

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 61 of 2025

[Arising out of order dated 07.01.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – II) in IA-
3186/2024 & IA-5801/2024 in IB-78/ND/2023]

IN THE MATTER OF:

Neeta Saha **...Appellant**

Versus

Assets Care & Reconstruction Enterprise Ltd. **...Respondent**

Present:

For Appellant : **Mr. Rajat Bhardwaj and Mr. Kaustubh Khanna,
Advocates.**

For Respondent : **Mr. Gaurav Mitra, Mr. Aditya Vashisth and Mr.
Anmol Bansal, Advocates.**

WITH

Company Appeal (AT) (Insolvency) No. 649 of 2025

&

I.A. No. 2520 of 2025

[Arising out of order dated 07.01.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – II) in IA-
5298/2024 in IB-79/ND/2023]

IN THE MATTER OF:

Aniel Kuumar Saha **...Appellant**

Versus

Assets Care & Reconstruction Enterprise Ltd. **...Respondent**

Present:

For Appellant : **Mr. Rajat Bhardwaj and Mr. Kaustubh Khanna,
Advocates.**

For Respondent : **Mr. Gaurav Mitra, Mr. Aditya Vashisth and Mr.
Anmol Bansal, Advocates.**

WITH

Company Appeal (AT) (Insolvency) No. 399 of 2025

[Arising out of order dated 07.01.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – II) in IB-
82/ND/2023 in IA-5281/2024 in I.A. No. 5281/2024]

IN THE MATTER OF:

Aunirban Saha

...Appellant

Versus

Assets Care & Reconstruction Enterprise Ltd.

...Respondent

Present:

**For Appellant : Mr. Rajat Bhardwaj and Mr. Kaustubh Khanna,
Advocates.**

**For Respondent : Mr. Gaurav Mitra, Mr. Aditya Vashisth and Mr.
Anmol Bansal, Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

These three appeals by personal guarantors have been filed challenging the common order dated 07.01.2025 passed by the adjudicating authority (National Company Law Tribunal, New Delhi Bench, Court – II) admitting a Section 95 application filed by a financial creditor against the appellants in IB 78/ND/2023, IB 79/ND/2023 & IB 82/ND/2023 respectively. The adjudicating authority by the impugned order has admitted the Section 95 application and initiated personal insolvency resolution process against the appellant. Aggrieved by the order, these appeals have been filed.

2. The pleadings and facts in above appeals being common, we refer to the facts from Comp. App. (AT) (Ins.) No. 61/2025 '*Neeta Saha*' Vs. '*Assets Care & Reconstruction Enterprise Ltd.*':

- i. The corporate debtor M/s. Saha Infratech Pvt. Ltd. was extended term loan facility of Rs.90 crore by ECL Finance Ltd. Amounts were disbursed between 07.11.2017 and 24.10.2019. The facility was granted @ 18.75% p.a. payable quarterly. There being default on part of the principal borrower, notice of default was issued by financial creditor on 02.04.2019 and 26.09.2019.
- ii. On an application filed by Homebuyers, Corporate Insolvency Resolution Process (CIRP) against the corporate debtor commenced on 28.02.2020.
- iii. A loan recall notice dated 23.03.2020 was issued by financial creditor. The ECL Finance Ltd. by Assignment Agreement dated 27.03.2020 assigned the debt along with all underlying securities guarantees etc. in favour of the Asset Care & Reconstruction Enterprise Ltd. The financial creditor in CIRP of corporate debtor filed a claim for an amount of Rs.14,36,850,028/- inclusive of interest as on 28.02.2020, out of the said claim, Resolution Professional (RP) admitted an amount of Rs.55,06,45,056/-. The financial creditor aggrieved by rejection of its majority of claim has filed an I.A. 2275/2021 before the adjudicating authority which is pending consideration.
- iv. The financial creditor vide notice dated 14.03.2022 invoked the personal guarantee of the appellants and claimed an amount of Rs.189,44,24,774/- as on 28.02.2022 payable by the guarantor within 7 days of the receipt of the notice. Personal guarantor did not repay the amount. Demand notice in 'Form-B' dated 17.11.2022 was issued claiming an amount of Rs.229,61,30,615/- as on 03.09.2022. No

payment having been received after service of demand notice, Section 95 application was filed by the financial creditor against the appellant on 02.01.2023.

- v. The adjudicating authority appointed RP vide order dated 10.04.2023. Appellant aggrieved by the order dated 10.04.2023 filed an appeal being Comp. App. (AT) (Ins.) No. 692/2023 'M/s. Neeta Saha' Vs. 'Assets Care & Reconstruction Enterprise Ltd.'. This Tribunal vide order dated 30.05.2023 disposed of the appeal permitting the appellant to file an objection and it was open for the adjudicating authority to proceed further after considering the objection of the appellant. Interim Resolution Professional (IRP) was directed not to submit any Report in the meantime.
- vi. Appellant filed a detailed objection on 13.06.2023. The RP submitted a Report under Section 99. The RP has filed an application seeking clarification of the order dated 30.05.2023 in this Tribunal, on 20.07.2024. This Tribunal clarified and permitted the RP to file a Report under Section 99. Appellant filed further objections on 14.10.2024. A Report dated 15.10.2024 was filed by the RP recommending admission of Section 95 application. Adjudicating authority heard both the parties and by impugned order dated 07.01.2025 admitted Section 95 application. Aggrieved by the order, these appeals have been filed.

3. We have heard learned counsel Mr. Rajat Bhardwaj appearing for the appellant as well learned counsels Mr. Gaurav Mitra and Mr. Aditya Vashisth appearing for the financial creditors.

4. Learned counsel for the appellant challenging the impugned order raised following submissions:

- I. Application under Section 95 is not maintainable as it is founded on the loan recall notice 23.03.2020 when CIRP in respect of the principal borrower had already commenced on 28.02.2020 and moratorium under Section 14 of the IBC was enforced.
- II. The alleged default occurred only upon expiry of 7 days of the recall notice i.e., on 31.03.2020 which default was during 10A period, hence application under Section 95 is hit by bar under Section 10A and proceeding under Section 95 are not sustainable.
- III. The financial creditor has mis declared the quantum of debt by claiming Rs.291,61,30,615/- from the personal guarantors, whereas, only amount of Rs.55,06,46,056/- has been admitted in CIRP of the principal borrower and debt cannot be more than admitted claim. It is further submitted that financial creditor has suppressed that the amount of Rs.30 crore was paid by another guarantor M/s. Kalptaru Housing Pvt. Ltd. pursuant to which a No-Objection Certificate (NoC) dated 30.12.2022 was issued in favour of co-guarantor. A further recovery of Rs.10 crore was made from co-guarantor. It is pleaded that recovery of amount Rs.45 crore has been made by the financial creditor, hence the amount of debt and claim is wholly incorrect.
- IV. Report submitted by RP under Section 99 of the IBC has not been made after considering the objections raised by the personal guarantor Report merely reproduced the creditor's narrative, whereas, duty was cast on

the RP to examine the application as well as personal guarantor's objections.

V. The guarantee recall notice issued by financial creditor his void claim is in excess of the admitted liability of Rs.55,06,46,056/-.

5. Learned counsel Mr. Gaurav Mitra appearing for the respondent refuting the submissions of the appellant submits that the default was committed by borrower which was communicated vide default notice dated 02.04.2019 and 26.09.2019. The submission of the appellant is that by enforcement of moratorium under Section 14 after admission of CIRP against the principal borrower, loan recall notice could not have been issued which was hit by Section 14. It is further submitted that the default even as per the loan recall notice 23.03.2020 default took place on 31.03.2020, hence it was barred by Section 10A. Learned counsel for the respondent submits that bar under Section 10A does not apply for initiating proceeding under Section 95 against the personal guarantors, hence argument based on 10A is without any substance. It is further submitted that guarantee against the personal guarantors were invoked on 14.03.2022 which guarantee invocation was in accordance with Guarantee Deed. Initiation of CIRP against the corporate debtor has no bearing on the right of the financial creditor to invoke the personal guarantee. The submission of the appellant that amount claim can only be Rs.55,06,46,056/- is not correct. In the CIRP of the corporate debtor, the financial creditor has filed a claim of more than Rs.143 crores and RP admitted only the claim of Rs.55,06,46,056/-. Financial creditor has already filed an I.A. before the adjudicating authority objecting to rejection of its majority of claim being I.A. No.2275/2021 which application is pending

Comp. App. (AT) (Ins.) No. 61, 649 & 399 of 2025

adjudication, thus it cannot be said that claim of the financial creditor is only Rs.55,06,46,056/-. Insofar as payment by co-guarantor Kalptaru Housing Pvt. Ltd., the said details have already been submitted to the RP. There is no receipt of Rs.10 crore for sale of immovable property of co-guarantor as alleged there is not receipt of Rs.5 crore for sale of immovable property at an e-auction. According to own case of the appellant, there is debt outstanding of more than Rs. 1 crore, hence no illegality can be found in admission of Section 95 application on the aforesaid ground. It is submitted that NoC was issued to Kalptaru Housing Pvt. Ltd. on basis of settlement to release the charge and the amount received, applied to pro-rata basis to the revolving facility, Rs.13.33 crore was credited. Amount received from corporate guarantor – M/s. Kool Interiors Pvt. Ltd. i.e., only amount of Rs.4.15 crore has been applied to the revolving facility on pro-rata basis. Thus, the submission of the appellant that there is no due, is incorrect. More so, what is the actual amount due on the personal guarantor is the issue which has to be examined at the time of submission of repayment of plan and that cannot be a ground for not admitting Section 95 application. It is submitted that there is no error in the order admitting Section 95 application warranting any interference by this Appellate Tribunal.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. From the submissions of the parties and materials on the record, following facts emerged:

a. Corporate debtor was granted facilities of term loan of Rs.90 crore.

Appellant executed irrevocable and unconditional corporate guarantees

and personal guarantees on 22.09.2017. Clause 3 of the Guarantee Agreement 22.09.2017 stipulates:

“In the event of any default on part of the Borrower in payment/repayment of any monies referred to above, or in the event of default on the part of the Borrower and/or Obligors to comply with or perform any of the terms, conditions and covenants contained in the Facility Agreement, the Guarantor shall, upon demand, forthwith pay to the Lender without demur all the amounts payable by the Borrower and/or the Obligors under the Facility Agreement.”

- b. The financial creditor had issued default notice dated 21.04.2019 and 26.09.2019 to the principal borrower.
- c. CIRP against the corporate debtor commenced on 28.02.2020 on an application under Section 7 of the IBC by Homebuuyers – ‘Indu Kumar & Ors.’ Vs. ‘Saha Infratech Pvt. Ltd.’. In the CIRP of the corporate debtor, financial creditor filed a claim of Rs.143,68,50,028/- exclusive of interest as on 01.03.2020 out of which the RP admitted claim of Rs.55,06,46,056/-. Aggrieved by rejection of majority claim, financial creditor has filed I.A.2275/2021 before the adjudicating authority which is pending consideration.
- d. The guarantee against the personal guarantor was invoked by financial creditor by notice dated 14.03.2022. In the said invocation, financial creditor demanded a payment of Rs.189,55,24,774/- inclusive of interest as on 28.02.2022.
- e. Demand notice under ‘Form-B’ dated 17.11.2022 was issued to personal guarantor demanding an amount of Rs.229,61,30615/- as on 30.09.2022. Application under Section 95 of the IBC was filed by the financial creditor against the personal guarantors on 02.01.2023.

8. The first submissions which has been raised by the counsel for the appellant is that CIRP process having already commenced against the corporate debtor on 28.02.2020, loan recall notice dated 23.03.2020 was hit by Section 14 of the IBC. There cannot be any dispute that after initiation of CIRP, any recovery of amount from corporate debtor is prohibited. But the present is the case, where notice of default was issued to the corporate debtor in the year 2019 and initiation of CIRP against the corporate debtor and the moratorium under Section 14 of the IBC does not preclude the financial creditor to initiate action under Section 95 against the personal guarantor. The personal guarantee issued by personal guarantor was invoked by notice dated 14.03.2022, thus invocation against the personal guarantor have taken place on 14.03.2022, the same was well within jurisdiction of the financial creditor and cannot be said to hit by moratorium under Section 14. We thus do not find any substance in the submission of the appellant that proceeding under Section 95 are in any manner hit by Section 14 of the IBC.

9. The second submission which has been pressed by the appellant is that loan recall notice issued on 23.03.2020 required payment within 7 days, hence the default could have occurred only on 31.03.2020, which date of default was covered under Section 10A and the proceeding under Section 95 against the personal guarantor are hit by Section 10A, default having been taken place under 10A period. The present is a case, where invocation of guarantee took place on 14.03.2022. In any view of the matter, Section 10A prohibits filing of application under Sections 7, 9 & 10 of the IBC and provisions of Section 10A does not in any manner bar proceedings against the personal guarantor under Part III of the IBC.

10. Learned counsel for the financial creditor has rightly relied on the judgment of this Tribunal in **‘Amit Jain’ Vs. ‘Siemens Financial Services Pvt. Ltd.’**, reported in **[2022 SCC OnLine NCLAT 347]**, in which case, the appeal was filed against an order of admission under Section 95 application by a personal guarantor, Amit Jain. One of the grounds to challenge the order was that Section 10A barred the initiation of proceeding under personal guarantor. This Tribunal while examining the legislative scheme under Section 95 laid down following in paragraphs 11, 12, 13, 16 & 17:

“11. Section 95 of the Code is in Part III of the Code which contains "Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms". Under Part III, Chapter III deals with insolvency resolution process of which Chapter section 95 is part. Section 95(1) is as follows:

"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."

12. *When section 10A was inserted in Chapter II of Part I no corresponding amendment was made in Chapter III of Part III of the Code. Had the Legislature intended to prohibit filing of application under section 95(1) by a creditor against the personal guarantor for any default committed on or after March 25, 2020 a provision akin to section 10A could have very well be inserted in Chapter III Part III of the Code.*

13. *The principles of statutory interpretations are well established. The basic principle of statutory interpretation is that when a word of statute is clear, plain and unambiguous the courts are bound to give effect to that meaning irrespective of consequences. Justice S. R. Das in CAIT v. Sri Keshab Chandra Mandal 1950 SCC 205 : (1950) 18 ITR 569, 579 (SC) ; AIR 1950 SC 265, observed:*

"Hardship or inconvenience cannot alter the meaning of the language employed by the

Legislature if such meaning is clear on the face of the statute or the rules."

16. *On the basic principle of statutory interpretation, the provision of section 10A is capable of only one meaning that is suspension of initiation of CIRP was only for a corporate debtor. Had the Legislature intended suspension of initiation of CIRP against the personal guarantor also, similar amendment was also required to be made in Chapter III of Part III of the Code. The Legislature is presumed to be aware of consequences of statutory provision especially consequences of amendment made in the statute. Whether the suspension of insolvency resolution process has to be for corporate debtor and also for individuals including personal guarantor is the legislative policy which policy has to be looked into from the amendment brought in the Code by insertion of section 10A.*

17. *We are, thus, unable to accept the submission of learned counsel for the appellant that suspension of CIRP shall also to be accepted for personal guarantor as was provided for the corporate debtor. The statutory scheme does not contain any indication that CIRP shall also remain suspended for personal guarantor for any default between March 25, 2020 to March 24, 2021 therefore, submission of learned counsel for the appellant cannot be accepted."*

11. In the above case, this Tribunal has rejected the submission raised on behalf of the personal guarantor that application against the personal guarantor cannot be initiated if default is committed during 10A period. We, thus do not find any substance in the submission of the appellant that proceeding under Section 95 were inhibited by virtue of Section 10A.

12. The submission which has been pressed by the counsel for the appellant is that in the notice for invocation of the guarantee dated 14.03.2022 amount of Rs.189,55,24,774/- has been demanded, whereas, in notice issued in 'Form-B' dated 17.01.2022 amount of Rs.229,61,60,615/- has been demanded, whereas, RP has admitted the claim of corporate debtor

only to the extent of Rs.55,05,46,056/-, hence the debt against the appellants cannot be more than the amount admitted in the CIRP of the corporate debtor. He further submits that co-guarantor Kalptaru Housing Pvt. Ltd. has already paid an amount of Rs.30 crore towards the aforesaid debt and another corporate guarantor has paid amount of Rs.10 crore. The amount of Rs. 55,06,46,056/- which has been admitted in the CIRP of the corporate debtor have been challenged by the financial creditor by filing an IA which is pending consideration. Even for argument sake, if it is assumed that amount of debt is only Rs.55,06,46,056/-, the appellants have failed to prove by any cogent evidence that entire debt has been paid. According to the appellant Rs.30 crore and Rs.10 crore have been paid by another guarantor even according to the case of the appellant there are still debt of more than Rs.1 crore which is unpaid.

13. Financial creditor in its affidavit filed before the adjudicating authority and in its reply filed before this Tribunal has explained the amount received from Kalptaru Housing Pvt. Ltd. It is pleaded that amount of Rs.30.36 crore was received from Kalptaru Housing Pvt. Ltd. pursuant to an independent settlement releasing the charge and mortgage resulting in no due certificate on 22.06.2023 applicable only to the Kalptaru Housing Pvt. Ltd. Further, on the pro-rata basis out of the aforesaid amount Rs.13.33 crore has been applied to the revolving financial facility i.e., term loan and another amount received from Rs.9.46 crore received from M/s. Kool Interiors Pvt. Ltd. another corporate guarantor an amount of Rs.4.50 crore has been applied to the revolving facility again on pro-rata basis. The adjudicating authority already in paragraph 17 noticed the submission of the personal guarantor and has

observed that exact calculation of the amount of debt can be given in repayment plan by the personal guarantors. In paragraph 17 of the impugned order, following has been observed by the adjudicating authority:

“17. It is not the case of the PGs that they had repaid the amount of debt or are in a position to adduce any of such evidences as are provided in Sec. 99(2) of IBC, 2016 to prove the repayment of the debt. As far as the issue of difference between the amount of debt defaulted to be repaid by the Principal Debtor and allegedly defaulted to be repaid by the Personal Guarantors is concerned, in the present proceedings we need to see that whether the amount of debt is more than threshold limit of Rs. 1 Crore amount. It is not in dispute that admittedly the defaulted amount is more than 1Cr. As far as the exact calculation of the amount of debt is concerned, the Personal Guarantors can give the same in Repayment Pla. While submitting the Plan, the Guarantors would be entitled to benefit of the provisions of Section 146 of the Indian Contract Act. We do not find any reason, basis or justification to nix the pleas raised on behalf of Applicant/ Creditor (ibid) and not to allow the IA-5801/ND/2024, IA5298/ND/2024 and IA-5281/ND/2024 and admit CP(IB)-78/ND/2023, CP(IB)- 79/ND/2023 and CP(IB)-82/ND/2023. Also there is no reason not to accept the Report/Recommendation given by RP. The IAs are allowed and the company petitions/applications preferred under Section 95 of IBC, 2016 are admitted.”

14. In any view of the matter, even as per the case of the appellant, there is no liquidation of the entire admitted amount of the corporate debtor as on date and dues of more than Rs.1 crore is still pending, hence without entering into the issue regarding the quantum of the amount the quantum being more than Rs.1 crore, we do not find any error in the admission of Section 95 application.

15. Learned counsel for the appellant has contended that the objections which have been raised by the appellant in Section 95 proceedings which was directed to be considered by this Tribunal on 30.05.2023 has not been

Comp. App. (AT) (Ins.) No. 61, 649 & 399 of 2025

considered by the adjudicating authority. Comp. App. (AT) (Ins.) No. 692/2023 was filed by the appellant challenging the order, by which the RP was appointed. The said appeal was disposed of on 30.05.2023 by this Tribunal. In paragraphs 3 & 4 of the order, following was observed:

“3. From the order impugned, it does appear that Adjudicating Authority has fixed 14th June, 2023 for further consideration. We are of the view that ends of justice will be served in giving an opportunity to the Appellant to file an objection before the Adjudicating Authority on or before 14th June, 2023 which may be considered by the Adjudicating Authority while proceeding further in the matter. Issuing notice to the Respondent and keeping the Appeal pending shall result further delay in matter. In view of the aforesaid, we permit the Appellant to file an objection, it shall be open for the Adjudicating Authority to proceed further after considering objections of the Appellant.

4. With these observations, the Appeals are disposed of. In view of the fact that we have permitted the Appellant to file an objection, IRP shall not submit any report in the meantime. We make it clear that we are not expressing any opinion on merit.”

16. Adjudicating authority in the impugned order has noted the objections of personal guarantor. In paragraph 7 of the impugned order, detail objections raised by the appellant has been noticed. RP's report in detail has been noticed by the adjudicating authority. Adjudicating authority has after noticing the facts noticed by RP who had recommended for admission of Section 95 application has returned a finding that it is not the case of the personal guarantor that they have repaid the amount of debt. Insofar as difference of quantum amount of debt is claimed by personal guarantor, adjudicating authority has rightly observed that the said exact calculation of the amount can be given at the time of repayment of plan. Adjudicating

authority has further held that amount due is admittedly more than Rs.1 crore, hence there is no reason to not accept the recommendation of the RP.

17. In view of the foregoing discussions and conclusions, we are of the view that on the submissions raised by the appellant no grounds are made out to interfere with the order admitting Section 95 application against the appellants.

We do not find any error in the order admitting Section 95 application. There is no merit in any of the appeals. Appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

19th December, 2025

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