

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.9 of 2025

(Arising out of Order dated 14.11.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court – II) in RCP IB-21/ND/2024 Old No.-IB-422/ND/2024)

IN THE MATTER OF:

Mudraksh Investfin Pvt. Ltd.

...Appellant

Versus

Gursev Singh

...Respondent

Present:

For Appellant : Mr. Mrinal Harshwardhan, Mr. Iswar Mohapatra, Ms. Rituparna Patra, Ms. Akankrita Sinha, Mr. Kailash Ram, Advocates.

For Respondent : Mr. Rahul Gupta, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Financial Creditor has been filed challenging order dated 14.02.2024 passed by National Company Law Tribunal, New Delhi Bench (Court – II) by which order Application filed under Section 95, sub-section (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) filed by the Financial Creditor to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against the Personal Guarantor of the Corporate Debtor (“**CD**”) has been rejected. The Appellant aggrieved by the order rejecting the Application has come up in this Appeal.

2. Brief facts necessary to be noticed for deciding the Appeal are:

- i. The Principal Borrower – Mica Industries Limited has obtained loan of Rs.10 lakhs from the Appellant on 01.02.2023. The Respondent – Gursev Singh, provided a personal guarantee for repayment of the loan as taken by the Principal Borrower on 08.02.202.
 - ii. The Financial Creditor invoked the personal guarantee on 15.10.2023 and filed an Application CP IB No.422/2024 under Section 95, sub-section (1) of the IBC, which Application has been rejected by the Adjudicating Authority holding that it did not meet the threshold of Rs.1 crore. Aggrieved by which order, this Appeal has been filed.
3. We have heard Shri Mrinal Harshwardhan and Shri Iswar Mohapatra, learned Counsel appearing for the Appellant and Shri Rahul Gupta, learned Counsel appearing for the Respondent.
4. Learned Counsel for the Appellant in support of the Appeal submits that threshold limit for individuals prescribed under Section 78 of the IBC is Rs.1000/-. Section 95 Application is under Part-III of the IBC for which threshold is of Rs.1000/- only. Thus, for initiating personal insolvency against a Personal Guarantor, the debt requirement is of only Rs.1000/-. Hence, the Adjudicating Authority committed error in applying the threshold of Rs.1 crore for filing an Application, which is against the clear intendment of Sections 78 and 79 of the IBC. It is submitted that Even if the NCLT is the Fora for filing Section 95 Application against the Personal Guarantor, Section 4, which provides for threshold under Part-II, is not

applicable with respect to an Application under Part-III. Had the legislature intended to specify the threshold of Rs.1 crore for Personal Guarantor, the same would have been incorporated in Section 60. No separate threshold having been provided for an Application against the Personal Guarantor, threshold of Rs.1000/- alone shall be applicable. The fact that single Fora for insolvency resolution against both the CD and Personal Guarantor is provided as NCLT, cannot mean that for Personal Guarantor, debt threshold of Rs.1 crore is required to be fulfilled. The Adjudicating Authority committed error in relying on Notification dated 15.11.2019 issued by Central Government. Notification did not make any provision of threshold regarding insolvency resolution of Personal Guarantor. The Adjudicating Authority misinterpreted provision of Section 78 of IBC and has come to wrong conclusion that threshold is not fulfilled in the Application filed by the Appellant, which was for a debt of Rs.10 lakhs.

5. Learned Counsel for the Respondent refuting the submissions of learned Counsel for the Appellant submits that Section 60, sub-section (1) stipulates that the Adjudicating Authority for a CD and its Personal Guarantor shall be the NCLT in whose jurisdiction the CD has its registered office. The provisions of Section 60 provides that if a CIRP is initiated against the CD before a particular Adjudicating Authority, then the personal insolvency of a Personal Guarantor to that CD also be initiated before the same Adjudicating Authority. If the creditor cannot knock the doors of the NCLT seeking initiation of CIRP against the CD then the same creditor cannot approach the NCLT seeking initiation of

personal insolvency against the very same Personal Guarantor. The Appellant cannot maintain an Application under Section 7 against the CD – Mica Industries Ltd., hence, he is also precluded to file an Application under Section 95 against the Personal Guarantor of the CD.

6. We have heard the submissions of learned Counsel for the parties and have perused the records.

7. A short but very interesting question has arisen for consideration in this Appeal, i.e., what is the threshold for filing an Application under Section 95, sub-section (1) by the Financial Creditor against the Personal Guarantor. Whether the threshold is Rs.1 crore as provided in Section 4 or it is Rs.1000/- as provided in Section 78 of the IBC, is the question to be answered. Section 4, which provides for threshold for filing an Application for insolvency against the CD is Rs.1 crore with effect from 24.03.2020. Section 60 of the IBC provides for ‘Adjudicating Authority for corporate person’. Section 60, sub-section (1), (2), (3) and (4) are 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).”

8. A notification was issued by Central Government under Section 1, sub-section (3) of the IBC, by which various provisions of the Code were enforced. Notification dated 15th March, 2019 has been extracted by Adjudicating Authority in paragraph-10 of the order, which is as follows:

**“NOTIFICATION
New Delhi, the 15th November, 2019**

S.O. 4126(E).--In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st day of December, 2019 as the date on which the following provisions of the said Code only in so far as they relate to personal guarantors to corporate debtors, shall come into force:

- (1) clause (e) of section 2;
- (2) section 78 (except with regard to fresh start process) and section 79;
- (3) sections 94 to 187 [both inclusive];
- (4) clause (g) to clause (i) of sub-section (2) of section 239;
- (5) clause (m) to clause (zc) of sub-section (2) of section 239;
- (6) clause (zn) to clause (zs) of sub-section (2) of section 240;
- and;
- (7) section 249.”

9. On the date when Notification dated 15.11.2019 was issued, Central Government also notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. Section 3, sub-section (e) was also inserted defining personal guarantor to a CD by the said

Notification. Now we need to look into Sections 78 and 79 of the IBC, which find place in Part-III of the IBC. Section 78 provides as follows:

“78. Application. -

This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms where the amount of the default is not less than one thousand rupees:

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one lakh rupees.”

10. Section 79 defines the Adjudicating Authority, i.e., Debt Recovery Tribunal in Part-III. Section 79 is as follows:

“79. Definitions. -

In this Part, unless the context otherwise requires, -

(1) “Adjudicating Authority” means the Debt Recovery Tribunal constituted under subsection (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (51 of 1993);

.....”

11. Section 179, which deals with territorial jurisdiction, sub-section (1) of which is as follows:

“179. Adjudicating Authority for individuals and partnership firms. -

(1) Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person.”

12. Sub-section (1) begun with the expression subject to the provision of Section 60, the Adjudicating Authority, in relation to insolvency matters

of individuals and firms shall be the Debt Recovery Tribunal. The Notification dated 15.11.2019 came for consideration before the Hon'ble Supreme Court in ***Lalit Kumar Jain vs. Union of India and Ors. – (2021) 9 SCC 321*** where different aspects of insolvency resolution of Personal Guarantor have been examined and gone into. In ***Company Appeal (AT) (Ins.) No.2282 of 2024 – Anita Goyal vs. Vistra ITCL (India) Ltd. & Anr.*** one of the question raised by the Personal Guarantor was that with regard to insolvency resolution process of Personal Guarantor, the Adjudicating Authority is the Debt Recovery Tribunal and not the NCLT. This Tribunal in the said Appeal vide its judgment dated 23.02.2025 examined the aspect of the matter while relying on the judgment of the Hon'ble Supreme Court in ***Lalit Kumar Jain*** has come to the conclusion that Adjudicating Authority for Personal Guarantors of the CD is the NCLT. In the above judgment, the Report of the Insolvency Law Committee March 2018 was noticed, which has noticed the link between the insolvency resolution of the CD and the Personal Guarantor. In paragraph-22 of the judgment in ***Anita Goyal***, following has been noticed:

“**22.** For answering the issue raised in the Appeal(s) we need to first notice the ambit and scope of Section 60, which is the basis of the submission. We need to notice the Report of Insolvency Law Committee, March 2018, which noticed that Section 60 create a link between the insolvency resolution or bankruptcy process of the Corporate Debtor and the Personal Guarantor and the matters relating to same debt are dealt in the same Tribunal. The Committee recommended for certain amendments. Paragraph 23 of the Report provides as follows:

“**23. LINKING PROCEEDINGS OF CORPORATE GUARANTOR WITH CORPORATE DEBTOR**

23.1 Section 60 of the Code requires that the Adjudicating Authority for the corporate debtor and personal guarantors should be the NCLT which has territorial jurisdiction over the place where the registered office of the corporate debtor is located. This creates a link between the insolvency resolution or bankruptcy processes of the corporate debtor and the personal guarantor such that the matters relating to the same debt are dealt in the same tribunal. However, no such link is present between the insolvency resolution or liquidation processes of the corporate debtor and the corporate guarantor. It was decided that section 60 may be suitably amended to provide for the same NCLT to deal with the insolvency resolution or liquidation processes of the corporate debtor and its corporate guarantor. For this purpose, the term “corporate guarantor” will also be defined.”

13. This Tribunal noticed the judgment of the Hon’ble Supreme Court in **Lalit Kumar Jain**, where Hon’ble Supreme Court has taken the view that Parliamentary intent was to treat Personal Guarantors differently from other categories of individuals, which is referred in Part-III, i.e. Section 78 of the IBC. The relevant paragraph of the Hon’ble Supreme Court in **Lalit Kumar Jain** has been noticed by this tribunal in **Anita Goyal**’s judgment. It is useful to notice paragraphs 31, 32, 33 and 34 of **Anita Goyal**’s judgment, which are as follows:

“**31.** The above Notification dated 15.11.2019 came to be challenged before the Hon’ble Supreme Court in Lalit Kumar Jain vs. Union of India & Ors. (Transferred Case (Civil) No.245/2020). One of the grounds to challenge the notification was whether provisions of IBC against Personal Guarantors have been enforced, which is discriminatory and is violative of Article 14 of the Constitution of India. In reference to challenge to the aforesaid

Notification, the Hon'ble Supreme Court had occasion to consider the Scheme of IBC. The Hon'ble Supreme Court noticed the 2018 amendment and the Report of the Insolvency Law Committee. In paragraph 92 of the judgment, the Hon'ble Supreme Court made following observation:

“92. As noticed earlier, Section 60 had previously, under the original Code, designated the NCLT as the adjudicating authority in relation to two categories: corporate debtors and personal guarantors to corporate debtors. The 2018 amendment added another category: corporate guarantors to corporate debtors. The amendment seen in the background of the report, as indeed the scheme of the Code (i.e., Section 2 (e), Section 5 (22), Section 29A, and Section 60), clearly show that all matters that were likely to impact, or have a bearing on a corporate debtor's insolvency process, were sought to be clubbed together and brought before the same forum. Section 5 (22) which is found in Part II (insolvency process provisions in respect of corporate debtors) as it was originally, defined personal guarantor to say that it “means an individual who is the surety in a contract of guarantee to a corporate debtor.”...”

32. In paragraph 96 of the judgment, following has been held by the Hon'ble Supreme Court:

“96. This court in V. Ramakrishnan (supra), 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 been notified. This meant that proceedings against personal guarantors stood outside the 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.

33. The observation by the Hon'ble Supreme Court in the last line is relevant which reads "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". The Hon'ble Supreme Court further held that Parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of the two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, from whom the Adjudicating authority was common with the corporate debtor to whom they had stood guarantee. In paragraphs 100 and 101, following was laid down:

"100. It is clear from the above analysis that Parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the Adjudicating authority was common with the corporate debtor to whom they had stood guarantee. The

fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to such corporate persons, does not lead to incongruity. On the other hand, there appear to be sound reasons why the forum for adjudicating insolvency processes – the provisions of which are disparate- is to be common, i.e through the NCLT. As was emphasized during the hearing, the NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realizing some part of the creditors' dues from personal guarantors.

101. In view of the above discussion, it is held that the impugned notification is not an instance of legislative exercise, or amounting to impermissible and selective application of provisions of the Code. There is no compulsion in the Code that it should, at the same time, be made applicable to all individuals, (including personal guarantors) or not at all. There is sufficient indication in the Code- by Section 2(e), Section 5(22), Section 60 and Section 179 indicating that personal guarantors, though forming part of the larger grouping of individuals, were to be, in view of their intrinsic connection with corporate debtors, dealt with differently, through the same adjudicatory process and by the same forum (though not insolvency provisions) as such corporate debtors. The notifications under Section 1(3), (issued before the impugned notification was issued) disclose that the Code was brought into force in stages, regard being had to the categories of persons to whom its provisions were to be applied. The impugned notification, similarly inter alia makes the provisions of the Code applicable in respect of personal guarantors to corporate debtors, as another such category of persons to whom the Code has been extended. It is held that the impugned notification was issued within the

power granted by Parliament, and in valid exercise of it. The exercise of power in issuing the impugned notification under Section 1(3) is therefore, not ultra vires; the notification is valid.”

34. The above judgment of the Hon’ble Supreme Court also clearly emphasized that Personal Guarantor of the Corporate Debtor has been treated as a separate species of individuals. Hence, provision regarding Personal Guarantor of the Corporate Debtor have been enforced and when we read Section 60, sub-sections (1) and (2), the conclusion is inescapable that for insolvency resolution process of personal guarantor, the jurisdiction is with the NCLT.”

14. Paragraphs 100 and 101 of the Hon’ble Supreme Court in **Lalit Kumar Jain** clearly noticed the intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate process being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the Adjudicating Authority was common with the CD to whom they had stood guarantee. The Hon’ble Supreme Court in paragraph-100 laid down following:

“**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)”

15. The fact that process of insolvency in Part-III is to apply to individuals, whereas the process related to CD set out in Part-II, apply to CD, does not lead to incongruity. On the other hand, there appears to be sound reasons why for Forum for adjudicating insolvency process – the provisions of which are disparate – is to be common, i.e. through NCLT. When NCLT is the Forum for initiating the CIRP against the Personal Guarantor and the process against the Personal Guarantor are to be taken by the same Forum before whom the insolvency resolution process of the CD is to be held, we are persuaded to accept the submission of the learned Counsel for the Respondent that threshold for the Application to be filed by against the Personal Guarantor before the NCLT shall be Rs.1 crore. The threshold of Rs.1000/- has been provided for an Application under Section 78 with respect to matter relating to fresh start, insolvency and bankruptcy of individuals or partnership firms, with regard to whom the Adjudicating Authority is the Debt Recovery Tribunal. When clear exception has been carved out in Section 78 by providing adjudicating authority as NCLT for Personal Guarantors of the CD, the threshold of Rs.1000/- as provided for filing an Application by individuals and partnership firms are not applicable, when Application is filed under Section 95(1) before the NCLT.

16. On 15.11.2019 when Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was notified, the definition of Adjudicating Authority in Section 3, sub-section (1) (a) provided as follows:

“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);

17. The Rules clearly contemplate that Adjudicating Authority for the purposes of Section 60 is National Company Law Tribunal and for other cases, it is Debt Recovery Tribunal.

18. Learned Counsel for the Appellant has referred to judgment of NCLAT, Chennai Bench in ***Mahendra Kumar Agarwal vs. PTC India Financial Services Ltd. & Anr. – (2023) SCC OnLine NCLAT 321*** where also this Tribunal had occasion to consider Section 60, Section 179 and Section 95, sub-section (1). This Tribunal in ***Mahendra Kumar Agarwal*** referred to the judgment of Hon’ble Supreme Court in ***Lalit Kumar Jain*** and has laid down following in paragraph 74:

“74. In ' Law', 'Guarantee', is an ' independent obligation' of the 'Guarantor', which is evident from the 'Personal Guarantee', and

that there is 'no requirement', enabling a 'Person', to 'exhaust', any 'remedy', against a 'Corporate Debtor', prior to the issuance of 'Demand', in terms of 'Personal Guarantee' and in the present case, Clauses 3, 4 and 6 of the 'Personal Guarantee', cannot be lost sight off. In reality, Section 60 of the Code, provides for only a 'Single Fora', in respect of an 'adjudication' of 'Insolvency Proceedings', against both the 'Corporate Debtor' and the 'Personal Guarantor' of the 'Corporate Debtor', Viz. 'Adjudicating Authority'/'Tribunal'."

19. This Tribunal in the above case noticed that for Personal Guarantor Section 60 provides for Single Fora with regard to adjudication of insolvency proceedings against both the CD and the Personal Guarantor. The said judgment relied by the Appellant in no manner support the submissions of the Appellant. In **Anita Goyal's** judgment, this Tribunal rejected the submission of the Appellant that NCLT has no jurisdiction to entertain Section 95 Application filed by the Financial Creditor against the Personal Guarantor.

20. Learned Counsel for the Respondent relied on judgment of this Tribunal in **State Bank of India vs. Mahendra Kumar Jajodia – Company Appeal (AT) (Ins.) No.60 of 2022** decided on 27.01.2022, where this Tribunal has held that Adjudicating Authority with regard to insolvency resolution process of Corporate Debtor including Corporate Guarantor or Personal Guarantor shall be the NCLT. In paragraph-10 of the judgment, following was laid down:

“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.”

21. The learned Counsel for the Respondent has relied on another judgment of this Tribunal ***Shapoorji Pallonji Finance v. Rekha Singh – Company Appeal (AT) (Ins.) No.397 of 2022***, where the question arose regarding the maintainability of Section 95 Application. The question came for consideration as to whether against the CD, second insolvency of Section 95 Application could have been proceeded or not?. Submission of both the parties were noticed in paragraph 14 of the judgment, which is as follows:

“14. For argument sake, we proceed on the premise that on 31.03.2021 the asset size of the JFIL became Rs.407 Crores. The application under Section 95 was filed by Financial Creditor on 03.06.2021 on which date last audited Balance Sheet was only the Balance Sheet as on 31.03.2020. Last Balance Sheet referred to in the Notification dated 18.11.2019 has to be treated as last audited Balance Sheet from the date the application can be filed. In event, the Balance Sheet as on 31.03.2021 was audited after filing of the application and let us assume that the asset size is reduced to less than Rs.500 Crores, what will be the consequence, whether the Adjudicating Authority who has jurisdiction to proceed with the application, shall not be having any more jurisdiction to proceed with the application is the question which needs to be answered. It is submission of learned counsel for both the parties that jurisdiction to proceed against the Personal Guarantors under Section 95 shall be dependent on entitlement to proceed against the Financial Service Provider i.e. JFIL and in event there is no jurisdiction to proceed against the Financial Service Provider, there is no jurisdiction to proceed against the Personal Guarantors. We, thus, have to

proceed to examine the issue as per above submission of learned counsel for the parties.”

22. This Tribunal held ultimately that Application under Section 7 was maintainable, hence, the Application under Section 95 was also maintainable. In paragraphs 33 and 34, following have been laid down:

“33. We having held that on the date when application was filed under Section 95 by the Financial Creditor against the Personal Guarantor an application could have filed against the Financial Service Provider on the basis of last Balance Sheet which had asset size of more than Rs.500, the application filed by the Financial Creditor against the Personal Guarantor was fully maintainable.

34. In view of the foregoing discussion, we hold that the Adjudicating Authority has committed error in allowing the applications filed by the Personal Guarantors and dismissing the Company Petitions. All the Appeals are allowed. Order of the Adjudicating Authority dated 22.02.2022 is set aside. The Company Petitions CP No. (IB) – 25/95/JPR/2021, CP No. (IB) – 26/95/JPR/2021 and CP No. (IB) – 27/95/JPR/2021 are held maintainable and are revived before the Adjudicating Authority to be proceeded in accordance with law.”

23. Learned Counsel for the Respondent relied on the aforesaid judgment to support its submission that unless an Application against the CD for CIRP is maintainable under Part-II, no Application for insolvency of Personal Guarantor can be maintained. We have noticed above that personal insolvency of Personal Guarantor has been synchronized with insolvency of the CD. We, thus, are not persuaded to accept the submission of the Appellant that threshold for filing Section 95

Application against the Personal Guarantor is Rs.1000/- as provided in Section 78, only needs to be fulfilled.

24. We may refer to one judgment of this Tribunal in ***Company Appeal (AT) (Ins.) No.2121of 2024 in Aarti Singal vs. State Bank of India and Anr.*** dated 03.04.2025. The above Appeal was filed by Personal Guarantor challenging the order admitting Section 95 Application filed by the State Bank of India. The State Bank of India raised a preliminary objection to the maintainability of the Appeal stating that order against Personal Guarantor having been passed under Part-III of the IBC, no Appeal is maintainable under Section 61 of the IBC. It was contended that the Appeal under Section 61 before this Tribunal is maintainable against an order passed under Part-II of the IBC. The said objection was noticed and parties were heard and the objection was rejected and it was held that proceedings against Personal Guarantor are initiated before the NCLT under Section 60 of the IBC, hence, the Appeal under Section 61 is maintainable and the objection that Personal Guarantors are covered by Part-III, no Appeal lies under Section 61 is rejected. In paragraphs 22 and 23, following was held:

“**22.** Learned counsel for the appellant has also relied on the judgment of this Tribunal in ***‘Anita Goyal’ Vs. ‘Vistara ITCL (India) Ltd. & Anr.’ reported in 2025 SCC OnLine NCLAT 37***, where the question was raised regarding the forum of initiating insolvency resolution process against the personal guarantor of the corporate debtor and this Tribunal after considering all relevant provisions of the IBC held that NCLT has jurisdiction to entertain Section 95 application filed by the financial creditor. Conclusions were recorded in paragraph 43, which are as follows:

“43. In view of the foregoing discussions, we are not proceeded to accept the submissions of the Appellant that NCLT Delhi has no jurisdiction to entertain Section 95 Application filed by the Financial Creditor against the Personal Guarantor for initiating insolvency resolution process. We do not find any substance in any of the submissions raised by the Appellant. There is no merit in the any of the Appeal(s). Both the Appeal(s) are dismissed accordingly. There shall be no order as to costs.”

23. When NCLT is a forum for filing Section 95 application which legal position is not even refuted by the SBI, who itself has filed the application under Section 95, submission of the respondent that no appeal shall lie against said order cannot be accepted. The law by the Hon’ble Supreme Court in **‘Lalit Kumar Jain’ (Supra)** is clear and categorically lays down that insolvency resolution process of personal guarantor have been integrated in with the insolvency resolution process of the corporate debtor and the forum being Section 60 i.e., NCLT, appeal against an order of NCLT shall lay to NCLAT.”

25. There is one more aspect, which cannot be ignored. Initiation of insolvency resolution process against the Personal Guarantor has serious consequences. Accepting the submission that on default of a debt of Rs.1000/-, personal insolvency against the Personal Guarantor should be permitted to be initiated, shall lead to innumerable cases of insolvency against Personal Guarantors, which shall frustrate the purpose, for which exception was carved for Personal Guarantors of Corporate Debtors.

26. We, thus, reject the submission of the Appellant that for insolvency resolution against the Personal Guarantor, threshold of only Rs.1000/- needs to be fulfilled.

27. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 Application filed by the Appellant, which was filed for a debt of Rs.10 lakhs, as not fulfilling the threshold. In result, the Appeal is dismissed. The parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

NEW DELHI

2nd May, 2025

Ashwani