

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1601 of 2024 & I.A. No. 5835 of 2024

(Arising out of the Order dated 11.06.2024 passed by the National Company Law Tribunal, New Delhi, Court-III in IA No. 2699/2022 in IB No. 382 (PB)/2021.)

IN THE MATTER OF:

Krishan Kumar Jajoo

S/o Late Mr. Rattan Lal Jajoo,
Flat No. 1001, 10th Floor,
Tower – 2, Pyramid Urban Homes,
Sector-67A, Gurugram
Haryana - 122001

...Appellant

Versus

1. Piramal Enterprises Ltd.

(Earlier PHL Fininvest Pvt. Ltd.)

Having registered office at:

Piramal Ananta, Agastya Corporate Park,
Opp. Fire Brigade, Kamani Junction,
LBS Marg, Kurla (West), Mumbai City,
Mumbai – 400070.

Also at :

T34, 1st Floor, Okhla Phase II,
Okhla Industrial Estate,
New Delhi, Delhi 110020

Email: corporate.communication@piramal.com

...Respondent No. 1

2. Jayant Prakash

(Resolution Professional)

Having Office at:

15/775, Vasundhara
Ghaziabad, Uttar Pradesh- 201012

...Respondent No. 2

Present

For Appellants:

**Mr. Vikas Dutta, Mr. Siddharth Silwal, Ms.
Shivani Sharma, Advocates.**

For Respondents: **Mr. Prashant Kumar, Mr. Angad, Mr. Kevin Chadha & Ms. Nikita Menon, Advocates for R-1.**
Mr. Adhish Srivastava, Advocate for R-2.
Mr. Jayant Prakash, RP.

J U D G E M E N T

(21.02.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

- 1.** The present appeal has been filed by the Appellant i.e., Krishan Kumar Jajoo under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") against the Impugned Order dated 11.06.2024 passed in Interlocutory Application No.2699 of 2022 in IB No. 382 (PB)/ 2021 by the National Company Law Tribunal, New Delhi, Court-III ('**Adjudicating Authority**').
- 2.** Piramal Enterprises Ltd. earlier known as PHL Fininvest Pvt. Ltd. is the Respondent No.1 herein, engaged in various financial services business.
- 3.** Mr. Jayant Prakash who is the Resolution Professional of the Corporate Debtor is the Respondent No.2 herein.
- 4.** It has been brought to our notice that the facility in question was initially granted by Piramal Finance Limited ("**PFL**") to Hema Engineering Industries Limited ("**HEIL**") ('**Corporate Debtor**') under the Facility Agreement dated 20.07.2017. The Appellant further submitted that following the order of the National Company Law Tribunal, Mumbai Bench, dated 06.04.2018, and pursuant to the scheme of amalgamation, PFL (the original lender) and Piramal

Capital Limited ("**PCL**") were amalgamated with Piramal Housing Finance Limited ("**PHFL**"). Subsequently, the name of PHFL was changed to Piramal Capital & Housing Finance Limited ("**PCHF**L"), as reflected in the Certificate of Incorporation dated 12.06.2018. The Appellant contends that under the Assignment Agreement dated 22.03.2019, the Facility Agreement dated 20.07.2017, originally entered into between PFL and HEIL, was assigned to PHL Fininvest Private Limited (now Piramal Enterprises Ltd.), the Respondent No.1 herein.

5. We have also been informed that, as per the Facility Agreement dated 20.07.2017, the Respondent No.1 extended a term loan facility of Rs.400 cr to HEIL. It is also noted that HEIL's obligation to repay the loan, along with all other amounts due under the said Facility Agreement, was secured by a Personal Guarantee dated 20.07.2017, which was executed by the Appellant in favour of Piramal Trusteeship Services Private Ltd. ("**PTSPL**"), the appointed Security Trustee.

6. It is noted that the Demand Notice in Form B was issued to the Appellant under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, which sought repayment of the outstanding amount of Rs. 443,36,21,727. The Respondent No.1 filed an application under Section 95(1) of the Code on 21.06.2021, seeking initiation of personal insolvency proceedings against the Appellant.

7. The Appellant submitted that the objections raised by him were not considered by the Adjudicating Authority while passing the Impugned Order dated 11.06.2024. The Appellant submitted that the Impugned Order is a non-speaking order, which merely replicates the report under Section 99 of the Code submitted by the Respondent No.2. The Appellant alleged that Impugned Order fails to comply with the settled procedure as mandated under the Code.

8. The Appellant submitted that on the date of the appointment of the Respondent No. 2 as Resolution Professional i.e., 08.04.2022, the record did not contain any authorization or consent from the Respondent No. 2, as required under Regulation 4(2) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The Appellant stated that, the Respondent No.2 initially suggested by Respondent No. 1 had its registered office in Mumbai. Consequently, the Adjudicating Authority directed Respondent No. 1 to submit the name of a new Resolution Professional in accordance with the Code. However, Respondent No. 1 later mentioned the name of Respondent No. 2 without filing the required AFA, and therefore the post-facto consent obtained from the Respondent No.2 is contrary to the mandates of the Code.

9. The Appellant submitted that, even otherwise, the appointment of the Respondent No.2 does not comply with the 'Insolvency Professionals to Act as Interim Professionals, Liquidators, Resolution Professionals & Bankruptcy Trustees (Recommendation) (Second) Guidelines dated 01.12.2021

("Guidelines"). The Appellant submitted that the said Guidelines outline the procedure for preparing a panel of Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals, and Bankruptcy Trustees and as per the said Guidelines the Respondent No.2 with a registered office in Allahabad was not eligible for appointment within the jurisdiction of Delhi.

10. The Appellant submitted that there was no privity of contract between the parties, as the Deed of Guarantee dated 20.07.2017 ("Guarantee Deed") was executed by the Appellant in favour of PTSPL (the Security Trustee), and not with Respondent No. 1. It is the case of the Appellant that it is a settled principle of law that a Guarantor is governed by the terms of the Guarantee. In this regard, the Appellant relies on the judgment of this Appellate Tribunal in *Pooja Ramesh Singh vs. State Bank of India & Anr., Company Appeal (AT) (Insolvency) No. 329 of 2023*, decided on 28.04.2023.

11. The Appellant submitted that the Guarantee was not invoked by the proper party, as the Demand Notice dated 21.04.2021 was issued by PHL Fininvest Private Limited, whereas the Guarantee was executed between the Appellant and Piramal Trusteeship Services Private Limited. The Appellant stated that in light of this, the Respondent No.1 had no locus to invoke the Guarantee against the Appellant. The Appellant emphasized that an application under Section 95 of the Code cannot be maintained without proper invocation of the Guarantee. In this regard, the Appellant relies on the judgment dated 26.07.2023 of this Appellate

Tribunal passed in *Company Appeal (AT) (Ins) No. 920 of 2023* titled ***Mudhit Madanlal Gupta vs. Supreme Constructions and Developers Pvt. Ltd.***

12. The Appellant submitted that there is no valid Board Resolution to show that Respondent No. 1 is authorized to file its application under Section 95 of the Code. The Appellant stated that the original Board Resolution dated 12.04.2021 filed by Respondent No. 1 limited the authority of the signatory to the extent that he could only file claims or proceedings in CP(IB) No. 900 of 2020 titled *PR Rolling Mills v. Hema Engineering Industries Ltd.* and the said Board Resolution did not grant any authority to initiate proceedings against the Appellant, including the application under Section 95 of the Code. It is the case of the Appellant that upon objections raised by the Appellant, Respondent No. 1 rectified the Board Resolution in its Rejoinder by placing on record a new Board Resolution dated 22.12.2021, thereby ratifying its actions. The Appellant submitted that the new Board Resolution of Respondent No. 1 cannot be considered for adjudicating the application under Section 95 of the Code. It is the case of the Appellant that since the original Board Resolution does not grant Respondent No. 1 the authority to take action against the Appellant, the application filed by Respondent No. 1 under Section 95 of the Code is liable to be dismissed on this ground.

13. The Appellant submitted that adequate security is already available with Respondent No. 1 in the form of a first and exclusive mortgage over various properties both immovable and movable, which were charged in favour of Piramal Finance Limited at the time of the execution of the Facility Agreement

dated 20.07.2017 by HEIL. The Appellant submitted that a Guarantor is not a primary party to the agreement but is considered as an additional comfort for the lender. The Appellant further submitted that Respondent No. 1 has already filed its claim for an amount of Rs. 4,43,36,21,727/- before the Respondent No.2 in the Corporate Insolvency Resolution Process ('**CIRP**') initiated against HEIL vide order dated 05.04.2021, which is currently under liquidation, hence there is no need to initiate PIRP against him.

14. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow his appeal.

15. Per contra, the Respondent No.1 denied all averments made by the Appellant as misleading and baseless.

16. The Respondent No. 1 submitted that the debt is due and payable from HEIL ("Corporate Debtor"), and the Appellant, as the Personal Guarantor of the Corporate Debtor, has committed defaults in repaying the same. The Respondent No.1 stated that Appellant has not disputed the sanction of the credit facilities or the validity of the Personal Guarantee dated July 20, 2017 executed by him in relation to such sanction, therefore, the Appellant is bound by the terms of the Personal Guarantee.

17. The Respondent No.1 submitted that the debt payable is undisputed, as evidenced by the fact that the claim against the Corporate Debtor is undergoing liquidation, and the personal insolvency resolution process has been initiated against other personal guarantors by Adjudicating Authority vide order dated

01.10.2024 (i.e., Chandresh Jajoo and Monica Jajoo). The Respondent No. 1 relied on the decision in *Laxmi Pat Surana v. Union Bank of India [(2021) 8 SCC 481]* wherein the Hon'ble Supreme Court of India held that a default is deemed to have been committed by the guarantor if the principal borrower fails to discharge its obligations, and as a consequence, the status of the guarantor transforms into that of a corporate debtor under the Code.

18. The Respondent No.1 elaborated that the Hon'ble Supreme Court, in the case of *Lalit Kumar Jain v. Union of India [(2021) 9 SCC 321]* has categorically held that even after the approval of a resolution plan for the corporate debtor, the guarantor is not discharged from their liability and the Apex Court further clarified that the release or discharge of principal borrower from its debt, through an involuntary process such as liquidation or insolvency proceedings, does not absolve the surety/guarantor of their liability, which arises out of an independent contract. The Appellant also stated that the Hon'ble Supreme Court reaffirmed this position in *Maitreya Doshi v. Anand Rathi Global Finance Ltd. and another [2022 SCC OnLine SC 1276]* holding that insolvency proceedings can be initiated against both the principal borrower and the guarantor. Additionally, in *BRS Ventures Investments Limited v. SREI Infrastructure Finance Limited and another [2024 SCC OnLine SC 1767]*, the Hon'ble Supreme Court of India held that the approval of any resolution plan for the principal borrower does not affect the guarantor's liability to repay amounts to the creditor, after deducting the amount recovered from the principal borrower.

19. The Respondent No. 1 submitted that the Appellant raised unnecessary objections regarding the Board Resolution of Respondent No. 1. In this regard, the Respondent No.1 submitted that, without prejudice to the fact that the Board Resolution dated 19.04.2021, was valid and sufficiently broad to cover the proceedings against the Appellant, the Respondent No. 1 had placed on record a revised Board Resolution dated 05.01.2022, in its Rejoinder, thereby ratifying all actions taken pursuant to the previous Board Resolution. The Respondent No. 1 relies on the judgment in *United Bank of India v. Naresh and Ors.* [(1996) 6 SCC 660] which establishes that a corporation can ratify the actions of its officers, including pleadings signed by them.

20. The Respondent No. 1 submitted that the Appellant objected to the proceedings before the Adjudicating Authority on the ground that there was no privity of contract with the Corporate Debtor and PHL Fininvest, as there had been no novation of the Facility Agreement executed in favor of Piramal Capital & Housing Finance Limited, following its merger. The Respondent No.1 stated that another objection of the Appellant was that the Facility Agreement could not be assigned to PHL Fininvest. In this regard, Respondent No. 1 submitted that the Facility Agreement explicitly provided that the 'Lender' was entitled, inter alia, to assign any rights under the agreement without the consent of the Corporate Debtor. The Respondent No.1 explained that the new lender would acquire the same rights as the original party to the Facility Agreement. The Respondent No.1 explained that term 'Lender' under the Facility Agreement was defined to include

its successors, transferees, and permitted assigns. Furthermore, the Facility Agreement, as referred to by the Appellant, allowed for amendments to the financing documents "if required by the Lender" as mentioned in Clause 18.7 of Facility Agreement.

21. The Respondent No.1 submitted that in by an Assignment Agreement dated March 22, 2019, the Assignor, Piramal Capital & Housing Finance Limited, unconditionally and irrevocably sold, assigned, transferred, and released to the Assignee, PHL Fininvest Private Limited, all the Assigned Receivables, including the power to enforce the underlying security available to the Assignor in relation to the finance documents as stated in Clause 2 of the Facility Agreement. Moreover, the Corporate Debtor, by letter dated 20.03.2019 two days prior to the Assignment Agreement had explicitly agreed to the transfer or assignment of the Facility Agreement. Therefore, the assignment of the Facility Agreement to PHL Fininvest was duly authorized, and the Appellant's objections regarding the assignment and privity of contract are without merit.

22. The Respondent No. 1 further submitted that the merger received the approval of the NCLT, Mumbai, on April 6, 2018, which occurred more than three years ago. Consequently, the Assignment Agreement and the transfer of all rights and obligations under the Facility Agreement to Respondent No. 1 are binding on the Appellant. It is the case of the Respondent No.1 that the Appellant cannot now seek to avoid his obligations under the Facility Agreement therefore, the Appellant's objections to the validity of the assignment are without merit.

23. The Respondent No.1 submitted that the Adjudicating Authority had issued notice in the petition filed before it [CP(IB) No. 382/2021] on October 10, 2021. Subsequently, by an order dated 22.02.2024, the Adjudicating Authority allowed the substitution application (I.A. No. 798 of 2024), thereby substituting the Financial Creditor, Piramal Enterprises Limited, in place of PHL Fininvest Private Limited. The Respondent No.1 asserted that once the order for issuance of notice and the order allowing the substitution application have attained finality, they cannot be challenged by way of an appeal at a later stage.

24. In response to the appellant's objections about non speaking impugned order passed by the Adjudicating Authority Respondent No. 1 asserts that the Adjudicating Authority duly considered the Resolution Professional's report, evidence, and relevant facts in paragraphs 11 and 12 of the Impugned Order, thus meeting the standards of a reasoned order while adhering to the principles of natural justice. The Respondent No.1 emphasizes the Adjudicating Authority's summary jurisdiction, distinct from that of a civil court, which implies that the criteria for a reasoned order may differ and this limited scope prevents the Adjudicating Authority from interfering with the commercial wisdom of the Committee of Creditors ('CoC').

25. The Respondent no.1 submitted that the Resolution Professional was appointed by an order dated 08.04.2022, which was not challenged by the Appellant. As such, the order has attained finality, and the Appellant is deemed to have acquiesced to this appointment. Regarding the delay in filing the report,

it is submitted that the Resolution Professional filed Interlocutory Application No. 2680 of 2022 before the Adjudicating Authority, seeking exclusion of the period from 08.04.2022, to 28.04.2022. This request was granted by the Adjudicating Authority through an order dated 27.02.2024, which has attained finality, as the Appellant did not challenge the said order. Furthermore, the Appellant's reliance on the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals, and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2024, is misplaced. In terms of the decision in *L. Ramalakshamma and Ors. v. State Bank of India* (MANU/NL/0510/2021), where this Appellate Tribunal held that confirmation of the Board by the Adjudicating Authority is only directory in nature and not mandatory. The Respondent No.1 submitted that the appointment of a Resolution Professional is within the judicial discretion of the Adjudicating Authority.

26. The Respondent No.1 submitted that an objection which is raised by the Appellant regarding the invocation of the statutory demand notice by an improper party, claiming a non-joinder of the Security Trustee, could not have initiated the proceedings before the Adjudicating Authority. In this regard, the Respondent No.1 submitted that the Personal Guarantee explicitly states that it was executed for the benefit of the lender, i.e., Respondent No. 1. The Respondent No.1 further submitted that the terms of the Personal Guarantee clearly establish that both the 'Lender' and the 'Trustee' are entitled to initiate action against the Appellant, as per the Clause 2.1.1, 3.1 and 4.1 of the guarantee.

27. The Respondent No.1 also submitted that all notices and demand letters, including the Demand Notice dated October 24, 2020, the Demand/Recall Notice dated February 24, 2021, and the Statutory Demand Notice dated April 21, 2021, were duly issued by the Lender to the Appellant, however, the Appellant never raised any objections regarding these notices. The Respondent No.1 further submitted that Respondent No. 1, as the Lender and ultimate beneficiary under the Personal Guarantee, is fully entitled to institute and maintain the proceedings against the Appellant under the Code.

28. Concluding his pleadings, the Respondent No.1 requested this Appellate Tribunal to dismiss this appeal with cost.

29. The Respondent No.2 also denied all averments made by the Appellant as frivolous, misleading and baseless.

30. The Respondent No.2 submitted that on 21.04.2021, the Financial Creditor served a statutory demand notice under Section 95(4)(b) of the Code to the Appellant/Personal Guarantor for an outstanding debt of ₹443,26,21,727/-, encompassing principal, interest, penal interest, and un-deposited TDS. In response, the Appellant/Personal Guarantor, in a reply dated 24.05.2024, claimed to have never personally taken a loan from the Financial Creditor, asserting that the matter pertains to HEIL ("Principal Borrower") and transfer the demand notice is required to be served on HEIL demanding payment of the amount of default.

31. The Respondent No. 2 submitted that on 21.06.2021, the Financial Creditor initiated an Insolvency Resolution Process against the Appellant/Personal Guarantor by filing Application IB No. 382 (ND) of 2021 before the Adjudicating Authority under Section 95(1) of the Code, r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

32. The Respondent No. 2 stated that, by order dated April 8, 2022, the Adjudicating Authority appointed the Answering Respondent as the Interim Resolution Professional ('IRP') under Section 97 of the Code. The Adjudicating Authority further directed the Respondent No.2 to submit a report within ten days, recommending either approval or rejection of the Application.

33. The Respondent No. 2 submitted that the Financial Creditor informed that Mr. Krishan Kumar Jajoo, the Appellant, was incommunicado and unresponsive at his last known address and email. Consequently, the Respondent No.2 issued an Intimation / Notice dated 29.04.2022, under Section 99(2) of the Code to the Appellant's counsel, requesting the Appellant, through his counsel, to provide evidence of repayment of the debt mentioned in the Application.

34. The Respondent No. 2 further submitted that the intimation was also sent to the Appellant's last known email address on 30.04.2022. Additionally, the intimation under Section 99(2) of the Code was dispatched to the

Appellant/Personal Guarantor's last known residential address, which is 917 A, The Aralias, DLF Golf Links, DLF Phase V, Gurgaon – 122009.

35. The Respondent No. 2 stated that, having received no acknowledgment or response from the Appellant or his legal counsel, he sent a further email to the Appellant's counsel on 05.05.2022, as a final reminder for the Appellant/Personal Guarantor to submit proof of debt repayment by 06.05.2022. However, no response was received from the Appellant.

36. The Respondent No. 2 submitted that, in accordance with the order dated April 8, 2022 (received by the Resolution Professional on April 28, 2022), the Respondent No.2 prepared a report under Section 99(1) of the Code. This report recommended the acceptance of the Application filed by the Financial Creditor under Section 100(1) of the Code.

37. The Respondent No.2 submitted that on 20.07. 2017, a Facility Agreement was executed between HEIL as the Principal Borrower, Piramal Capital & Housing Finance Ltd. (formerly known as Piramal Finance Ltd.), Promoters/Guarantors of HEIL (including the Appellant/Respondent), and Piramal Trusteeship Services Pvt. Ltd. ("Security Trustee"), for financial assistance of Rs. 400 cr extended to HEIL. The Respondent No.2 explained that the obligations of the Principal Borrower to repay the loan and all associated amounts under the Facility Agreement were secured by an irrevocable and unconditional guarantee dated July 20, 2017, from the Appellant in favor of the Security Trustee for the benefit of the Financial Creditor.

38. The Respondent No. 2 submitted that the Financial Creditor issued a demand letter on 24.10.2020, to the Principal Borrower, the Appellant/Personal Guarantor, and others, highlighting the defaults and demanding clearance of outstanding dues with interest. The Respondent No.2 stated that on 24.02.2021, a recall/demand notice was issued to the same parties, recalling the entire loan as per the Facility Agreement. This notice directed the Principal Borrower and the Guarantors, including the Appellant/Personal Guarantor, to pay the outstanding amounts as of 23.02.2021, within 7 days of receipt. The Respondent No.2 stated that despite receiving the demand letter, the Appellant/Personal Guarantor and the Principal Borrower remained in default, and no payment was made to the Financial Creditor and Respondent No.2 submitted that a record of default was submitted to the Information Utility, National E-Governance Services Limited ('NeSL'), on 14.04.2021.

39. The Respondent No. 2 submitted that in the Reply dated 02.12.2021, filed by the Appellant/Personal Guarantor, the execution and existence of the Deed of Guarantee have not been denied and the liability of the Appellant has also not been denied. While objections regarding the maintainability of the Application have been raised, there is no specific defense against the liability of the Appellant/Personal Guarantor. The Appellant/Personal Guarantor has not denied the existence of a valid and subsisting debt, nor the fact that a default in repayment has occurred.

40. The Respondent No. 2 stated that the Financial Creditor provided a Statement of Accounts detailing the debt and default of HEIL, which the Respondent No.2 reviewed. The Respondent No.2 explained that the Statement of Accounts reflects the disbursement of the principal amount under the Facility Agreement. Consequently, the liability of the Appellant/Personal Guarantor arose upon the Financial Creditor's invocation of the Personal Guarantee, following the demand made by the Financial Creditor on 21.04.2021.

41. The Respondent No. 2 submitted that, based on the examination and verification of the Application, the supporting documents, and the requirements outlined in Section 95(4) of the Code, he recommended that the Adjudicating Authority accept the Application. The matter was extensively argued before the Adjudicating Authority, and both parties were permitted to file written submissions detailing their respective positions. Consequently, the Adjudicating Authority admitted the application against the Appellant and initiated the Personal Insolvency Resolution Process against the Appellant vide impugned order dated 11.06.2024.

42. The Respondent No. 2 submitted that the Resolution Professional's role is facilitative and administrative, and he is only required to recommend the admission or rejection of a petition based on the documents and information collated. The Resolution Professional does not possess an adjudicatory function as defined in Section 99 of the Code. The Respondent No.2 provided a reasonable opportunity by following the principle of natural justice, considered the various

documents, and concluded that the Personal Insolvency Resolution Process could be initiated against the Appellant/Personal Guarantor.

43. The Respondent No. 2 strongly refuted the Appellant's allegation that the impugned order is a non-speaking order and terms such allegations as an attempt to delay the Personal Insolvency Resolution Process through technical objections, challenging Adjudicating Authority directions that have already been decided and for which no appeal has been filed. It is the case of the Respondent No. 2 that the gave reasonable opportunity following the principle of Natural Justice and considered the various documents including copy of the Information Utility Report evidencing record of Default; Copy of the Letter of Intent; along with Deed of Guarantee; Copy of the Letter of Invocation of Guarantee and Copy of the Statutory - Demand Notice in Form B and has come to a conclusion that Insolvency Proceedings be initiated against the Personal Guarantor.

44. The Respondent No. 2 submitted that the objections raised by the Appellant are substantially the same as those presented in response to IA No. 2680 of 2022. The Adjudicating Authority considered these submissions and ruled on them in an order dated 27.02.2024. As the Appellant did not appeal the order dated 27.02.2024, the Appellant cannot reintroduce the same issue in the present appeal, as the decision stands confirmed. Given these facts, the Adjudicating Authority did not address issues already decided and admitted between the parties. The Appellant has deliberately withheld this information in an attempt to mislead this Tribunal.

45. Concluding his arguments, the Respondent No.2 requested this Appellate Tribunal to dismiss this appeal with exemplary cost.

Findings

46. The Appellant had challenged the Impugned Order on several ground based on which we find the following issues are required to be examined and determined upon to decide the present appeal.

47. Issue No. I (a) Whether there was no privity of contract between the Appellant and Respondent No.1.

(b) Whether the Adjudicating Authority could have passed the Impugned Order based on invocation of personal guarantee by 3rd party.

(c) Whether the guarantee was not invoked by proper party as Demand Notice dated 21.04.2021 was issued by PHL Fininvest Private Limited whereas the Guarantee was executed into between the Appellant and Piramal Trusteeship Services Private Limited.

Issue No. (II) Whether the Impugned Order is a non-speaking order and contravene the principal of natural justice.

Issue No. (III) Whether the appointment of Respondent No. 2 was not in accordance with provision of the Code.

Issue No. (IV) Whether there was no valid Board Resolution to show that the Respondent No. 1 was authorised to file its Application u/s 95 of the Code.

Issue No. (V) Whether when adequate securities are already available with the Respondent No. 1 by way of first and exclusive mortgage of various properties (both immovable and moveable) charged in favour of the Piramal Finance Limited at the time of execution of the Facility Agreement dated 20.07.2017 by Corporate Debtor (HEIL) and therefore, the Appellant as Guarantor is not liable for outstanding dues.

48. Issue No. I (a) Whether there was no privity of contract between the Appellant and Respondent No.1.

(b) Whether the Adjudicating Authority could have passed the Impugned Order based on invocation of personal guarantee by 3rd party.

(i) At the outset we would like to mention that the same issue has been examined by this Appellate Tribunal in the matter of *Shantanu Jagdish Prakash Vs. State Bank of India & Anr.* in *Company Appeal (AT) (Ins.) No. 1609 of 2024* decided on 23.01.2025, where we upheld the decision of the Adjudicating Authority in favour of the Lenders. We note that the facts are similar in the present case, however, we shall deal the issue in the present appeal based on the facts of the present appeal.

(ii) As regard, the issue of privity of contract, it has been pleaded by the appellant that the personal guarantee was between the Appellant along with other guarantors with PTSPL and the Respondent No. 1 was not signatory to personal guarantee as such the Respondent No. 1 could not have initiated application under Section 95 of the Code.

- (iii) We note that concept of trusteeship is to act on behalf of the creditors/ Lenders. Such trusteeship deeds are generally signed between the trust on behalf of the lenders and the personal/ corporate guarantor of the principal borrower. However, by its inherent nature and intent, the lenders or the Financial Creditors are the true beneficiaries of such deed of guarantee.
- (iv) We further note that Section 95 of the Code provides right to the creditors to file application to initiate Personal Insolvency Resolution Process (**‘PIRP’**). The security trustee is merely holding security in favour of the Financial Creditor or consortium of creditors and therefore either the trust or creditors may file application under Section 95 of the Code. The wording of Section 95(1) of the Code clearly stipulates that creditor may apply **“either by himself or generally with other creditors”**. Therefore, the creditor i.e., Respondent No. 1 is within his right to initiate Section 95 application and does not prevent him based on alleged lack of privity of contract with the Appellant. It is settled law that a party can enforce the contract made for its benefit.
- (v) From the terms of Security Trusteeship Agreement dated 20.07.2017 and Facility Agreement dated 20.07.2017, it is clear that the security trustees are holding 'Security' not for themselves, but on behalf of, and for the benefit of Financial Creditor/Lender. The Lenders, can therefore, enforce the security documents even if he is not a party to the trusteeship agreement.

(vi) In this connection, we note relevant Clauses of the Facility agreement, which read as under:-

“18.2 - The Lender may without the consent of the Borrower, assign all or any part of its rights and benefits hereunder or transfer or novate all or part of its rights, benefits and obligations hereunder or under the Financing Documents, to any person, including Bank, Financial Institution or Public Financial Institution (under section 4A of the Companies Act 1956), or institutional lender ("New Lender") at any time in accordance with the provisions herein. Whilst the Lender may exercise the aforesaid right, it shall not be under any obligation to do so. However, In the event the Lender exercises this right, it shall inform the Borrower of the same prior to the assignment/novation. The Borrower shall take such action as may be necessary to perfect such assignment, transfer or novation, as the case may be, at the costs of the Lender;

18.3- The New Lender shall, upon such assignment/ novation/ transfer, acquire the same rights and assume the same obligations as regards the Borrower as they would have acquired and assumed had the New Lender been an original party to this Agreement and other Financing Documents.

18.7- If required by the Lender, the Borrower shall, for the transfer, novation or assignment of the Facility to any person, Including bank, financial institution or public financial institution (under section 4A of the Companies Act 1956), or institutional lender subject to the provisions of this Agreement, execute necessary amendments to the Financing

Documents, as may be mutually agreed between the Parties, with respect to any one or all of the following provisions:

(a) to the dispute resolution provisions under this agreement;

(b) to incorporate the names and details of any such assignee, novatee or transferee of the Lender;

(c) to the administrative procedures specified under this Agreement; and

(d) such other deeds, documents and writings as may be required under the Applicable Laws to facilitate or otherwise give effect to such assignment, transfer, novation, or securitization, as the case may be.”

(Emphasis Supplied)

- (vii) We note that Section 5(7) of the Code which defines 'financial creditor' to mean any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. We observe that the definition of 'Lender' under the Facility Agreement deemed to include its successors, transferees and permitted assignment of debts and the Facility Agreement imposed a restriction on the transfer of the rights and obligations by HEIL and not on lenders. We observe that clause **18.2** of the Facility Agreement stipulated that the 'Lender' was entitled inter alia to assign any rights under the Facility Agreement without the consent of the Corporate Debtor and such new lender would acquire the same rights as the original party to the Facility Agreement. It is noted that clause **18.7** of the Facility Agreement pertained to amendments to the financing documents if required by the Lender.

Therefore, it may be concluded that the Assignment Agreement and the transfer of rights and obligations under the Facility Agreement were binding on the Corporate Debtor and accordingly, the Appellant could not seek to escape his obligations thereunder.

(viii) It is settled law that beneficiaries under the terms of a contract have the right to enforce the covenants thereof as held by the Hon'ble Supreme Court of India in case of *M.C. Chacko v. tile State Bank of Travancore, Trivandrum*, [(1969) 2 SCC 343].

(ix) Thus, the issue discussed above i.e privity of contract between the Appellant and Respondent No.1, we find no merits in the arguments of the Appellant and reject the same.

Issue No. (I) (c) Whether the guarantee was not invoked by proper party as Demand Notice dated 21.04.2021 was issued by PHL Fininvest Private Limited whereas the Guarantee was executed into between the Appellant and Piramal Trusteeship Services Private Limited.

(i) We shall deal with the issue raised by the Appellant that the statutory notice under Section 95(4)(b) of the Code was invoked and the proceedings for insolvency proceedings were initiated by the not proper party against the Appellant. The Appellant had raised a objection that the statutory demand notice was not invoked by a proper party, there was a non-joinder of the Security Trustee and that Respondent No. 1

could not have filed the proceedings before the Adjudicating Authority. Both the Respondents pleaded that the Personal Guarantee clearly stipulated that the same was executed for the benefit of the lender i.e., the Respondent No. 1.

- (ii) We note that all the notices / demand letters were issued by the Lender to the Appellant, including the Demand Notice dated October 24, 2020, Demand / Recall Notice dated February 24, 2021, and Statutory Demand Notice dated April 21, 2021; however, no such objection was ever raised by the Appellant in this regard.
- (iii) We also observe that the Respondent No. 1 / Lender, being the ultimate beneficiary under the Personal Guarantee, could institute and maintain the proceedings initiated against the Appellant under the Code.
- (iv) The Appellant further challenged that the report is not infirmity of the Code especially under Section 99(1), 99(7) and 99(9) of the Code, he specifically referred to Para 11 of the Impugned order in its record.
- (v) We take into consideration para 11 of the Impugned Order along with other relevant paras of the Impugned Order dated 11.06.2024 which read as under:-

“7. This Adjudicating Authority vide order dated 08.04.2022 initiated the interim moratorium period in terms of Section 96 of IBC and appointed Mr. Jayant Prakash (having IBBI Registration: - IBBI/IPA-001/IP-P-00597/2017-2018/11049) as the Resolution Professional and the Resolution

Professional was directed to submit a report in terms of Section 99 IBC. Accordingly, the Resolution Professional has filed a report and a copy of the said report has been duly served on the Personal Guarantor by all modes.

8.The Resolution Professional vide IA-2699/2022 dated 09.05.2022 has filed its report before this Adjudicating Authority. The Recommendations of the Resolution Professional are as under:

"9. In pursuance of the aforesaid, the present Report is being submitted whereby, I recommend approval of the above Application filed under Section 95 of the Code by the Applicant/Financial Creditor, for reasons as set out in Annexure A.

In the view of the aforesaid, I hereby recommend acceptance of the Application filed by the Applicant/Financial Creditor under Section 100(1) of the Code."

9.In Response to the Report filed by the Resolution Professional, the Personal Guarantor filed its reply and stated that the present Application is not only a blatant abuse of the process of law but also based on bald and baseless assertions and allegations apart from the material concealment of facts.

10.We have heard the submissions made by Ld. Counsel for the Applicant, Resolution Professional and Personal Guarantor and perused the report.

11. On a perusal of the report, we find that the Resolution Professional has given reasonable opportunity following the principle of Natural Justice and has taken into consideration

the various documents and has come to a conclusion that the Personal Insolvency Resolution Process be initiated against the Personal Guarantor.

12. The Objections raised by the Personal Guarantor are not substantiated with adequate evidence and are not tenable. We are satisfied with the grounds/reasons given by the Resolution Professional for the initiation of the Personal Insolvency Resolution Process against the Personal Guarantor. Having regard to the facts and circumstances of the case, we are of the view that the Personal Insolvency Resolution Process ought to be initiated against the Personal Guarantor.

(Emphasis supplied)

- (vi) At this stage, we would like to go through relevant clauses of personal guarantee agreement dated 20.07.2017 which read as under: The relevant clauses are as under:

“Clause 2.1.1

UNDERTAKING TO PAY

In consideration of the Lender extending the Facility to the Borrower per the terms of Financing Documents, the adequacy of which is hereby acknowledged, the Guarantor guarantees to pay to the Lender, on failure to pay the Outstanding Amounts by the Borrower and on demand by the Lenders and/or the Trustee, all Outstanding Amounts and discharge any outstanding obligations and liabilities now or hereafter due, owing or incurred by the Borrower to the Lenders and/or Trustee

under or pursuant to the Financing Documents, and whether such obligations or liabilities are express or implied, present, future or contingent, joint or several, incurred as principal or surety, originally owing to them.

Clause 3.1

In the event of any default on the part of the Borrower in payment/repayment of any of the monies referred to in Clause 2 above the **Guarantor shall, upon demand, forthwith pay to the Lenders and/or the Trustee, without demur, all the amounts demanded by the Lenders and/or the Trustee** and payable by the Borrower under the Financing Documents.

Clause 4.1

INDEMNITY BY THE GUARANTOR

The Guarantor shall also indemnify and keep the Lender and the Trustee indemnified against all losses, damages, costs, claims and expenses whatsoever, which the Lender and the Trustee may suffer, pay or incur by reason of or in connection with any default on the part of the Borrower and/or the Guarantor in performance of their respective obligations under the Financing Documents, including Legal Proceedings taken against the Borrower and/or the Guarantor for recovery of the moneys referred to in Clause 2 and 3 above or on account of any misrepresentation on the part of the Guarantor.

(Emphasis Supplied)

- (vii) The terms of the Personal Guarantee clearly stipulated that ‘Lender’ or the ‘Trustee’ could initiate action against the Appellant as discussed below:
- a. The Personal Guarantor guaranteed to pay the lender, on failure to pay the outstanding amounts by the Corporate Debtor and on demand by the Lender and/or Trustee
 - b. In the event of default on the part of the Corporate Debtor in payment, the Guarantor shall, upon demand, forthwith pay to the Lenders and/or Trustee, without demur, all amounts demanded by the Lenders and/or Trustee.
 - c. The Lender and the Trustee would be entitled to take action against the Corporate Debtor and the Guarantor as it deems fit, in the event of failure to honour any terms of the Deed of Guarantee.
- (viii) Above clauses of the Personal Guarantee dated 20.07.2017 are loud and vocal and establish the independent rights of creditors in addition to Trust. By no way of imagination it can be argued by the Appellant (as guarantor) that creditor (including its assignee) can not pursue his rights against the Appellant. The pleading of the Appellant does not stand to any logic and need to be dismissed. We do not find any merit in the pleadings of the Appellant on their issue and stand rejected.

49. Issue No. (II) Whether the Impugned Order is a non-speaking order and contravene the principal of natural justice.

- (i) We note that the Appellant pleaded that the Adjudicating Authority has not given reasoned order and therefore, it is a non speaking order which merely replicate the report of the Resolution Professional filed under Section 99 of the Code.
- (ii) We note that Chapter III of the Code is related to insolvency resolution process and under Section 95 of the Code, the Creditor can file and application to initiate insolvency resolution process w.r.t. parties stipulated under Section. Further, Section 95 of the Code stipulates that if the application is made under Section 94 or 95 through resolution professional, the Adjudicating Authority shall appoint the Resolution Professional, recommended under sub-Section 2 or else nominated by board under sub-Section 4 of the code.
- (iii) We also note that the Resolution Professional is required to submit his report under Section 99 of the Code after examination the application made under Section 95 of the Code and after examination the Resolution Professional may recommend the acceptance or rejection of the application in his report.
- (iv) In terms of Section 100 of the Code, the Adjudicating Authority is required to adjudicate on the application filed by the Resolution

Professional under Section 99 and pass an order either admitting or rejecting the application.

- (v) Thus, significant role of the investigations has been assigned to the Resolution Professional who has to examine the various documentations and reply of the debtor like Appellant/Personal guarantor in the present case.
- (vi) In above background, we note that the Impugned Order clearly stipulate that the Adjudicating Authority had appointed the Respondent No. 2 as Resolution Professional and directed the Respondent No. 2 to examine the case. We further note that based on the directions of Adjudicating Authority, the Respondent No.2 finalised the report which was submitted and which was taken into consideration by the Adjudicating Authority. The objections raised by the personal guarantors were filed in the reply who stated that the application is baseless. We observe that the Adjudicating Authority have heard the submissions made by the Financial Creditor, the Resolution Professional and the personal guarantors and also perused the report of the Resolution Professional. The Impugned Order further mentioned the fact that the Resolution Professional has also given the reasonable opportunity of the Appellant, following the principle of natural justice and taken into consideration the various documents before coming into conclusion that personal

resolution insolvency process should be initiated against the personal guarantor/ Appellant.

- (vii) We note that proceedings under the Code are summary and time-bound, and thus, the Adjudicating Authority is not required to conduct proceedings akin to civil proceedings. The Adjudicating Authority's role is limited in considering whether a debt is due and payable and whether a default has occurred. In the present case, the amount of default is not in dispute, nor has the Appellant disputed signing the personal guarantee with the Financial Creditor by admitting to being a signatory to the personal guarantee, the privity of contract is established. The parties were granted ample opportunities to raise objections and after considering these objections, and recognizing that substantial objections were already addressed while deciding IA No. 2680/2022, the Impugned Order was passed. The report filed by the Resolution Professional meets the basic ingredients envisioned under the code. Therefore, the Impugned Order is found to be valid and was passed while keeping in mind the principles of natural justice and equity.
- (viii) We note that the Hon'ble Supreme Court of India in case of ***Dilip B. Jiwarkha vs. Union of India & Ors.*** (Writ Petition (Civil) No. 1281 of 2021) cautioned that the principles of natural justice cannot be mechanically applied in a straightjacket formula and stipulated that

based on the facts and circumstances, principles of natural justice on some occasions may extend to the right to a full-fledged evidentiary hearing while in certain cases may be circumscribed to a bare minimum opportunity to furnish an explanation by the affected party.

- (ix) Based on the provisions of the code the documents made available to us and taking into account the Impugned Order dated 11.06.2024 passed by the Adjudicating Authority and the Hon'ble Supreme court judgements, we do not find merit in the contention of the Appellant that the Impugned Order is a non speaking order and against the principal of natural justice.
- (x) We also state that the principal of natural justice could vary with different circumstances and the Adjudicating Authority is not bound to give exhausting hearing on each and every objection raised by the Appellant in the same intensity.
- (xi) Therefore, the Impugned Order is found to be valid and was passed while keeping in mind the principles of natural justice and equity.
- (xii) The judgment of the Hon'ble Supreme Court of India passed in the matter of *Dilip B Jiwrajka vs. Union of India & Ors.* in [Writ Petition (Civil) No. 1281 of 2021] does not support case of the Appellant.
- (xiii) Thus, we reject pleading of the Appellant on this issue.

50. Issue No. (III) Whether the appointment of Respondent No. 2 was not in accordance with provision of the Code.

- (i) We note that the objections of the Appellant is regarding appointment of Resolution Professional on technical issues that the Respondent No. 1 mentioned the name of Respondent No. 2 as Resolution Professional without filing AFA and post facto consent was obtained from the Resolution Professional which is against the spirit of the Code. The Appellant also stated that the appointment of the Resolution Professional is not in conformity with the 'Insolvency Professionals to act as Interim Professionals, Liquidators, Resolution Professionals & Bankruptcy Trustees (Recommendation) (Second) Guidelines dated 01.12.2021' ("Guidelines"). The Appellant submitted that the said guidelines implies that the Resolution Professional having registered office in Allahabad was not eligible to be appointed in the jurisdiction of Delhi.
- (ii) In this regard, as far as the appointment of Resolution Professional by the Adjudicating Authority is concerned, we note that this Appellate Tribunal has earlier examined the same issue in the matter of ***L. Ramalakshamma and Ors. Vs. State Bank of India*** decided on 22.11.2021 (MANU/NL/0510/2021) where it held that it is a discretion of the Adjudicating Authority and provisions of the Codes are directives in nature. The relevant paras of the aforesaid judgment read as under :-

“Para 31- A ‘Resolution Professional’ is an indispensable person in ‘Insolvency Resolution Process’, as he has a pivotal part to play. No wonder, an ‘Adjudicating Authority’ can exercise his judicial discretion in appointing a ‘Resolution Professional’ in a given case, based on the facts and circumstances of the case, which float on the surface.

Para 32- Moreover, if viewed from the object and purpose to be achieved by ‘IBC’, the word ‘employed’ in Section 97(1) shall can only be construed as ‘directory’ by any stretch of imagination and not a mandatory one, that too by adopting a purposeful, meaningful, practical, pragmatic and result oriented approach, with a view to prevent an aberration of justice and to secure the ends of justice.

Para 33- In the instant case on hand, ongoing through word ‘shall’ occurred in Section 97(1) of ‘IBC’ employed in Section 97(1) of ‘IBC’, this ‘Tribunal’ is of the considered view that it is only ‘Directory’ and not ‘Mandatory’ and holds it so, in the teeth of Rule 8(1) of the Insolvency and Bankruptcy (Application to ‘Adjudicating Authority’ for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and also by which the NCLT may pick up any one from the Panel for appointment of ‘IRP’ Liquidator, Resolution Professional and Bankruptcy Trustee. As such, when the ‘Adjudicating Authority’ had exercised its judicial discretion in fair manner for the appointment of Mr. Anil Kohli as an ‘IRP’, the same cannot be found fault with as opined by this ‘Tribunal’.

Para 34- In view of the foregoing, the contra plea, taken on behalf of the Appellants that before passing of an order under Section 97(5) of 'IBC', the ingredients of sections 91 and 92 of 'IBC', are ought to be satisfied, is not acceded to by this 'Tribunal'. Looking at from any angle, the 'Impugned Orders' dated 23.07.2021 in I.A.(IBC) No. 346 of 2021 CP(IB) No. 02/95/HDB/2021 and I.A.(IBC) No. 347 of 2021 in CP(IB) No. 03/95/HDB/2021 for appointment of Mr. Anil Kohli as 'IRP' and directing him to file 'Report' under Section 19(9) of 'IBC' are free from any legal patent legal errors. Hence, the 'Appeals' fail."

(iii) We further note that the Respondent No. 2 was appointed as the Resolution Professional by the Adjudicating Authority vide order dated 08.04.2022 which has not been challenged by the Appellant and thus attained finality.

(iv) In view of above, we do not find any merit in the contention of the Appellant on this issue.

51. Issue No. (IV) Whether there was no valid Board Resolution to show that the Respondent No. 1 is authorised to file its Application u/s 95 of the Code.

(i) The Appellant objected to the validity of the board resolution dated April 12, 2021, filed in favour of the authorized representative of the Respondent No. 1 in the said petition. The Appellant had contended that the said board resolution did not authorize the power of attorney holder to initiate any proceedings against the guarantors including the

Appellant under Section 95 of the Code. It was further contended by the Appellant that the Respondent No. 1 had wrongly mentioned that the authorized representative was authorized under the said board resolution dated 19.4.2021 instead 12.04.2021 and that the authorized representative was named as 'Abhijit Verma' instead of 'Abhijeet Verma' in the pleadings of the Respondent No. 1. It was further stated by the Appellant that the said board resolution did not set out Mr. Verma's designation and thus, the proceedings against the Appellant could not be initiated based on the said board resolution that was allegedly faulty. In response to the purported objections raised by the Appellant in relation to the said board resolution, the Respondent No. 1 provided a detailed clarification stating that the said board resolution was valid and wide enough to cover the proceedings against HEIL and the Appellant. The Respondent No. 1 further placed reliance on the decision of the Hon'ble Supreme Court in *United Bank of India v Naresh and Ors.* [(1996) 6 SCC 660] to contend that a corporation could ratify the action, expressed or implied, of pleadings being signed by one of its officers. Accordingly, in order to put a quietus to the flimsy objection taken by the Appellant, the Respondent No. 1 executed and placed on record a fresh board resolution dated 05.01.2022, thereby ratifying all acts undertaken under the previous board resolution dated April 12, 2021.

- (ii) We find sufficient logic in pleadings of the Respondent No. 1 which is covered by the judgment of the Hon'ble Supreme Court of India in the matter of *United Bank of India (Supra)*. We do not find any merit in the contention of the Appellant on this point.

52. Issue No. (V) Whether when adequate securities are already available with the Respondent No. 1 by way of first and exclusive mortgage of various properties (both immovable and moveable) charged in favour of the Piramal Finance Limited at the time of execution of the Facility Agreement dated 20.07.2017 by Corporate Debtor (HEIL) and therefore, the Appellant as Guarantor is not liable for outstanding dues.

- (i) We noted the pleading of the Appellant that adequate securities were already available with the Respondent No. 1 by way of first and exclusive mortgage of various properties (both immovable and moveable) charged in favour of the Piramal Finance Limited at the time of execution of the Facility Agreement dated 20.07.2017 by HEIL/Corporate Debtor. It is the case of the Appellant that a Guarantor is not a primary party to the agreement but is considered as additional comfort for a lender.
- (ii) We note that the Appellant case is that adequate securities are available to the Respondent to recover the outstanding debt from the principal borrower and therefore no case was required to be initiated against the Appellant/personal guarantor. In this regard in terms of catena of

judgments of the Hon'ble Supreme Court of India including the matter of *Laxmi Pat Surana vs Union of India [(2021) 8 SCC 481]*, it has been clearly stipulated that this is the prerogative of the creditor to initiate the insolvency process against the principal borrower or the personal guarantor or both.

- (iii) In terms of Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor. The Supreme Court in the case of *Industrial Investment Bank of India Ltd. v. Biswanath Jhunjunwala [(2009) 9 SCC 478]* while examining the issue of the term 'co extensive liability' has held that the liability of a surety is not in alternative to the principal borrower or Corporate Debtor and further it is not necessary for a creditor to first proceed against the principal borrower or Corporate Debtor before initiating legal proceedings against the surety.
- (iv) We note that Section 5(22) of the Code defines personal guarantor as an individual who is the surety in a contract of guarantee to a corporate debtor who provides guarantee in his personal capacity against the loans availed by the corporate debtor with co-extensive liabilities alongwith the corporate debtor.
- (v) We observe that the creditor has legal rights to initiate PIRP even without any pending CIRP or Liquidation proceeding as held by this Appellate Tribunal in case of *State Bank of India, Stressed Asset Management*

Branch Vs. Mahendra Kumar Jajodia in *Company Appeal (AT) Insolvency No. 60 of 2022* decided on 27.01.2022. This was confirmed by Hon'ble Supreme Court of India in Civil Appeal No. 1871-1872 of 2022 decided on 06.05.2022

- (vi) One also need to understand that the total recovery made from the principal borrower and the personal guarantor may not exceed the outstanding debts payable to the lenders. However, it can be no one's case that if the securities are held in favour of the lenders/ creditors based on certain charges created on the assets of the Corporate Debtor, personal guarantor should not be responsible, therefore, is no insolvency proceedings can be initiated against personal guarantor. We also consciously note the resolution of Corporate Debtor could not happen and now Corporate Debtor is under Liquidation which clearly demonstrate without any ambiguity, need as well as right of the Lender to recover from the Personal Guarantors in accordance with law. We find this proposition of the Appellant as not convincing and arguments of the Appellant therefore stand rejected.

53. In view of above discussion, we do not find any merit in the Appeal. Appeal devoid of any merit stand rejected. No costs. I.A, if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

**[Mr. Indavar Pandey]
Member (Technical)**

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