

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.58 of 2023

(Arising out of Order dated 01.12.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No.IV in C.P.(IB)/359(MB)2022)

IN THE MATTER OF:

Mr. Ankit Miglani
21-B, Embassy Apartment, 46,
Nepean Sea Road,
Mumbai, Maharashtra – 400 036.

... Appellant

Vs

State Bank of India
(Through Resolution Professional,
Mr. Harish Kant Kaushik)
Stressed Assets Management Branch – II,
Raheja Chambers, B-Wing,
Ground Floor, Free Press Journal Marg,
Nariman Point, Mumbai,
Maharashtra – 400 021

... Respondent

Present:

For Appellant: **Mr. Gaurav Mitra, Mr. Ishan Roy Chowdhury,
Ms. Lavanya Pathak, Mr. Akshat Singh, Mr.
Bhanu Gupta, Mr. Sanampreet Singh,
Advocates**

For Respondents: **Mr. Harshit Khare, Advocate for SBI.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Appellant challenging order dated 01.12..2022 passed by National Company Law Tribunal, Mumbai Bench, Court-IV, by which an Application under Section 95 sub-section (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the

“**Code**”) filed by State bank of India (Respondent herein), the Adjudicating Authority has declared commencement of moratorium under Section 96(1)(a) of the Code and has appointed an Insolvency Resolution Professional (“**IRP**”) as Resolution Professional (“**RP**”). The Appellant, a personal guarantor of Corporate Debtor, M/s – Uttam Galva Metalics Limited aggrieved by the said order, filed this Appeal.

2. We have heard Shri Gaurav Mitra, learned Counsel for the Appellant and shri Harshit Khare, learned Counsel appearing for State Bank of India (“**SBI**”).

3. The learned Counsel for the Appellant submits that the Registered Office of the Corporate Debtor M/s Uttam Galva Metalics Limited is situated in State of Haryana, hence, the Application under Section 95(1) filed by the SBI before the National Company Law Tribunal, Mumbai Bench was not maintainable and lacks territorial jurisdiction. It is submitted that earlier Corporate Insolvency Resolution Process (“**CIRP**”) against the associate Company of Corporate Debtor - Uttam Value Steels Limited under Section 7 was filed before the Mumbai Bench and during the pendency of the said petition, the SBI has filed another petition under Section 7 against the Corporate Debtor - Uttam Galva Metalics Limited being Company Petition (I.B.) No.18 of 2018 before the Chandigarh Bench, which was transferred to the Mumbai Bench, where both the petitions were heard and Resolution Plan was approved by order dated 06.05.2020 and the Company Petition pending in the Mumbai Bench has come to an end. It is submitted that there is no reason or occasion to file Application under Section 95

before the Mumbai Bench and the order passed by the Adjudicating Authority is completely without jurisdiction and deserves to be set aside. The Mumbai bench ought to have dismissed the Company Petition instead of usurping the territorial jurisdiction in entertaining the Application. It is submitted that before the Adjudicating Authority, among other objections, this objection was also raised on 01.12.2022 by the Appellant regarding the maintainability, which objection was overruled.

4. The learned Counsel for the SBI opposing the Appeal contends that Adjudicating Authority, i.e., NCLT Mumbai Bench has jurisdiction to entertain the Application filed under Section 95 sub-section (1). In the present case, the NCLT Mumbai had adjudicated on the CIRP of the Corporate Debtor, hence, Adjudicating Authority has jurisdiction to oversee the personal insolvency resolution of the personal guarantor on account of the dynamics and the interwoven connection between the Corporate Debtor and a guarantor. The learned Counsel for the SBI has referred to provisions of Section 60 of the Code. It is submitted that the dues of the SBI in the Resolution Plan has not been specified, hence, the demand invocation Notice was issued to the Appellant and on 23.06.2021 a petition was filed under Section 95 before the NCLT Mumbai Bench against the Appellant. On 01.12.2022, the Adjudicating Authority has rejected the objection of the Appellant regarding territorial jurisdiction.

5. We have considered the submissions of learned Counsel for the parties and have perused the record.

6. Section 60 of the Code is part of Chapter VI, which deals with Adjudicating Authority for Corporate Persons. Section 60, sub-section (1), (2) and (3), which are relevant for the present case, are as follows:

“60. Adjudicating Authority for corporate persons.

- (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before the National Company Law Tribunal.

(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.”

7. The Scheme of the Code as per Section 60 is that Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate

persons including corporate debtors and personal guarantors in the NCLT having territorial jurisdiction over the place where the registered office of a corporate person is located. The Corporate Person in the present case is Uttam Galva Metallics Limited, whose registered office admittedly is in the State of Haryana. Sub-section (2) of Section 60 contains an addition to Section 60(1), which provides that where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution process of a corporate guarantor or personal guarantor shall be filed before such National Company Law Tribunal. This Tribunal had occasion to consider the Scheme of Section 60, sub-section (2) in ***Company Appeal (AT) (Insolvency) No.60 of 2022 – State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia, Personal Guarantor to Corporate Debtor***, wherein, the Adjudicating Authority held that no CIRP or liquidation proceedings of the Corporate Debtor being pending, the Application filed under Section 95 was rejected. In the above context, this Tribunal examined the statutory Scheme of Section 60 and in paragraphs 7 to 10, following was held:

“7. Sub-Section 1 of Section 60 provides that Adjudicating Authority for the corporate persons including corporate debtors and personal guarantors shall be the NCLT. The Sub-Section 2 of Section 60 requires that where a CIRP or Liquidation Process of the Corporate Debtor is pending before ‘a’ National Company Law Tribunal the application relating to CIRP of the Corporate Guarantor or Personal Guarantor as the case may be of such Corporate Debtor shall be filed before ‘such’ National Company

Law Tribunal. The purpose and object of the sub-section 2 of Section 60 of the Code is that when proceedings are pending in 'a' National Company Law Tribunal, any proceeding against Corporate Guarantor should also be filed before 'such' National Company Law Tribunal. The idea is that both proceedings be entertained by one and the same NCLT. The sub-section 2 of Section 60 does not in any way prohibit filing of proceedings under Section 95 of the Code even if no proceeding are pending before NCLT.

8. *The use of words 'a' and 'such' before National Company Law Tribunal clearly indicates that Section 60(2) was applicable only when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before NCLT. The object is that when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before 'a' NCLT the application relating to Insolvency Process of a Corporate Guarantor or Personal Guarantor should be filed before the same NCLT. This was to avoid two different NCLT to take up CIRP of Corporate Guarantor. Section 60(2) is applicable only when CIRP or Liquidation Proceeding of a Corporate Debtor is pending, when CIRP or Liquidation Proceeding are not pending with regard to the Corporate Debtor there is no applicability of Section 60(2).*

9. *Section 60(2) begins with expression 'Without prejudice to sub-section (1)' thus provision of Section 60(2) are without prejudice to Section 60(1) and are supplemental to sub-section (1) of Section 60.*

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.”

8. Civil Appeal No(s). 1871-1872 of 2022 filed against the above judgment has been dismissed by Hon’ble Supreme Court vide order dated 06.05.2022, which is to the following effect

“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.”

9. From the facts brought on record, it does appear that earlier CIRP, which was initiated against the Corporate Debtor in NCLT Chandigarh Bench was transferred by order of the Principal Bench to NCLT Mumbai Bench, which CIRP was heard along with another CIRP of an associate Company pending before the NCLT Mumbai Bench, namely - Uttam Value Steels Limited. Both proceedings were completed by approving the Resolution Plan dated 06.05.2020 and as on date when Application under Section 95 has been filed against the Appellant, no CIRP was pending against the Corporate Debtor at NCLT Mumbai Bench. Under Section 60 sub-section (2), insolvency resolution process against the personal guarantor can be filed before the NCLT where CIRP is pending. When at

present no CIRP is pending in the NCLT Mumbai Bench, Section 60, sub-section (2) has no application in the present case. The facts that once upon a time CIRP against the Corporate Debtor was undertaken by the NCLT Mumbai Bench under order of transfer from the Principal Bench, will not preclude the jurisdiction of NCLT Chandigarh Bench for Application against the personal guarantor. The Application against the personal guarantor by virtue of Section 60 sub-section (1) has to be filed before the Adjudicating Authority under whose jurisdiction, registered office of the Corporate Debtor is situated. There is no dispute between the parties that registered office of the Corporate Debtor is situated in the State of Haryana and it is the NCLT Chandigarh, which has jurisdiction to consider any Application against the personal guarantor, such as Appellant. Before the Adjudicating Authority, this objection was raised and noticed. However, the said objection was overruled. In paragraph 4 of the impugned order, following has been observed:

“4. The bench has a considered view that following the order of admission into CIRP of the Corporate Debtor, this Bench having jurisdiction to appoint a Resolution Professional in the Personal Guarantor of the Corporate Debtor.”

10. In paragraph 7, it was noted that CIRP against the Corporate Debtor was initiated on 11.07.2018, which proceeding was admitted and thereafter insolvency resolution process was completed by approval of the Plan by order dated 06.05.2020. The Respondent in paragraph 5 of the reply from (iii) to (xii) has stated necessary 11 facts, which are to the following effect:

- “(iii) The Corporate Debtor – Uttam Galva Metallics Limited (“UGML”) defaulted in its repayment obligations under various credit facilities on 30.06.2016 and owing to which the account of UGML was classified as NPA with effect from 28.09.2016.*
- (iv) In December 2017, a Section 7 petition was filed by Respondent against Uttam Value Steels Limited (“UVSL”), an associate company of the UGML, before the Mumbai Bench of the Adjudicating Authority. That under Section 7 of the Code, a petition was also filed against the UGML before the Chandigarh Bench of the Adjudicating Authority.*
- (v) In February 2018, a Company Petition was filed by UVSL only before the Principal Bench of the Adjudicating Authority seeking the transfer of UVSL Petition which was pending before the Mumbai bench to the Chandigarh Bench. However, the Principal Bench by an order dated 13.02.2018 instead transferred the UGML Petition from the Chandigarh Bench to Mumbai Bench.*
- (vi) On 17.03.2018 the Respondent issued 3 demand invocation notices (in terms of the Deed of Personal Guarantees executed on 10.10.2015, 05.08.2015 and 05.08.2015) on the Appellant, stating that since the borrower (the Corporate Debtor) has not fulfilled its obligation under the loan agreements, the amounts are due and payable, and we require you to pay such amounts. Accordingly, 17.03.2018, was the first event, when the personal guarantees were invoked and a demand was raised on the Appellant by the Respondent.*
- All the Demand Invocation Notices are part of the Section 95 Application, which is annexed herewith and marked as Annexure R2.*

- (vii) *The UGML petition was admitted for the commencement of Corporate Insolvency Resolution Process vide order dated 11.07.2018.*
- (viii) *A demand notice dated 03.02.2020 was served by the Respondent on the Appellant claiming Rs.422.21 Crores as the amount of debt in default.*
- (ix) *After that vide an order dated 06.05.2020, the resolution plan submitted by the resolution applicants was thereby approved by the Adjudicating Authority in respect of UVSL as well as UGML.*
- (x) *In terms of the approved resolution plan, the Respondent was proposed to be paid a sum of Rs.183,14,79,002 against its total admitted claims of Rs.527,01,19,307, thereby leaving the residual debt of Rs.343,86,40,305, which the Respondent seek to recover from the Appellant.*
- (xi) *Since, the Respondent could not recover entire amount of its claims in the CIRP of the Corporate Debtor, the Respondent with an intent to recover the residual debt, decided to file for insolvency of the Appellant and accordingly on 23.06.2021, a petition was filed under Section 95 by Respondent against the Appellant for the initiation of the Insolvency Resolution Process before the Mumbai bench.*
- (xii) *The Adjudicating Authority vide order dated 01.12.2022 allowed the petition after duly considering the arguments raised by the Appellant with respect to the jurisdiction of the Adjudicating Authority.”*

11. From the facts which have been brought on record by the State Bank of India, it is clear that on the date when Section 95 Application was filed before the Adjudicating Authority, i.e., 23.06.2021, no insolvency

resolution was pending against the Corporate Debtor before NCLT Mumbai. Hence, Section 60 sub-section (2) could not have been invoked.

12. In view of the foregoing discussions, we are of the view that NCLT Mumbai Bench had no territorial jurisdiction to entertain Section 95 Application filed by the State Bank of India against the Appellant. The jurisdiction to entertain Section 95, sub-section (1) Application was only before the NCLT under whose jurisdiction the registered office of the Corporate Debtor is situated, which in the present case happens to be NCLT Chandigarh. In the result, we allow the Appeal, set aside the order dated 01.12.2022 passed by the Adjudicating Authority and dismiss the C.P.(IB)/ 359(MB)2022 filed under Section 95 sub-section (1) due to lack of territorial jurisdiction. We make it clear that dismissal of Application C.P.(IB)/ 359(MB)2022 shall not preclude the Respondent to file an Application before the appropriate Forum.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

19th April, 2023

Ashwani