Vs. V.Ramakrishnan and Anr.***[3] to contend that even though the said judgment arose prior to the notification in respect of the personal guarantors, still it has been held that the adjudicating authority in respect of the personal guarantors would only be the *NCLT*. Summing up his submissions, the learned Senior Counsel would submit that the contentions of the respondent bank, attempting to create dichotomy in respect of the proceedings by trying to differentiate between insolvency and bankruptcy proceedings, would do violence to the very purport and intention of *The IBC* and would contend that the phrase '*as the case may be'* contained in Section 60(2) and 60(3) of *The IBC* would only relate to the corporate debtor or personal guarantor and will not relate to insolvency process or liquidation process or bankruptcy proceedings. He would submit that such a construction would defeat the very concept of resolution inasmuch as the personal guarantors also have a direct interest in the revival of the Company, and therefore, would pray that the order of the *DRT* be set aside and the pending proceedings in I.B.C.No.1 of 2022 be transferred to the file of the *NCLT*.

3 (2018) 17 SCC 394

3.6. Opposing the said submissions, *Mr.P.Vinod Kumar*, learned Counsel appearing on behalf of the respondent bank took us in detail through the scheme of *The IBC*. He would submit that the purport of *The IBC* was to consolidate the laws of insolvency and bankruptcy of both the corporate entities as well as the individuals to be a consolidated code which were hitherto covered by different legislations. The proviso of Section 1(3) of *The IBC* expressly enables the Government of India to appoint different dates for different provisions of the code to come into force. Accordingly, *vide* S.O.3594(E), dated 30.11.2016, only the provisions relating to the corporate entities alone were brought into force. The learned Counsel would submit that Part-I of *The IBC* contains the preliminary provisions and general definitions. Part-II deals with Insolvency Resolution and Liquidation for Corporate Persons. Part-III deals with Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms.

3.7. Coming back to Part-II, i.e., Insolvency Resolution and Liquidation for Corporate Persons, the learned Counsel took us through Section 5 of *The IBC* containing various definitions, more specifically, Section 5(12) - insolvency commencement date and Section 5(17) - liquidation commencement date. The learned Counsel would submit that

Chapter-II would deal with how the corporate insolvency resolution process should be carried out. The learned Counsel took us through Sections 13 and 14 of *The IBC* about the moratorium and more specifically pointing out Section 14(3)(b) of *The IBC*, where, in respect of a surety in a contract of guarantee to corporate debtor, moratorium is not applicable. The learned Counsel would take us through Sections 17, 20, 23, 24, 30, 31 and 32A of *The IBC* to highlight about the manner in which the resolution has to be gone into by the Interim Resolution Professional so as to put in place a resolution plan to revive the corporate debtor as an ongoing Company. The learned Counsel would then take us through Chapter-III, distinctly dealing with liquidation process by appointment of liquidator under Section 34 of *The IBC* and the purpose of liquidation as contained under Section 53 of *The IBC* dealing with distribution of assets and the dissolution of the corporate debtor under Section 54 of *The IBC*. In this context, learned Counsel would read Section 60(1) of *The IBC* to primarily submit that the purpose was to specify as to which of the *NCLT Bench* will be the appropriate adjudicating authority in respect of the corporate debtors and the personal guarantors.

3.8. *Mr.P.Vinod Kumar*, would then take us through Part-III and the Chapter-I starting from Section 78 of *The IBC* that deals with the insolvency resolution process of the individuals. The learned Counsel would specifically rely upon Section 79(1) of *The IBC* to contend that the "Adjudicating Authority" shall mean the *DRT*. Learned Counsel would thereupon take us through the manner in which the insolvency process against an individual is carried on by pointing out to Section 105 of *The IBC* - repayment plan; Section 111 of *The IBC* - approval of repayment plan by creditors; the order to be passed by the adjudicating authority under Section 114 of *The IBC;* and the effect of the order of the adjudicating authority as per Section 115 of *The IBC.* He would submit that Chapter-III is distinct by itself upto the level of the adjudicating authority's order which will entitle the creditor to file an application for bankruptcy under Chapter-IV if the repayment plan is rejected.

3.9. Thereafter, taking this Court through Chapter-IV, pointing out to Section 121 of *The IBC* - application for bankruptcy; Section 136 of *The IBC*- administration and distribution of estate of bankrupt; Sections 174 and 176 of *The IBC* - distribution of interim dividend and final dividend; the learned Counsel would contend that insolvency resolution and bankruptcy

are separate compartments which cannot be interlinked with one another. The learned Counsel, drawing attention of this Court to the notification of the Government of India, dated 15.11.2019, would submit that the said notification also notifies Sections 79 and 249 of *The IBC* and if the contention of the petitioner has to be accepted, then there was no necessity to notify both the sections naming the *DRT* as adjudicating authority and carrying out the amendments to *Recovery of Debts due to Banks and Financial Institutions Act, 1993* as specified in the fifth schedule. Similarly, drawing attention to Rule 3(1)(a)(ii) of the *Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019*, he would submit that the rules clearly mention the *DRT* as an adjudicating authority.

3.10. In support of his submissions, the learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***State Bank of India***'s case (cited *supra*), more specifically paragraph No.22 of the said judgment, to press home the point that Section 60 of *The IBC* primarily locates the appropriate Tribunal having territorial jurisdiction and cannot be relied upon by the other side to contend that only the *NCLT* has jurisdiction. Secondly, the learned Counsel placed strong reliance on the phrase '*as the*

case may be' found in Section 60(2), as well as Section 60(3) of *The IBC* to contend that the phrase '*as the case may be*' would only mean the appropriate compartment of the resolution or liquidation in case of a corporate debtor and insolvency resolution or bankruptcy in case of a personal guarantor. He would submit that in the bankruptcy proceedings the Trustee is only going to grant the dividends to the creditors and absolutely no purpose will be served by clubbing with the corporate resolution process.

3.11. Again placing strong reliance on ***Lalit Kumar Jain***'s case (cited *supra*), specifically pointing out to paragraph Nos.99, 100, 101, 108 and 122 of the said judgment, the learned Counsel would submit that the order of the *DRT* is in order. The said paragraphs, except paragraph No.108, are reproduced hereunder for ready reference, as paragraph No.108 was quoted *supra*.

> ***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 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:

> *"**60. (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:*
>
> *"**60. (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."*

100. *The amendment inserted the expression "or liquidation" before the words "or bankruptcy" and also inserted the expression "of a corporate guarantor … as the case may be, of" such corporate debtor. The interpretation of this*

expression has to be contextual. There is no question of liquidation of a personal guarantor, an individual. In such cases, this Court has ruled that the principle behind the maxim reddendo singula singulis applies. This Court had, in ***Koteswar Vittal Kamath v. K. Rangappa Baliga & Co.*** *[****Koteswar Vittal Kamath v. K. Rangappa Baliga & Co., (1969) 1 SCC 255****] quoted Black's Interpretation of Laws, to explain the meaning of that maxim: (SCC p. 263, para 13)*

> *"Where a sentence in a statute contains several antecedents and several consequences, they are to be read distributively, that is to say, each phrase or expression is to be referred to its appropriate object."*

Koteswar Vittal Kamath *[****Koteswar Vittal Kamath v. K. Rangappa Baliga & Co., (1969) 1 SCC 255****] was concerned with the interpretation of the proviso to Article 304(b) of the Constitution of India which provided that:*

> *"Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."*

*The term "no Bill or amendment" was construed distributively. The Court held: (****Koteswar Vittal Kamath case*** *[****Koteswar Vittal Kamath v. K. Rangappa Baliga & Co., (1969) 1 SCC 255****] , SCC pp. 263-64, para 14)*

> *"14. … In our opinion, the High Court in* ***Koteswar Vittal Kamath v. Rangappa Baliga & Co.*** *[****Koteswar Vittal Kamath v. Rangappa Baliga & Co., 1963 SCC OnLine Ker 132****] did not correctly appreciate the position. The language of the proviso cannot be*

> *interpreted in the manner accepted by the High Court without doing violence to the rules of construction. If both the words "introduced" or "moved" are held to refer to the Bill, it must necessarily be held that both those words will also refer to the word "amendment". On the face of it, there can be no question of introducing an amendment. Amendments are moved and then, if accepted by the House, incorporated in the Bill before it is passed. There is further an indication in the Constitution itself that wherever a reference is made to a Bill, the only step envisaged is introduction of the Bill. There is no reference to such a step as a Bill being moved. The articles, of which notice may be taken in this connection, are Articles 109, 114, 117, 198 and 207. In all these articles, whatever prohibition is laid down relates to the introduction of a Bill in the legislature. There is no reference at any stage to a Bill being moved in a House. The language thus used in the Constitution clearly points to the interpretation that, even in the proviso to Article 304, the word "introduced" refers to the Bill, while the word "moved" refers to the amendment."*
>
> *(emphasis in original)*

101. *Recently, in* ***Rajendra K. Bhutta v. Mhada*** *[****Rajendra K. Bhutta v. Mhada, (2020) 13 SCC 208****], this principle and* ***Koteswar Vittal Kamath*** *[****Koteswar Vittal Kamath v. K. Rangappa Baliga & Co., (1969) 1 SCC 255****] were cited and applied. Therefore, it is held that*

when Section 60(2) alludes to insolvency resolution or bankruptcy, or liquidation of three categories i.e. corporate debtors, corporate guarantors (to corporate debtors) and personal guarantors (to corporate debtors) they apply distributively i.e. that insolvency resolution, or liquidation processes apply to corporate debtors and their corporate guarantors, whereas insolvency resolution and bankruptcy processes apply to personal guarantors, (to corporate debtors) who cannot be subjected to liquidation.

122. *It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this Court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability. In* ***Maharashtra SEB [Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358****] the liability of the guarantor (in a case where liability of the principal debtor was discharged under the Insolvency law or the Company law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872 as there is no discharge under Section 134 of that Act. This Court observed as follows: (SCC pp. 362-63, para 7)*

> *"7. Under the bank guarantee in question the Bank has undertaken to pay the Electricity Board any sum up to Rs 50,000 and in order to realise it all that the Electricity Board has to do*

is to make a demand. Within forty-eight hours of such demand the Bank has to pay the amount to the Electricity Board which is not under any obligation to prove any default on the part of the Company in liquidation before the amount demanded is paid. The Bank cannot raise the plea that it is liable only to the extent of any loss that may have been sustained by the Electricity Board owing to any default on the part of the supplier of goods i.e. the Company in liquidation. The liability is absolute and unconditional. The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the Contract Act, 1872, the liability of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Contract Act, 1872 by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability (see ***Jagannath Ganeshram Agarwale v. Shivnarayan Bhagirath [Jagannath Ganeshram Agarwale v. Shivnarayan Bhagirath, 1939 SCC***

OnLine Bom 65 : AIR 1940 Bom 247] *; see also* ***Fitzgeorge, In re [Fitzgeorge, In re, (1905) 1 KB 462]).”***

3.12. More specifically, by relying upon paragraph No.122, the learned Counsel would submit that (i) moratorium is not applicable and (ii) even if the Company is revived in the resolution process by accepting the plan, the Hon'ble Supreme Court of India has categorically held that, the revival plan will not in any manner operate to discharge the guarantor's liability and therefore, still the guarantor would not be absolved of his liability and bankruptcy proceedings in the *DRT* can be continued. The said factor would also fortify the contention that the proceedings, now lying in different compartments, cannot be clubbed together.

3.13. Learned Counsel would submit that repeatedly, the petitioner herein is trying to stall the proceedings without even moving his little finger in the direction of any constructive step towards the repayment of debt. Initially, he challenged the vires of the notification and only upon its failure, he filed the Civil Revision Petition under Article 227 of the Constitution of India questioning the jurisdiction of the *DRT*. After its failure and after the final order of rejection of repayment plan is passed,

upon commencement of bankruptcy proceedings, once again, he has come up with the present application by way of a memo and thereafter by the present Civil Revision Petition, to again willfully stall the process and therefore, would pray that the Civil Revision Petition be dismissed.

D. Points for consideration :

4. We have heard the rival submissions made on behalf of either side and perused the material records of the case. Upon consideration of the same, the following points arise for consideration:-

> *(i) Whether NCLT alone has jurisdiction in matters of insolvency resolution and bankruptcy process for personal guarantors (to corporate debtors) in view of Section 60(1) of The IBC?*
>
> *(ii) Whether in view of the filing of the insolvency resolution process against the corporate debtor, the pending proceedings in I.B.C.No.1 of 2022 before the DRT is to be transferred to the NCLT in view of Section 60(3) of The IBC?*
>
> *(iii) To what reliefs, the parties are entitled?*

E. Point No.i :

5. We have encapsulated the arguments of both the sides, regarding this point, in detail *supra*. It may be seen that the contentions

revolve around the manner in which Section 60(1) of *The IBC* has to be read. Both the side learned Counsel repeatedly laid emphasis on the self-same provisions and more specifically, the three judgments of the Hon'ble Supreme Court of India in ***State Bank of India***'s case, ***Lalit Kumar Jain***'s case and ***Embassy Property Developments Private Limited***'s case (cited *supra*). On a cumulative reading of all the relevant provisions and a careful understanding of the aforesaid three decisions of the Hon'ble Supreme Court of India, we answer this point in negative. We hold that the *NCLT* will not have the jurisdiction to entertain insolvency and bankruptcy proceedings against personal guarantors (to corporate debtors) and the *DRT* will be the adjudicating authority and our reasons are as follows:-

(i) The appropriate provisions in *The IBC* which specify the adjudicating authority are Section 5(1) of *The IBC* in respect of Part-II and Section 79 of *The IBC* in respect of Part-III, which specify the *NCLT* as the adjudicating authority in respect of Part-II, that is, Insolvency Resolution and Liquidation for Corporate Persons and the *DRT* in respect of Part-III that is, Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms. Therefore, in this context, Section 60(1) of *The IBC*, which is part and parcel of Part-II, has to be read as indicating only the appropriate *NCLT* having territorial jurisdiction and would not mean the

exclusive jurisdiction for *NCLT*. In this regard, we reproduce paragraph No.22 of a judgment of the Hon'ble Supreme Court of India in ***State Bank of India***'s case (cited *supra*) which reads as hereunder:-

> " ***22.*** *We are afraid that such arguments have to be turned down on a careful reading of the sections relied upon. Section 60 of the Code, in sub-section (1) thereof, refers to insolvency resolution and liquidation for both corporate debtors and personal guarantors, the adjudicating authority for which shall be the National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate person is located. This sub-section is only important in that it locates the Tribunal which has territorial jurisdiction in insolvency resolution processes against corporate debtors. So far as personal guarantors are concerned, we have seen that Part III has not been brought into force, and neither has Section 243, which repeals the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. The net result of this is that so far as individual personal guarantors are concerned, they will continue to be proceeded against under the aforesaid two Insolvency Acts and not under the Code. Indeed, by a Press Release dated 28-8-2017, the Government of India, through the Ministry of Finance, cautioned that Section 243 of the Code, which provides for the repeal of the said enactments, has not been notified till date, and further, that the provisions relating to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part III of the Code are yet to be notified. Hence, it was advised that stakeholders who intend to pursue their insolvency cases may approach the appropriate authority/court under the existing*

enactments, instead of approaching the Debts Recovery Tribunals."

(emphasis supplied)

(ii) The contention that the *NCLT* cannot be the exclusive authority is also fortified by the definition of the 'Adjudicating Authority' under Rule 3(1)(a)(ii) of the *Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019* and the same is extracted hereunder:-

" ***3. Definitions***

(1) In these Rules, unless the context otherwise requires,-

(a) "Adjudicating Authority" means-

(i) for the purpose of section 60, the National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013); or

(ii) in cases other than sub-clause (i), the Debt Recovery Tribunal established under sub-section (1A) of section 3 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993);"

(empahsis supplied)

Therefore, if the *NCLT* alone is the authority, then there was no necessity for Rule 3(1)(a)(ii) at all and thus, it would be clear that both the *NCLT* and the *DRT* will have jurisdiction as the case may be;

(iii) Similarly, notification, dated 15.11.2019 would bring the relevant provisions of *The IBC* into force so that the insolvency and

bankruptcy proceedings against *personal guarantors* be brought under *The IBC*, Section 249 of *The IBC* which carries out Amendments to *Recovery of Debts due to Banks and Financial Institutions Act, 1993* as per the Fifth Schedule. Similarly, Section 79 of *The IBC*, specifying the *DRT*, as the adjudicating authority, is also brought into force;

(iv) The specific contention has been raised by the petitioner that even in the absence of the proceedings against the corporate debtor, the proceedings against the personal guarantor can only be before the *NCLT* in C.R.P.(PD).No.1289 of 2021 and by a judgment, dated 28.07.2021, the said contention has been rejected and it is essential to extract paragraph No.22 of the said judgment which reads as follows:-

> *" **22.** The text of Section 60(2) discloses that Section 60 of the Code would apply to an individual only if there is a corporate insolvency resolution process pertaining to the corporate entity which is the principal debtor, that has been filed or commenced. In other words, in case of company 'A' being the principal debtor and an individual 'P' the guarantor promising repayment of the credit facilities obtained by 'A', if a corporate insolvency resolution process is initiated under the provisions of the Code pertaining to company 'A', the insolvency resolution process pertaining to guarantor 'P' would per force be before the same adjudicating authority, viz., the National Company Law Tribunal. <u>But, where there is no corporate insolvency resolution process initiated in respect of company 'A', insolvency proceedings</u>*

> *pertaining to guarantor 'P' must necessarily be carried only to the jurisdictional Debts Recovery Tribunal and not to any other forum. To repeat, the provisions of the Acts of 1909 and 1920 will have no manner of application to guarantors who have furnished guarantees in connection with credit facilities obtained by corporate entities.*"
>
> (emphasis supplied)

The said judgment has become final and binding between the parties.

(v) Factually also, that stage has crossed and now insolvency resolution proceedings are pending before the *NCLT* and therefore, the only question which has to be gone into is to whether the proceedings are liable to be transferred under Section 60(3) of *The IBC*.

5.1. Thus, we answer this point in the negative and hold that the *DRT* shall have jurisdiction to entertain the applications against personal guarantors and Section 60(1) of *The IBC* cannot be read to confer exclusive jurisdiction only on the *NCLT*.

F. Point No.ii :

6. There can be no two opinion that Section 60(3) of *The IBC* mandates the transfer of proceedings pending in any Court or Tribunal to the *NCLT* in which the insolvency resolution process or liquidation process against the corporate debtor is pending. Section 60(3) of *The IBC* is reproduced hereunder for ready reference:-

> " ***60. Adjudicating Authority for corporate persons***
> .
> .
> .
> *(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.*"

6.1. Admittedly, the matter in respect of the personal guarantor is pending before the Tribunal (*DRT*) and the proceedings are also pending before the *NCLT*. The only contention is that whether, as per the above provision, the pending proceedings in I.B.C.No.1 of 2022 has to be transferred to the *NCLT*, and clubbed along with CP(IB)/196(CHE)/2021. It is, in this context, on a careful reading of both Part-II and Part-III of *The*

IBC, it is clear that in respect of corporate entities, two distinct proceedings under two distinct compartments namely, 'Corporate Insolvency Resolution Process', which is dealt under Chapter-II, wherein the Resolution Professional appointed conducts the resolution process by convening a meeting of the committee of creditors and puts in place a revival plan and management of the affairs of the corporate debtor and thereby, getting an approval for the resolution plan as per Section 30(1) of *The IBC* and revives the Company by getting necessary approval from the adjudicating authority. In case of the rejection of the resolution plan, the liquidation process shall start under Chapter-III, whereby a Liquidator is appointed and this would ultimately result in distribution of assets as per Section 53 of *The IBC* and dissolution of corporate debtor as per Section 54 of *The IBC*.

6.2. Similarly, in respect of the individuals also, which would include the *personal guarantors* (to corporate debtors) under Part-III, two distinct processes are undertaken. Firstly, as per Chapter-III of Part-III, the 'Insolvency Resolution Process' is undertaken by debtor by filing an application under Section 94 of *The IBC* or creditor filing an application under Section 95 of *The IBC*, in which, public notice of the claims is made and list of creditors is sought to be prepared and repayment plan is proposed

by the debtor and the adjudicating authority passes an order under Section 114 of *The IBC*, by which, the adjudicating authority can either approve or reject the repayment plan. As per Section 115 of *The IBC*, if the repayment plan is approved, then it will be binding on all the creditors and further implementation and supervision will be undertaken. If the repayment plan is rejected, then the creditors will be entitled to file an application for bankruptcy under Chapter-IV. Thus, upon rejection of the repayment plan, the process of insolvency resolution of the individual comes to an end and results in a fresh application to be filed by the creditor within three months from the date of the order under Chapter-III, which is termed as 'Bankruptcy Proceedings'. Under Chapter-IV, upon application filed by the creditor under Section 123 of *The IBC*, a Bankruptcy Trustee is appointed and bankruptcy order is passed. Upon such bankruptcy order, the effects mentioned in Section 128 of *The IBC* such as the estate of the bankrupt vesting with the Bankruptcy Trustee etc, takes place and the estate of the bankrupt will be divided among the creditors. The further proceedings are that the Bankruptcy would summon the creditor for meeting to deliberate on the administration of the estates and distribution of the estate among the creditors. Finally, a discharge order is passed on application, by the adjudicating authority and the discharge order has certain effects resulting

in certain disqualifications of the bankrupt from acting as a Trustee or acting as a public servant or being elected to any public office or being elected to any member of the local authority etc., and also certain restrictions, such as, not to act as a Director of any Company etc., befalls on the bankrupt.

6.3. Thus, if read in the context, absolutely no purpose will be served in transferring the 'bankruptcy proceedings' to the file of the *NCLT* which has now started the corporate resolution process under Chapter-II of Part-II. Therefore, on a proper reading of Section 60(3) of *The IBC*, especially the phrase '*as the case may be*' would only relate to the appropriate process namely, the 'Corporate Insolvency Resolution Process' or 'Liquidation Process' or 'Individual Insolvency Resolution Process' or 'Bankruptcy Process' as the terms form clear and distinct compartments. If the insolvency resolution process of the corporate debtor is pending before the *NCLT* and if the insolvency resolution process of the personal guarantor is also pending before any Court or Tribunal, then the same has to be transferred. But, in this case, the insolvency resolution process of the personal guarantor filed in I.B.C.SR.No.2643 of 2020 and was already disposed of by the *DRT* passing the final order rejecting the repayment plan under Section 114 of *The IBC* on 24.11.2021. Thereafter, much water has

flown as the 'bankruptcy proceedings' has further been initiated and the same is taken on file as I.B.C.No.1 of 2022. Now, the further process which remain so is to distribute the assets of the bankrupt by the Bankruptcy Trustee in the manner as enunciated in *The IBC* and nothing else.

6.4. In this regard, first, it is very relevant to quote paragraph No.122 of a judgment of the Hon'ble Supreme Court of India in ***Lalit Kumar Jain***'s case (cited *supra*), by which, it is categorically held that even if the Company's resolution plan is going to be accepted by the *NCLT*, the same will not in any manner affect the liability of the personal guarantor and paragraph No.122 is reproduced hereunder:-

> " ***122.*** *It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this Court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability. In* ***Maharashtra SEB [Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358****] the liability of the guarantor (in a case where liability of the principal debtor was discharged under the Insolvency law or the Company law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise*

the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872 as there is no discharge under Section 134 of that Act. This Court observed as follows: (SCC pp. 362-63, para 7)

> *"7. Under the bank guarantee in question the Bank has undertaken to pay the Electricity Board any sum up to Rs 50,000 and in order to realise it all that the Electricity Board has to do is to make a demand. Within forty-eight hours of such demand the Bank has to pay the amount to the Electricity Board which is not under any obligation to prove any default on the part of the Company in liquidation before the amount demanded is paid. The Bank cannot raise the plea that it is liable only to the extent of any loss that may have been sustained by the Electricity Board owing to any default on the part of the supplier of goods i.e. the Company in liquidation. The liability is absolute and unconditional. The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the Contract Act, 1872, the liability of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Contract Act, 1872 by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the*

> *discharge of the principal debtor. But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability (see* ***Jagannath Ganeshram Agarwale v. Shivnarayan Bhagirath*** *[****Jagannath Ganeshram Agarwale v. Shivnarayan Bhagirath, 1939 SCC OnLine Bom 65 : AIR 1940 Bom 247****] ; see also* ***Fitzgeorge, In re*** *[****Fitzgeorge, In re, (1905) 1 KB 462****]).”*"
>
> (emphasis supplied)

6.5. Further, Paragraph No.125 of the said judgment also reads as follows:-

> " ***125.*** *In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract*."
>
> (emphasis supplied)

6.6. It can further be seen that even the moratorium, which comes into force as per Section 14 of *The IBC* in respect of institution of suits, continuation of proceedings etc., is not applicable in respect of the guarantor as per Section 14(3)(b) of *The IBC*. Thus, we are of the view that the proceedings which are now pending before the *DRT*, termed as 'bankruptcy proceedings' altogether lies in a different compartment and no purpose whatsoever would be made by transferring the same to the *NCLT*. The purpose of transferring is to consider the resolution plan and the repayment plan together, so that, the management of the corporate entity be vested with the Directors, (who are more often not the personal guarantors) even while the debts are being discharged. Therefore, on more clear understanding of Section 60(3) of *The IBC*, the phrase '*as the case may be*' would only relate to appropriate proceedings. If different proceedings are pending at different stages, the same need not be transferred inappropriately as the same would be in violence to the phrase '*as the case may be*' found under Section 60(3) of *The IBC*.

6.7. Both side learned Counsel also pointed out towards the punctuations (commas) used in the statute and attempted to read the

provision. In this regard, in ***Aswini Kumar Ghosh and Anr. Vs. Arabinda Bose and Anr.***[4], the Hon'ble Supreme Court of India, held that:

> *"Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English courts. … When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation."*

6.8. In ***Barun Kumar and Ors. Vs. Vs State of Jharkhand and Ors.***[5], in paragraph No.46, it is held by the Hon'ble Supreme Court of India, that:-

> *" It is well known that punctuation marks by themselves do not control the meaning of the statute when its meaning is otherwise obvious. The ordinary rule is that punctuation mark is a minor element in the interpretation of statute, more so, when it is a case of subordinate legislation."*

6.9. The Kerala High Court, in ***M/s.Hotel Asoka Vs. The Commercial Tax Officer-1, Dept of Comml. Taxes***[6], held as follows :

> " ***31.*** *In Statutory interpretation by Francis Bennion, it is said, punctuation forms part of an Act, and may be used as a guide to interpretation. Punctuation is generally of little weight, however, since the sense of an Act should be the same with or without punctuation. It is further said, that punctuation is a device not for*

4 AIR 1952 SC 369
5 2022 SCC OnLine SC 1093
6 (2008) 1 KLJ 419

making meaning, but for making meaning plain, its purpose, as Bouvier said, is to denote the stops that ought to be made in oral reading, and to point out the sense. Drafters are instructed that they should on no account, allow the meaning to turn, on the presence or absence of a punctuation mark. The good drafter consciously drafts every clause with an eye to what its sense would be if all such marks were removed.

32. *Crawford in his book on "Statutory construction" says that when a statute is careful by punctuation, there is no doubt as its meaning, weight should undoubtedly be given to punctuation. Punctuation, therefore, certainly has its uses, but tendency of courts is not to allow it to control the plain meaning of a text, this is because the draftsman very often does use punctuation marks properly.*

34. *The use and purpose of using a 'semi-colon' in a statute is explained by Vepa P. Sarathi in his book Interpretation of Statutes. It is said 'semi-colon' is an important and interesting mark to use. It is stronger than a comma, which is used more for a pause; but the semi colon does not imply a complete break like the full stop. It only makes a partial break and is at the same time a link between sentences appearing on the subject. It often implies that what follows at least partially explains and amplifies the sentence that comes before it. It is often used instead of a comma when it is followed by "and" or "or" or "but".*

35. *The Advanced Law Lexicon by P. Ramanatha Aiyer defines the punctuation semicolon as "According to well established grammatical rules, this is a point only used to separate parts of a sense more distinctly than a comma.*

> ***36.*** *The semi-colon and the comma are both used for the same purpose in punctuation, namely to divide sentences and parts of sentences, the only difference being that the semi-colon makes the division a little more prolonged than the comma.*"

6.10. The Hon'ble Supreme Court of India, in ***Mukund Dewangan v. Oriental Insurance Co. Ltd.***[7], held as follows:-

> " ***31.*** *It is a settled proposition of law that while interpreting a legislative provision, the intention of the legislature, motive and the philosophy of the relevant provisions, the goals to be achieved by enacting the same, have to be taken into consideration.*
>
> ***32.*** *In Principles of Statutory Interpretation by Justice G.P. Singh, it has been observed that a statute is an edict of a legislature and the conventional way of interpreting or construing a statute is to seek the intention of its maker. The duty of the judicature is to act upon the true intention of the legislature — men's or sentential logic. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which furthers the intention of the legislature.*"

6.11. In ***Reserve Bank of India Vs. Peerless General Finance & Investment Co. Ltd. and Ors.***[8], the Hon'ble Supreme Court of India held as follows:-

> " ***33.*** *Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the*

7 (2017) 14 SCC 663
8 (1987) 1 SCC 424

texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it."

6.12. Therefore, contextually and purposively reading Section 60(3), we have no hesitation in rejecting the submissions of learned Senior Counsel on behalf of the petitioner / personal guarantor. Thus, we answer this point that it is not necessary to transfer the proceedings, which are pending in I.B.C.No.1 of 2022 before the *DRT-II*, Chennai to the *NCLT*.

6.13. Further, even the bankruptcy order has been passed by the *DRT* on 08.08.2022 under Section 126 of *The IBC* and the only process which remains to be carried out is the Bankruptcy Trustee convening the meeting of the creditors and allotting the dividends and applying for the discharge order. Therefore, the proceedings cannot be transferred at this stage and we answer the point accordingly.

G. Point No.iii :

7. One unconscionable feature we find in this case is the manner in which the pleadings are made and the arguments are advanced by the petitioner is totally unconcerned with the huge borrowal and non-repayment of loan. Akin to an ascetic's aloofness to the worldly affairs, the petitioner, who is also the Managing Director of the Company, distances himself from the loan. For instance, paragraph No.4 of the affidavit filed before this Court reads as hereunder:-

> " ***4.*** *I state that the Account of Alectrona Energy Pvt Ltd* ***appears to have*** *been classified as a Non-performing Asset by the Respondent Bank in 29.08.2018. ...*"

7.1. The arguments are advanced without even remotely touching the debt or repayment. We find that the attitude of the petitioner to wriggle

out of liability is writ-large from the proceedings. Therefore, apart from dismissing the Revision Petition, we hold that the respondent bank will be entitled for a costs of Rs.1,00,000/-. We also direct the *DRT-II*, Chennai and the Bankruptcy Trustee to proceed with the matter as expeditiously as possible.

H. The Result :

8. In the result,

(i) This Civil Revision Petition i.e., C.R.P.No.2513 of 2022 shall stand dismissed;

(ii) The *DRT-II*, Chennai and the Bankruptcy Trustee shall proceed further and complete the proceedings in I.B.C.No.1 of 2022 as expeditiously as possible;

(iii) The respondent bank will be entitled for a costs of Rs.1,00,000/-;

(iv) Consequently, connected miscellaneous petition is closed.

(T.R., ACJ.) **(D.B.C., J.)**
30.03.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,

grs

To

The Debt Recovery Tribunal - II,
Chennai.

Pre-Delivery Order in

C.R.P.No.2513 of 2022
and C.M.P.No.12925 of 2022

30.03.2023