NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-97(ND)2022

IN THE MATTER OF :

Indiabulls Housing Finance Limited
Having its office at :
M-62 & 63, 1st Floor,
Connaught Place,
New Delhi - 110001 ...**Financial Creditor/ Applicant**

Versus

Dr. Subhash Chandra
B-10, Lawrence Road,
Industrial Area
New Delhi-110035
Also at :
18th Floor, Wing A
Marathon Futurex,
N.M. Joshi Marg,
Lower Parel, Mumbai,
Maharastra – 400013 ....**Personal Guarantor/ Respondent**

Order Delivered on: 30.05.2022

SECTION: 95(1) of IBC, 2016

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	:	Sr. Adv. Krishnendu Datta, Adv. Rini Badoni, Adv. Sanjana Bakshi, Adv. Chirag Sharma, Adv. Siddharth Dey, Adv. Sakshi Tibrewal, Adv. Mehak Khurana, Advocates
For the Respondent	:	Sr. Adv. Arvind Nayar, assisted by Adv. Ritwika Nanda, Adv. Petal Chandhok, Adv. Akshay, Adv. Eshna Kumar

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Indiabulls Housing Finance Limited **(the 'Applicant/Financial Creditor')** has preferred the present Application under Section 95(1) of IBC, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019) for initiating the Insolvency Resolution Process **(the "IR Process")** against Dr. Subhash Chandra (hereinafter, referred to as **Personal Guarantor/Debtor),** who provided personal guarantees to the loan facilities secured by M/s. Vivek Infracon Private Limited **(the 'Corporate Debtor')**.

2. It is submitted by the Applicant that the Financial Creditor is a housing finance company primarily engaged in lending business especially home loans, loan against property etc. The Financial Creditor entered into a loan agreement with Vivek Infracon Private Limited, the 'Corporate Debtor', under which it extended the loan facilities of Rs 170 Crore to the Corporate debtor.

3. It has been further submitted that the Borrower was to maintain Security Cover-Securities in terms of the loan agreement. Aggrieved by the failure to maintain the Minimum Security Cover-Securities, the Financial Creditor wrote letter/reminder dated 14.11.2018 and 15.11.2018 to the Corporate Debtor stating that the non-compliance with the notice dated 14.11.2018 would be considered as Event of Default.

4. That the Applicant has furnished the following list of the important dates and events in its application, which have led it to filing of the instant application:

LIST OF DATES AND EVENTS

Date	Event
13.12.2016	The Financial Creditor, Indiabulls Housing Finance Limited, entered into a Loan Agreement with the Corporate Debtor, Vivek Infracon Private Limited for Rs. 170 crores.
17.12.2016	In pursuance of the Loan Agreement(s), an amount of Rs. 115,95,00,000/- (Rupees One Hundred and Fifteen Crore Ninety Five Lakh Only) was disbursed to the Corporate Debtor.
02.01.2017	To secure the amounts advanced under the Loan Agreement entered into with the Corporate Debtor, along with other loan agreements with other persons, a Deed of Hypothecation was executed by the Corporate Debtor, and other persons, in favour of the Financial Creditor.
18.08.2017	A Declaration and Acknowledgment was executed by the Corporate Debtor, and other persons in favour of the Financial Creditor depositing title deeds of the mortgaged properties.
14.11.2018	The Financial Creditor sent a notice to the Corporate Debtor informing them about non-maintenance of minimum Security Cover-Securities (as stipulated in the Loan Documents). Further, the Financial Creditor called upon the Corporate Debtor and Other Borrowers, to either pay a sum of INR 287,85,49,976/- (Rupees Two Hundred and Eighty Seven Crores Eighty Five Lakh Forty Nine Thousand Nine Hundred and Seventy Six only) or pledge additional shares to the sum of INR 341,82,78097/ (Rupees Three Hundred and Forty One Crores Eighty Lakh Seventy Eight Thousand and Ninety Seven only).
15.11.2018	The Financial Creditor issued a letter to the Corporate Debtor and Other Borrowers, as a reminder to the pay the funds or provide additional

	security to maintain the Security Cover-Securities.
19.11.2018	The Corporate Debtor, Co-Borrower and Other Borrowers gave an Undertaking to prepay/foreclose the Loan in favour of the Financial Creditor stating that an amount of Rs. 50 crores (towards the principal) shall be prepaid by the Corporate Debtor and Other Borrowers on or before 30.11.2018 and the balance total outstanding shall be prepaid/foreclosed on or before 15.12.2018.
29.11.2018	The Corporate Debtor, Co-Borrower and Other Borrowers, gave an Additional Undertaking stating agreeing *inter alia*, (i) to make prepayment of Rs. 100 crores, to be appropriated towards the principal amount of the loan, by 31.12.2018, (ii) cause Dr. Subhash Chandra to execute the deed of guarantee by 05.12.2018 to secure all obligations of the obligor(s) including payment of the borrowers dues to the Applicant, and (iii) to execute first-ranking mortgage over the properties as described in Schedule II of the Additional Undertaking, by 31.12.2018.
05.12.2018	Deed of Guarantee executed by Dr. Subhash Chandra (Respondent) in favour of the Financial Creditor, agreeing, *inter alia,* to pay the Lender Rs. 726 crores upon failure of the Corporate Debtor, Co-Borrower and other Borrowers, to perform their obligations under the Loan Documents.
04.02.2019	The Financial Creditor sent notice to the Corporate Debtor, Co-Borrower, Guarantor and the Other Borrowers seeking payment of entire outstanding amount as under the four Loan Agreements, thereby *inter alia* recalling the loan facility and invoking the personal guarantee of the Respondent.
18.01.2022	A Demand Notice was sent to the Guarantor under Section 95(4)(b) read with Rule 7(1) of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules 2019 seeking repayment of dues to the tune of **Rs. 178,78,52,577/- (Rupees One Hundred Seventy Eight Crore Seventy Eight Lakh Fifty Two Thousand Five Hundred and Seventy Seven only)** including pending TDS, in lieu of the loan facility granted to the Corporate Debtor and Co-Borrower.
27.01.2022	The Hon'ble National Company Law Appellate Tribunal passed a judgment in **State Bank of India v. Mahendra Kumar Jajodia, CA (AT) Ins. No. 60 of 2022**, holding that the National Company Law Tribunal has jurisdiction to initiate Insolvency Resolution Process

	against the Personal Guarantor even in the absence of a pending CIRP against the Corporate Debtor before the National Company Law Tribunal.
	Hence, the present Application.

5. That the Applicant has provided detailed particulars of the financial transaction in Part III of its Application (pg.16-20 of the application), pursuant to which it has claimed a total debt of Rs.178,78,52,577/- and mentioned the date of 08.02.2019, on which the default has occurred. The relevant extracts of the Part III of the Application are reproduced below :

Part-III

PARTICULARS OF DEBT		
1.	**Total debt (including any interest or penalties)**	The Financial Creditor is a housing finance company providing housing finance including home loans. Rs. 178,78,52,577/- (Rupees One Hundred Seventy Eight Crore Seventy Eight Lakh Fifty Two Thousand Five Hundred and Seventy Seven only)
2.	**Amount in default**	Rs. 178,78,52,577/- (Rupees One Hundred Seventy Eight Crore Seventy Eight Lakh Fifty Two Thousand Five Hundred and Seventy Seven only)
3.	**Date on which debt was due**	**04.02.2019** The Financial Creditor sent notice to the Corporate Debtor, Co-Borrower , Guarantor along with Other Borrowers, seeking payment of the entire outstanding amount and recalling the loan facility and invoking the Personal Guarantee dated 05.12.2018.

		08.02.2019 Default occurred. **18.01.2022** Demand Notice under Section 95(4)(b) of the IB Code, read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personnel Guarantors to Corporate Persons) Rules, 2019 on the Respondent demanding the Payment of the unpaid debt in default amounting to Rs. 178,78,52,577/- The default is continuing and subsisting.
4.	**Date on which default occurred**	**08.02.2019**
5.	**Nature of the debt**	Guarantee given in respect of term loan
6.	**Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)**	• No shares have been have been pledged by the Guarantor, Dr. Subhash Chandra. However, the shares are pledged for securing repayment has been created by other parties. • No mortgage or hypothecation has been created by Guarantor, Dr. Subhash Chandra. However, mortgage/ hypothecation for securing repayment has been created by other parties.
7.	**Unsecured debt (as applicable)**	Subject to Sr. No. 6
8.	**Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)**	N.A.

		and marked as **ANNEXURE A-5**.
14.	**A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred (attach a copy)**	Copy of the Statement of Account is annexed herewith and marked as **ANNEXURE A-6.** Copy of Foreclosure statement dated 17.01.2022 is annexed herewith and is marked as **ANNEXURE A-7.**
15.	**List of documents attached to this application in order to prove the existence of debt and the amount in default**	1. Sanction Letter dated 09.12.2016 2. Loan Agreement dated 13.12.2016 3. Deed of Guarantee dated 05.12.2018 4. Guarantee Invocation Notice dated 04.02.2019 5. Demand notice dated 18.01.2022 6. Statement of Account 7. Foreclosure statement dated 17.01.2022 8. Letters dated 14.11.2018 and 15.11.2018 is annexed herewith and is marked as **ANNEXURE A- 8 (COLLY).** 9. Undertaking dated 19.11.2018 is annexed herewith and is marked as **ANNEXURE A-9.** 10. Additional undertaking dated 29.11.2018 is annexed herewith and is marked as **ANNEXURE A-10.**

9.	**Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)**	N.A.
10.	**Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)**	N.A.
11.	**Record of default with the information utility, if any (attach a copy)**	N.A.
12.	**Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)**	N.A.
13.	**Provision of law, contract or other document under which debt has become due (attach a copy)**	Copy of the Sanction Letter dated 09.12.2016 is annexed herewith and marked as **ANNEXURE A-1**. Copy of the Loan Agreement dated 13.12.2016 with Vivek Infracon Private Limited (Corporate Debtor) and Essel Home Private is annexed herewith and marked as **ANNEXURE A-2**. Copy of the Deed of Guarantee dated 05.12.2018 is annexed herewith and marked as **ANNEXURE A-3**. Copy of the notice dated 04.02.2019 is annexed herewith and marked as **ANNEXURE A-4**. Copy of the Demand Notice dated 18.01.2022 is annexed herewith

16.	**Statement by creditor in respect of excluded debts**	I, Uttam Kumar for Indiabulls Housing Finance Limited for which the insolvency resolution process application is filed does not include any- *(i)* liability to pay fine imposed by a court or tribunal; *(ii)* liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; *(iii)* liability to pay maintenance to any person under any law for the time being in force; *(iv)* liability in relation to a student loan; *(v)* any other debt prescribed under section 79(15)(e) of the Code.
17.	**If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code**	I do not agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan.

6. That the Financial Creditor/Applicant has annexed the Deed of Guarantee dated 05.12.2018 (pg.61-76 of the application), executed by Dr. Subhash Chandra, the Personal Guarantor in favour of the Indiabulls Housing Finance Limited to secure the loans extended to the Corporate Debtor Vivek Infracon Private Limited.

7. That the Applicant has sent one notice dated 04.02.2019 (pg.77-89 of the application) to the Corporate Debtor and Personal Guarantor stating that the Event of Default has occurred and the Guarantee advanced by the Guarantor stands invoked.

8. It is further averred by the Applicant that it had sent a Demand Notice dated 18.01.2022 (pg.37-42 of the Additional Affidavit dated 16.02.2022) in Form B under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor demanding the payment of total outstanding amount of Rs.170,00,00,000/- (One Hundred and Seventy Crore) only.

9. That during the course of hearing on 14.02.2022, the Ld. Sr. Counsel for the Personal Guarantor appeared before this Adjudicating Authority and submitted that he has not received the copy of the Application. Accordingly, this Bench directed the Applicant to serve the copy of the application to the Personal Guarantor.

10. That on 22.04.2022, both sides addressed their arguments. It was confirmed by the Ld. Sr. Counsel appearing for the Personal Guarantor that he has received the copy of application. He further submitted that as on the date of filing of this application under Section 95 of IBC, 2016, there was no application pending in NCLT to initiate CIR process of the Corporate Debtor. Per Contra, Ld. Sr. Counsel appearing for the Applicant stated that after filing of the present application, an application under Section 7 of IBC, 2016 bearing no. (IB)-236(PB)/2022, has been filed in NCLT to initiate the CIR process of the Corporate Debtor, which is under consideration of the Principal Bench.

11. That the Applicant/ Financial Creditor has filed its written submissions, scanned copy of which is reproduced overleaf :

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

COMPANY PETITION (IB) NO. 97 OF 2022

IN THE MATTER OF:

INDIABULLS HOUSING FINANCE LIMITED **...FINANCIAL CREDITOR**

VERSUS

DR. SUBHASH CHANDRA **... RESPONDENT/PERSONAL GUARANTOR**

WRITTEN SUBMISSIONS ON BEHALF OF THE FINANCIAL CREDITOR

1. The present Written Submissions are being filed by the Financial Creditor in terms of directions of this Hon'ble Tribunal dated 22.04.2022.
2. That the Financial Creditor has filed the present application ***("The Application")*** under section 95 of the Insolvency and Bankruptcy Code, 2016 ***("The Code").*** The facts leading up to the filing of The Application are set out hereinafter.
3. The Financial Creditor had entered into a loan agreement dated 13.12.2016 ***("Loan Agreement")*** with one Vivek Infracon Pvt. Ltd.***("Corporate Debtor")*** The said loan agreement is at **Annexure A-11 of the Affidavit of Counsel, at page 4.** By virtue of the said agreement, the Financial Creditor had lent an amount of Rs. 170,00,00,000/- (Rupees One Hundred and Seventy Crore Only) to the Corporate Debtor ***("Loan Amount")***. The sanction letter in respect of the Loan Amount is at **Annexure A-1 of The Application, at page 24.**
4. In order to secure the Loan Amount, the Respondent/ Personal Guarantor herein executed a Deed of Guarantee ***("Personal Guarantee")*** dated 05.12.2018 **(Annexure A-3 of The Application, at page 61)**. As per Schedule I of the Personal Guarantee **(at page 72 of The Application)**, the guarantee amount stood at Rs. 726,00,00,000/- (Rupees Seven Hundred and Twenty Six Crore Only), which included the Loan Amount, as is evident from schedule II along with the Personal Guarantee **(at page 73 of The Application)**, which clearly mentions the Loan Agreement.
5. The Personal Guarantee was invoked by the Financial Creditor by notice dated 04.02.2019 **(Annexure A-4 at page 77 of The Application).** The same was, *inter alia*, addressed to the Respondent **(Annexure A-4, page 77 of The Application at page 78)**. Further, in the said notice, it was clearly mentioned that the Personal Guarantee stood invoked in view of the failure of the Corporate Debtor to pay the outstanding amount to the Financial Creditor **(Annexure A-4, page 77 of The Application at page 80).**
6. Further, the Financial Creditor has also issued a demand notice dated 18.01.2022 **(Annexure A-12 of the Affidavit of Counsel, at page 37)**, as per Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, upon the Respondent/Personal Guarantor. In the said demand notice, it is clearly mentioned **(at page 38)** that the said notice is in respect of the default committed by the Corporate Debtor in repayment of the Loan Amount.
7. Additionally, it is apposite to mention here that an application for initiating insolvency against the Corporate Debtor, being C.P. (IB) 236/2022 titled "Indiabulls Housing Finance Limited vs. Vivek Infracon Private Limited" is pending before the National Company Law Tribunal, Principal Bench, New Delhi, wherein the notice was issued on 01.04.2022. Copies of the order dated 01.04.2022 issuing notice upon the Corporate Debtor and order dated 11.04.2022, directing the Corporate Debtor to file its reply are annexed herewith as **Annexure P-1 (Colly).**
8. The present Application has therefore, been filed before this Hon'ble Tribunal in accordance with Section 60(2) which mandates that an application relating to resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate

debtor shall be filed before such National Company Law Tribunal where CIRP or liquidation proceeding of such corporate debtor is pending.

9. Therefore, the Application fulfils the requirements under Section 95 of the Code. Further, as per the judgment of the Hon'ble National Company Law Tribunal *("NCLAT")* in ***Ravi Ajit Kulkarni vs. State Bank of India (Company Appeal (AT) (Insolvency) No. 316 of 2021, at Paras 41, 42)***, limited notice to the Personal Guarantor only for securing his presence has been issued to him. Consequently, since at the stage of appointment of the resolution professional, no hearing is to be afforded to the Personal Guarantor, this Hon'ble Tribunal ought to proceed under Section 97 of the Code. Further, it is pertinent to mention that, disputes, if any, can be raised by the Personal Guarantor only at the stage of Section 100.

10. The contention made on behalf of the Personal Guarantor that an application under Section 95 of the Code can only be filed in case the Corporate Insolvency Resolution Process ***("CIRP")*** of the Corporate Debtor has been commenced and undergoing falls foul of the following judgments:

    a) ***PNB Housing Finance Limited vs. Mohit Arora (Company Petition No. (IB)-395(ND) 2021)*** wherein it was observed: *" Hence we conclude that in a situation where Application(s) in relation to the Corporate Debtor for initiation of CIRP is pending at National Company Law Tribunal (NCLT) then, initiation of CIRP of the Corporate Debtor is not a prerequisite for maintainability of an application under Section 95 of the IBC, 2016 filed for initiating IR Process against the Personal Guarantor of that Corporate Debtor before the NCLT." **(para 33).***
    b) ***Rohit Nath vs. KEB Hana Bank Ltd., (C.R.P (PD) No. 1289 of 2021)***, it was observed: *"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..." (para 22)***

11. In view of the above, it is humbly submitted that this Hon'ble Tribunal may kindly be pleased to appoint a Resolution Professional, in respect of the Personal Guarantor, as per section 97 of The Code.

FILED THROUGH

For **JAITLEY AND BAKHSHI**
48, TODARMAL ROAD,
NEW DELHI-110019
+91-9871491071, 9599779581
EMAIL: filingstatus@jaitleyandbakhshi.com

12. That the Ld. Sr. Counsel for the Personal Guarantor argued that since there is no CIR proceeding initiated against the Corporate Debtor, therefore, the present application is not maintainable. That the Personal Guarantor has also filed its written submissions, scanned copy of which is reproduced below:

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI
COMPANY PETITION (IB) NO. 97 OF 2022

IN THE MATTER OF :

INDIABULLS HOUSING FINANCE LTD. .... FINANCIAL CREDITOR

VERSUS

DR. SUBHASH CHANDRA ...... RESPONDENT / PERSONAL GUARANTOR

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT / PERSONAL GUARANTOR

1. The instant Application has been preferred on behalf of the Financial Creditor under Section 95 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

2. It is stated that the instant Application has been preferred against the Respondent / Personal Guarantor purportedly in regard and

3. Essential Facts

   3.1. Corporate Debtor – Vivek Infracon Pvt. Ltd. *(@ pg. 2)*
   3.2. Loan Agreement dated 13.12.2016 for an amount of Rs. 170,00,00,000/- (Rupees One Hundred and Seventy Crores Only)
   3.3. Deed of Guarantee dated 05.12.2018

4. **Submissions on behalf of the Respondent / Personal Guarantor**

A. **The instant Application is not maintainable before this Ld. Tribunal and ought to be dismissed.**

5. Admittedly, no corporate insolvency resolution process and /or liquidation proceeding against the Corporate Debtor is pending before the Hon'ble NCLT.
6. The Respondent / Personal Guarantor in the instant case is an "Individual".
7. It is stated that PART – III of the IBC bearing heading "**Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms**" is applicable to insolvency proceedings against 'individuals'.
8. By way of the Notification dated. 15.11.2019, various provisions of Part – III of the IBC was notified with effect from 01.12.2019, inter alia, including Sections 79, 95 and 179 of the IBC.
9. As per Section 79(1) of the IBC: "Adjudicating Authority" for the purposes of Part – III of the IBC has been defined as under :

   "(1) "Adjudicating Authority" means the Debt Recovery Tribunal constituted under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;"

10. As per Section 95(1) of the IBC, a creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process. The relevant extract is reproduced as under :

   *"**95.** (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application."*

11. Furthermore, in terms of Section 179 of the IBC, the 'Adjudicating Authority" in relation to insolvency matters of individuals is the Debt Recovery Tribunal and not the NCLT. This provision is subject to Section 60 of the IBC. The relevant extract of Section 179 IBC is reproduced hereunder :

   "179. (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. Thus, on a conjoint reading of Section 95(1) with Section 79(1) and Section 179 of the IBC, a creditor may apply to the jurisdictional Debts Recovery Tribunal for initiating an insolvency resolution process against appropriate persons under Section 95 of the Code.
13. It is stated that Section 179(1) of the IBC is subject to the provisions of Section 60 of the IBC.
14. Section 60 of the IBC, which is included in Part II thereof, identifies the adjudicatory authority in relation to insolvency resolution and liquidation for corporate persons.
    14.1. Section 60(1) of the Code mandates that insolvency resolution and liquidation for corporate persons, including corporate debtors and personal guarantors, may be brought before the National Company Law Tribunal having territorial jurisdiction over the places where the registered office of the corporate person is located. However, a "corporate debtor" is defined in Section 3(8) of the IBC to mean a corporate person who owes a debt to any person and a "corporate person", in turn, is defined in Section 3(7) of the Code to mean a company, a limited liability partnership firm or any person incorporated with limited liability under any law for the time being in force but not including any financial service provider.
    14.2. The text of Section 60(2) provides 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. In such as case, as per Section 60(4) of the IBC, the NCLT shall be vested with powers of the DRT.
15. It is stated that an 'individual' like the Respondent in the instant case is not a corporate debtor or a corporate person within the definitions ascribed to such expressions in the IBC. Furthermore, no "corporate insolvency process" and/or liquidation proceedings are pending against the Corporate Debtor. Thus, Section 60(1) of the IBC is not applicable to the Respondent and no proceedings can be instituted against the Respondent before the NCLT.

16. Ref:

    i. Lalit Kumar Jain Vs. Union of India *[2021(9)SCC321]* – *Para 108 @ pg. 390*

        "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."

    ii. Rohit Nath Vs. KEB Hana Bank Ltd. *[2021SCCOnlineMad2734]* – Paras 12-23
    iii. Altico Captial India Ltd. Vs Rajesh Patel & Ors *[CP293/2020]* of NCLT, Mumbai. Appeal pending before NCLAT, no stay on the order.
    iv. Insta Capital Pvt. Ltd. Vs Ketan Vinod Kumar Shah *[CP(IB)/1365/MB-IV/2020]* – Paras 16-18

17. **The Hon'ble SC in Mahendra Kumar Jajodia Vs. SBI *[Civil Appeal No. 1871-1872/2022]* vide order dt. 21.03.2022 has stayed the operation of the judgment dt. 27.1.2022 passed by NCLAT in SBI Vs Mahendra Kumar Jajodia *[Company Appeal (AT)Insolvency No. 60/2022]*.** The NCLAT vide judgment dt. 27.01.2022 inter alia, held that as under:

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

13. We have perused the Application, additional affidavit, Written Submissions placed by parties on record and heard the Ld. Sr. Counsels for the Applicant as well as the Personal Guarantor.

14. At this juncture, we would like to refer to the Judgment of Hon'ble NCLAT passed in the matter of **Company Appeal (AT) Insolvency No. 60 of 2022, State Bank of India vs. Mahendra Kumar Jajodia dated 27.01.2022,** the relevant extracts of which are reproduced below:

> *"10. Sub-Section 1 of Section 60 provides that Adjudicating Authority in relation to Insolvency or Liquidation for Corporate Debtor including Corporate Guarantor or Personal Guarantor shall be the NCLT having territorial jurisdiction over the place where the Registered Office of the Corporate Person is located. The substantive provision for an Adjudicating Authority is Section 60, sub-Section (1), when a particular case is not covered under Section 60(2) the Application as referred to in sub-section (1) of Section 60 can be very well filed in the NCLT having territorial jurisdiction over the place where the Registered Office of corporate Person is located.*
>
> *11. The Adjudicating Authority erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor are pending the application under Section 95(1) filed by the Appellant is not maintainable. The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor are pending before the NCLT. In result, we set aside the order dated 05th October, 2021 passed by the Adjudicating Authority. The Application filed by the Appellant under Section 95(1)*

of the Code is revived before the NCLT which may be proceeded in accordance with the law..."

15. That the Judgement of Hon'ble NCLAT dated 27.01.2022 passed in the matter of **State Bank of India Vs. Mahendra Kumar Jajodia** has been upheld by **Hon'ble Supreme Court vide order dated 06.05.2022 in the matter of Mahendra Kumar Jajodia Vs SBI in Civil Appeal No. 1871 -1872 OF 2022**. The copy of the Order is reproduced below :

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 1871-1872 OF 2022

MAHENDRA KUMAR JAJODIA ETC. Appellant(s)

VERSUS

STATE BANK OF INDIA,
STRESSED ASSET MANAGEMENT BRANCH Respondent(s)

O R D E R

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

The Appeals are dismissed.

...............................J.
(S. ABDUL NAZEER)

...............................J.
(VIKRAM NATH)

NEW DELHI
MAY 06, 2022

16. Hence, from the Judgement of Hon'ble NCLAT in the **Mahendra Kumar Jajodia** (Supra) case read with the Judgement of Hon'ble Supreme Court (Supra), it can be inferred that an Application filed under Section 95 of IBC cannot be rejected merely on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor is pending before the NCLT.

17. Accordingly, we would like to proceed in the matter.

18. That the interim-moratorium has already commenced as stipulated under Section 96 (1) (a) in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim-moratorium period, the following are prohibited:

(a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and
(b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

This shall, however, not apply to such transactions as notified, if any, by the Central Government in consultation with any Financial Sector Regulator.

19. The Applicant has not proposed the name of any Resolution Professional. Therefore, from the panel of IPs suggested by the IBBI, **this Bench appoints Mr. Raj Kamal Saraogi, Insolvency Professional having the registration no. IBBI/IPA-002/IP-N00459/2017-2018/11294, as the Resolution Professional** subject to filing of an affidavit that there is no disciplinary proceeding pending against Mr. Raj Kamal Saraogi, the RP proposed herein within seven days.

20. **Mr. Raj Kamal Saraogi, the Resolution Professional shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 r/w the Rules made thereunder. He is directed to examine the Application and make recommendations along with the reasons in writing for acceptance or rejection of this Application, within the stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016.** The RP shall give a copy of the report under Section 99(7) to the Applicant/Creditor as soon as the same is filed before this Adjudicating Authority.

21. The Applicant or his Counsel and the Registrar/Court Officer are directed to serve the copy of this Order along with copy of the Application and documents immediately on Mr. Raj Kamal Saraogi, Resolution Professional so appointed by all modes for information and compliance.

22. List the matter on 10.06.2022.

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)