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

(IB) 114(ND)/2022

IN THE MATTER OF:

STATE BANK OF INDIA
STRESSED ASSET MANAGEMENT BRANCH- II
11TH FLOOR, JAWAHAR VYAPAR BHAVAN
STC BUILDING, 1 TOLSTOY MARG,
JANPATH, NEW DELHI – 110001

THROUGH
RESOLUTION PROFESSIONAL
SH. CHANCHAL DUA

....APPLICANT/CREDITOR

VERSUS

SH. DINESH KUMAR BASIA
SU 217, PITAMPURA,
DELHI - 110034

....RESPONDENT/ GUARANTOR

SECTION: U/S 95 of IBC, 2016

Order delivered on: 06.06.2022

CORAM:
MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
MR. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

Present-

For the Applicant	:	Mr. Abhishek Anand, Mr. Prateek Kushwaha, Mr. Samriddh Bindal
For the Respondent	:	Mr. Rishi Kapoor, Mr. Akhil Shankhwar

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present application is filed under Section 95 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), by State Bank of India ("Applicant/Creditor") praying for initiation of Insolvency Resolution Process against Mr. Dinesh Kumar Basia, who is the Guarantor of M/s Gee Ispat Private Limited ("Corporate Debtor").

2. That, on the hearing of this case on 21.02.2022, the Ld. Counsel for the Respondent/Guarantor appeared and appraised that the Respondent has already filed an Application under Section 94 of the Code. Consequently, an affidavit dated 26.02.2022 was filed by the Respondent/Guarantor submitting the aforementioned fact.

3. In response to the above, a counter affidavit dt. 11.03.2022 was filed by the Applicant submitting that the present application u/s 95 of the Code was filed on 01.10.2021 and in terms of Section 96(1) of the Code, interim moratorium commenced on the filing of the application i.e. on 01.10.2021 and subsequently, the Guarantor filed the Section 94 application in C.P. (IB)- 770/2021 on 30.11.2021.

4. That the Applicant has filed written submissions and the scanned copy is reproduced below:

SECTION 94 FILED BY THE RESPONDENT/ PERSONAL GUARANTOR IS NOT MAINTAINABLE

1. It is a matter of record that the State Bank of India issued a statutory demand notice dated 29.06.2021 under Section 95(4)(b) of the Insolvency and Bankruptcy Code, 2016 ("Code") to the Respondent in FORM B as per Rule 7(1) of the IBBI (Personal Insolvency) Rules, 2019 calling upon the guarantor to pay Rs. 58,17,07,111/- due as on 02.11.2018.

2. Pursuant to filing the demand notice, the Respondent filed a reply dated 13.07.2021 whereby the Respondent admitted that he was in receipt of the Demand Notice on 01.07.2021.

3. Even otherwise the Application filed by the Respondent herein under Section 94 on 30.11.2021 cannot be proceeded or pressed by the Respondent herein since an Application filed under Section 95 of the Code was filed much prior, i.e., on 01.10.2021 by the Applicant herein. Since an Application under **Section 95 was filed on 01.10.2021**, and therefore in terms of Section 96(1)(a) the interim moratorium is *ipso facto* initiated as soon as the application is filed before this Hon'ble Adjudicating Authority. The relevant dates are mentioned below:

S. NO.	CAUSE TITLE	CASE NO.	DATE OF FILING
1.	*State Bank of India through Resolution Professional Chanchal Dua vs. Dinesh kumar Basia* **(Section 95)**	IB-114/ND/2022	01.10.2021
2.	*Ankit Kumar Gupta (Section 94)*	C.P. (IB)-770/2021	30.11.2021 (Dy. No. 0710102087272021)

4. In view of the interim moratorium under Section 96, any legal action or proceeding in respect of any debt must be stayed. Hence, in view of the above, the Application filed by the Respondent under Section 94 is not maintainable and deserves to be dismissed.

II. MORATORIUM IS INITIATED AS SOON AS AN APPLICATION UNDER SECTION 95 OF I & B CODE IS 'FILED'

3. It is reiterated that since an application under Section 95 is already filed and the therefore interim moratorium under Section 96 is into force. At this juncture, it is imperative to note, Section 96 of the I & B Code provides that an *interim moratorium shall commence* ***on the date of the application*** *in relation to all the debts and shall cease to have effect on the date of admission of such application.* It is further submitted that since the application was filed on 01.10.2021 the interim moratorium is initiated.

4. It is imperative to note the relevant Rules of the National Company Law Tribunal Rules, 2016, which are reproduced herein below:

> **"Rule2(14):** ***"filed" means filed in the office of the Registry of the Tribunal;***
>
> **Rule 23:** ***Presentation of petition or appeal .- (1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.***
>
> **Rule 29:** ***Registration of proceedings admitted. - On admission of appeal or petition or caveat or application, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein."***

5. Pursuant to the above, and keeping in mind the definition of 'filing' as mentioned hereinabove, the Hon'ble NCLAT in the matter of ***Ravi Ajit Kulkarni vs. State Bank of India*** **[Company Appeal (AT) (Insolvency) No. 316 of 2021],** while clarifying the process of initiation of CIRP process for personal guarantors of the Corporate Debtor has held as follows:

> ***"25. Section 96 deals with interim-moratorium. As is clear from the section reproduced above, relevant is that when an application is "filed" under Section 95, the interim-moratorium will automatically kick in. Thus, the effect of interim-moratorium immediately starts when the application is "filed". No adjudication is involved here."***

6. It is further submitted that the Hon'ble Supreme Court in the matter of ***M/s Surendra Trading Company vs. M/s Juggilal Kamlapat Jute Mills Company Limited and Ors.***, [Civil Appeal No. 8400 of 2017] has held that as follows:

> ***"24. Thus, we hold that the aforesaid provision of removing the defects within seven days is directory and not mandatory in nature.***
> ***
>
> ***26. In fine, these appeals are allowed and that part of the impugned judgment of NCLAT which holds proviso to sub-section (5) of Section 7 or proviso to sub-section (5) of Section 9 or proviso to sub-section (4) of Section 10 to remove the defects within seven days as mandatory and on failure applications to be rejected, is set aside."***

7. In view of the above it is hereby submitted that the day the Registry of this Hon'ble Adjudicating Authority has accepted the applications and gave a 'diary number' to the Applicant herein becomes the **date of filing of an application** and consequentially and automatically, an interim moratorium has commenced without prejudice to the fact that defects have been removed or not. Therefore, the Application filed by the Respondent under Section 94 is admittedly filed after filing of Section 95 by the Applicant Bank and thus the application under Section 94 is not maintainable and is filed with *malafide* intention only to derail the process initiated by the Applicant.

III. LIMITATION IS CALCULATED FROM THE DATE OF 'FILING' AND NOT FROM THE DATE WHEN THE APPLICATION IS MARKED 'DEFECT FREE' OR 'LISTED'

8. That without prejudice to the above, it is hereby submitted that even the limitation period for any application/appeal/petition is calculated from the period of filing an Application or Petition before the appropriate forum. Therefore, in the instant case as well, the moratorium shall be instituted in terms of Section 96 of the Code in the present

matter as soon as the Application is filed before Registry of this Tribunal within the meaning of Rule 2(14) of the NCLT Rules 2016

9. Inference can also be drawn from the judgment of Hon'ble Supreme Court in the matter of ***B.K. Educational Services (P) Ltd. Vs. Parag Gupta & Associates*** held that the Limitation Act, 1963 is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. ***If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act,*** save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

10. It is hereby submitted that since the Limitation of default under the Code is also construed from the **date of filing of the Application**, therefore, in the instant case as well the interim moratorium under Section 96 kicked in on the **date of filing of an application**, and hence the Application under Section 94 could not have been filed and therefore deserves to be dismissed. Even otherwise in case, the Legislature intended that an interim moratorium would be passed or commence on the **date of listing/ numbering** of an application, then the Legislature would have specifically mentioned the word **Scrutinised/Numbered**/written the same herein. It is humbly submitted that the Hon'ble Adjudicating Authority will have to interpret the particular provision of law the way it is, similarly, the Hon'ble Supreme Court in the matter of ***Grasim Industries Ltd. vs. Collector of Customs, Bombay*** **[(2002)4 SCC 297]**, has followed the same principle and observed:

> *"Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions."*

APPLICABILITY OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016

11. The Respondent in its written submissions have relied on Rule 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, which states that that only Rule 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013 shall apply. However, such an argument is untenable and incorrect in law. If such an argument is accepted then it shall prejudice the rights of all the stakeholders since there are several other Rules that are necessary for adjudication of any proceeding, including but not limited to, Part IV (General Procedure), Part X (Record of Proceedings), Part XIX (Disposal of Cases and Pronouncement of Orders), Rule 11 (Inherent Power of the NCLT), Rule 16(d) (Transfer of proceedings).

12. It is imperative to mention the judgment dated 29.11.2019 relied upon by the Personal Guarantor, passed by the Hon'ble High Court of Bombay in the matter of ***Kamal K. Singh vs. Union of India*** **[Writ Petition (L) No. 3250 of 2019]**, wherein the Respondent had taken a similar plea as the Respondent herein mentioning Rule 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, therefore other Rules will not be applicable in the instant case. However, the Hon'ble Bombay High Court found no merit in the argument of the Respondent therein. The relevant portion of ***Kamal K. Singh (Supra)***, is reproduced herein below:

> *"65. A perusal of Rule 10 would show that the same pertains to the rules and procedure for conduct of proceedings under the Code. They are yet not notified. Until then, the application made under sub-section (1) of section 7 and sub-section (1) of section 9 and section 10 of the IBC shall be filed before the adjudicating authority in accordance with Rules 20 to 26 of Part III of NCLT Rules, 2016. Mr. Kadam overlooks the fact that Rule 10 has been inserted so that there is no vacuum. It is only to facilitate the filing of the*

applications under the sub-section (1) of section 7 and sections 9 and 10 that the rule makers have provided the procedure in that behalf in the NCLT Rules, 2016. ***Thus, only the procedure in relation to filing of application, which has been set out in the NCLT Rules, 2016, is applied until the rules of procedure for conduct of proceedings under the Code are notified. We cannot read sub-rule (1) of Rule 10 as suggested by Mr. Kadam. He would argue that Rules 20 to 26 of Part III of the NCLT Rules, 2016 shall apply and rest of the NCLT Rules, 2016 would not apply. This argument overlooks the fact that the rules of procedure for conduct of proceedings under the Code have yet to be notified, the framers of the rules and the legislature itself did not want a vacuum to be created. Otherwise, there would be no guide at all. A pre-existing or pre-established tribunal functional much before the Code came into force has been chosen for adjudication of the applications under section 7.*** *That is how the term "adjudicating authority" is defined in the Code. Therefore, until the rules of procedure in relation to the conduct of proceedings under the IBC are notified, the NCLT Rules, 2016 would be the governing rules. When the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 were notified, the legislature was aware that it will have to frame and notify separate rules enabling filing of application under section 7(1), section 9(1) and section 10(1) of the IBC.* ***If they are not notified as yet, then, Rule 10 allows filing of application under the NCLT Rules, 2016 and particularly Rules 20 to 26. However, that does not mean that the rest of the NCLT Rules already notified and governing procedural aspects and guiding the NCLT would cease to apply. That is not the mandate flowing from the language of Rule 10. We, therefore, do not find any merit in the argument of Mr. Kadam in this behalf."***

13. That the contention raised by the Respondent herein that Rules 20 to 24 and 26 of the NCLT Rules, 2016 will have to be read solely is incorrect and contrary to the settled provision of law. It is submitted that as per the laws of statutory interpretation, the statute is interpreted as per 'internal aids. The contention of the Respondent is against the judgment of Hon'ble Supreme Court in the matter of ***India City Properties & Anr. vs. Municipal Commissioner of Greater Bombay & Anr.*** **[(2005)6 SCC 417]**, wherein the Hon'ble Court has held as under:

"10. The body of the section however qualifies the definition with the words "unless there be something repugnant in the subject or context". The phrase in Section 3 means precisely what it says, namely, that the definition will apply unless excluded expressly or by necessary implication. The onus is on the person alleging such exclusion. It is not the respondent's case that the items found to be permanent existing structures by the Commission of the High Court, would not fall within the general definition of building. The submission is that the word should be read in a more restrictive manner in the context of Section 299. The question then is — has the onus been discharged by the respondent.

11. The definition itself is in terms an inclusive one and is therefore to be widely construed. It seems to indicate that a structure would be a building if it has been erected by the use of whatever material, which may or may not be used by human beings since it specifies stables and tanks as buildings."

LEGISLATURE HAVE NOT USED THE WORD "REGISTERED"

14. That a conjoint reading of NCLT Rules as mentioned above, it is evident that under Section 96 the words used are, *When an application is **filed** under Section 94 or 95, an interim moratorium shall commence **on date of the application***. Admittedly, the **date of application** can only be construed as **date of filing** and that is the solitary reason that the Legislature have used the word **filed** and not registered/numbered. **"Filed"** as per Rule 2(14) of the NCLT Rules, 2016 means ***filed in the office of the Registry of the Tribunal.*** Admittedly, in the instant case, Section 95 Application was filed in the Office of the Registry of this Tribunal on **01.10.2021 and therefore, any subsequent application filed by Personal Guarantor or even any other creditor would be hit by Interim Moratorium under Section 96 of the Code.**

15. In light of the above it is hereby submitted that the Application filed under **Section 94** is an afterthought and filed with *mala fide* intention, even otherwise it is submitted that Section 96 provides for the initiation of the interim moratorium which was initiated as soon as Application under Section 95 was filed by the Applicant herein, therefore, any other Application for initiation of insolvency is *void ab initio*. Further, the any other argument taken by the Respondent in its Reply or in the written submission are untenable in law and only to derail and delay the process.

5. That the Respondent has filed written submissions and the scanned copy is reproduced below:

A. THAT THE MEANING OF "FILING" UNDER SECTION 96 OF THE INSOLVENCY & BANKRUPTCY CODE, 2016 (THE "IBC") MEANS NUMBERING OF THE PETITION:

That the NCLT when adjudicates under the IB Code, it assumes the role of an Adjudicating Authority for Corporate Persons under PART II of the IBC and in case of a PART III of the Code it assumes the role of the Adjudicating Authority for personal guarantors, which otherwise is assumed by DRT in case other than provided under Section 60(2) and 60(3) of the IBC. The Adjudicating Authority is governed by the Rules and Regulations framed for Adjudicating Authority, which in the present case is *the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019* (the **"Rules"**). Rule 2(a) defines the NCLT to be the Adjudicating Authority in the present case. Rule 10 is the relevant Rule that deals with the filing of the Application under

Section 94 or 95 of the IB Code. As per Rule 10, for the purposes of application under Section 94 or 95, only Rule 20, 21,22,23,24 and 26 of the NCLT Rules 2016 is made applicable. The relevant Rule 10 is as under:

> *Rule 10 Filing of application and documents.—*
>
> *(1) Till such time, rules of procedure for conduct of proceedings under the Code are notified, the applications under rules 6 and 7 shall be filed and dealt with by the Adjudicating Authority in accordance with —*
>
> *(a) rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013 (18 of 2013); or*
>
> *(b) rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as the case may be.*
>
> *(2) The application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as directed by the Adjudicating Authority: Provided that till such facility is made available, the applicant may submit accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as compact disc or a USB flash drive acceptable to the Adjudicating Authority.*

Therefore, for the purposes of seeing as to when an application under Section 94 or Section 95 of the IBC is considered to be "filed" within the meaning of Section 96, it is to be seen whether the same is filed in accordance with Rule 10 of the Rules, which in fact would mean that, an application which is filed in terms of Rule 20-24 and 26 of the NCLT Rules would be considered as "filing" in terms of Section 96 of the IBC. Rule 20 to 24 and 26 of IBC is reiterated as under for ready reference:

> *"....Rule 20. Procedure:*
>
> *(1) Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about*

four centimeter width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form;

(2) The cause title shall state "Before the National Company Law Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.

(3) Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.

(4) Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given.

(5) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.

(7) These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.
(8) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(9) Every proceeding shall state immediately after the cause title the provision of law under which it is
preferred...."

".....Rule 21. Particulars to be set out in the address for service. - The address for service of summons shall be filed with every appeal or petition or application or caveat on behalf of a party and shall as far as possible contain the following items namely:-

(a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;
(b) the name of the town or village;
(c) the post office, postal district and PIN Code, and
(d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any...."

"....Rule 22. Initialling alteration:-

Every interlineations, eraser or correction or deletion in any appeal or petition or application or document shall be initialled by the party or his authorised representative presenting it..."

"……Rule 23. Presentation of Petition or appeal:-

(1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
(2) Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.
(3) All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.
(5) In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.
(6) The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum of appeal....."

"....Rule 24. Number of copies to be filed:-

The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party...."

"……26. Endorsement and verification:

(1) At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.
(2) Every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules

A bare perusal of the aforesaid rule would show that there are specific conditions that need to be fulfilled for "***filing***" of an application to called a filing in accordance with Rule 10 of the Rules. These are including but not limited to the following:

a. Proper pagination; and
b. Proper margin, proper spacing as prescribed; and
c. English, legible and fair; and
d. Numbering to be consecutive; and
e. Provision of law as prescribed; and
f. Description of parties as prescribed; and
g. Address of service as prescribed; and
h. Initialing alteration as prescribed; and
i. In triplicate as prescribed; and
j. Certified true copies as prescribed; and
k. Endorsement and verification as prescribed; and
l. Other conditions as prescribed under Rule 20-24 and 26 of NCLT Rules and made applicable by way of Rule 10 of the Rules.

Therefore, a Petition to be considered as "filed" has to comply with the Rule 20-24 and 26 of NCLT Rules and made applicable by way of Rule 10 of the Rules for any Petition under Section 94 and 95 of the IBC. Any Petition that is presented to the Registry and not complies with the aforesaid provisions is marked as "defective" Petition by the Registry and therefore, any Petition which is marked defective is evidence of it not being "filed". If the Petition is in the manner as provided under the said Rules, only then it would be considered as "filed" which is evidenced by the numbering of the Petition. The Registry is dutybound to number the Petition if it complies with the conditions of the aforesaid Rules. Therefore, whether the Petition is "***filed***" or not, is determined by the numbering of the Petition, as otherwise it is defective and cannot be considered as "***filing***". The act of numbering of Petition is the sole evidence to show and determine that the Petition is "filed" in terms of the Rules as afore-stated. "***Filing***" under Section 96 means filing not merely a bunch of papers but an act of filing as provided under Rule 10 of the Rules, which in turn, has to be as provided under Rule 20 to 24 and 26 of the NCLT Rules. Therefore, any Petition which is not complying with Rule 20 to 24 and 26 cannot be considered to be filed for the purposes of Section 96 of the IBC, which in other words, means, that a Petition which is in defects cannot be a filing in terms of Rule 20 to 24 and

26 of NCLT Rules and therefore is not a filing in terms of Rule 10 of Rules and accordingly not a filing for the purposes of Section 96 of the IBC.

Therefore, as per law, the numbering of Petition, which is an evidence of filing in terms of Rule 10 of the Rules, is the "filing" of the Petition for Section 96 of the IBC. The same has been held by the Hon'ble NCLAT New Delhi in Ravi Ajit Kulkarni v. State Bank of India in Company Appeal (AT)(Ins.) No. 316 of 2021, wherein the Hon'ble NCLAT dealt with the entire Section 96 of the IBC and held that the "*filing*" under Section 96 of the IBC shall mean "***numbering***" of the Petition an treated so accordingly. This was held by the Hon'ble NCLAT after referring to Rule 20 to 24 and 26 of the NCLT Rules as applicable to the present proceedings under Rule 10 of the Rules. The relevant paragraph of the judgment is as under:

> *"....39. This takes us to Rule 20 to 24 and 26 of Part III of NCLT Rules which deals with institution of proceedings, petition, appeals etc. and procedure and particulars to be set out in the address for service and presentation of petition or appeal, etc. Once the application has been "filed" and treated so by numbering the application by the Adjudicating Authority, the next stage contemplated for the Adjudicating Authority is to only appoint the Resolution Professional under the provisions of Section 97 and the Resolution Professional is to then "examine" the application as per requirements laid down in Section 99 where the Resolution Professional has to also give opportunity to the Debtor/ Personal Guarantor and submit the report...."*

That Therefore, as per the NCLAT judgment it is clear that after dealing with the relevant provisions of the Rules and the Code, the Hon'ble NCLAT has held that the "filing" of the Petition is to be treated as filed by numbering of Petition. The said judgment is binding as a precedent in the present case as the question does not remain res integra. That as per the NCLAT judgment in *Rajeev R. Jain, Director (Suspended) versus Aasan Corporate Solution Private Limited*, the principle of *stare decisis* is applicable to the NCLTs acting as Adjudicating Authorities and the judgments of NCLATs are binding upon the NCLTs. Therefore, the said judgment holding filing of the Petition for the purposes of Section 94,

95 and 96 to be "***numbering of the Petition***" is the law governing the present case as on date and it is humbly submitted that the same is to be followed in terms of *stare decisis*.

Even looking from another angle, which was posed during the course of arguments, that Rule 2(14) of the NCLT Rules states that filed means filed with the Registry. In response to the same, it is submitted that firstly, act of filing in the present case is to be governed by Rule 10 of the Rules and only Rule 20-24 and 26 of the NCLT Rules are applicable by virtue of the same and such definition is not made applicable to the instant case of Section 94 and 95 proceedings. Secondly, even as per the NCLT Rules, more specifically, Rule 2(14) filed with the registry means filed as provided under the NCLT Rules i.e. Rule 20-24 and 26. The law cannot be interpreted to mean that filing is merely filing a bunch of papers not complying with the provisions of law as contained in the NCLT Rules. Therefore, even as per the definition of filed under Rule 2(14) of the NCLT Rules, filed with the Registry means filed as provided under the NCLT Rules, more specifically, Rule 20 to 26 of the NCLT Rules. Therefore, even in this way, the conclusion shall remain the same that any Petition which is defective cannot be considered as "filed" within the meaning of Section 2(14) as law contemplates that "an act required to be done in a manner shall be done that manner alone or would be considered to have not been done at all". Accordingly, filed even in terms of Section 2(14) means filed in accordance with law i.e. Rule 20 to 26 of the NCLT Rules, which again can be evidenced only by numbering of the Petition.

Even otherwise, the Hon'ble NCLAT has given a dictum after considering the law and held that the filing shall be treated so by numbering of the Petition and therefore remains the law as on date and is binding in the present case.

Furthermore, even though there is no ambiguity in the law, assuming for the sake of arguments, that the law provides for two different meanings, the meaning which would render the provision unworkable or otiose or redundant or senseless has to be discarded. In the present case, the interpretation sought by the State Bank of India needs to be

discarded as if the Diary No. is taken to be the filing in terms of Section 96, then it would be misused by the Personal Guarantors themselves as the said Applicants shall file a bunch of papers with the Registry and keep the same in defects for years while using the benefits of interim moratorium in all their proceedings of recovery and Section 138 NI Acts, throughout their lives, without an resolution or effective hearing as contemplated with no checks on them. Therefore, such interpretation would render the entire PART III of the IB Code otiose and is against the object of the Code.

Therefore it is the date of numbering of Petition that is the date of "filing" in terms of Section 94, 95 and 96 of the IBC.

B. DATE OF FILING IN THE PRESENT CASE UNDER SECTION 94 AS AGAINST SECTION 95:

The date of numbering of Petition under Section 94 and Petition details:

Date of numbering	Date of 1st listing
20.12.2021	22.12.2021

The date of numbering of Petition under Section 95 and Petition details:

Date of numbering	Date of 1st listing
18.02.2022	21.02.2022

Therefore, the present Petition having been filed in the year 2022 after the Petition filed by the Personal Guarantor under Section 94 in the year 2021 itself, is barred by *res subjudice* and is liable to be dismissed as non-maintainable.

Even otherwise, the Petition filed under Section 94 of IB Code which is pending before Hon'ble Principal Bench, the Resolution Professional has already filed its report under Section 99 of the IB Code and the same has been taken on record vide order dated 15.03.2022. The said Petition filed under Section 94 is now pending for the proceedings under Section 100 of the IB Code and accordingly listed on 08.04.2022. Furthermore, it is trite to mention that when the said Petition under Section 94 of the IB Code was listed

before the Hon'ble Principle Bench on 15.03.2022, the Counsel on behalf of SBI appeared on before Hon'ble Principal and sought time to file Transfer petition within one week from 15.03.2022. However, till date, the counsel of the SBI has not filed any application for transfer of the Petition under Section 94 of the IB, wherein the time period of one week has already elapsed on 22.03.2022.

The proceedings under Part III has already been initiated under Section 94 of the IB Code, and the said proceeding is in an advance stage wherein the report filed by the Resolution Professional has already been taken on record. Therefore, the present petition under Section 95 of the IB Code is not maintainable and liable to be dismissed in view of the abovementioned submissions.

6. In the course of hearing, the Respondent has raised the maintainability of the application on the ground that prior to filing of this application, which was numbered on 18/02/2022, the Respondent has already filed an application, numbered on 22/12/ 2021, which is prior to the number given to the application filed u/s 95 of the IBC by the Applicant.

7. He further submitted that in terms of Rule 10 of the IBBI (application to Adjudicating Authority for Insolvency Resolution Process or Personal Guarantor to Corporate Debtor) Rules 2019, the application under Section 94 & 95 of the IBC, 2016 shall be considered in terms of Rule 20, 21, 22, 23, 24 & 26 of the NCLT Rules.

8. He further submits that in terms of Rule 10 of the IBBI (application to Adjudicating Authority for Insolvency Resolution Process or Personal Guarantor to Corporate Debtor) Rules 2019, Rule 2(14) of the NCLT Rules is not applicable. He further submits that the applicant is required to file the

application after removing the defects. Therefore, we would like to refer to the following provisions :

NCLT Rule 20, 21, 22, 23, 24 & 26 are reproduced below:

> ***"20. Procedure.-****(1) Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form;*
>
> *(2) The cause title shall state "Before the National Company Law Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.*
>
> *(3) Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.*
>
> *(4) Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given*
>
> *(5) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.*

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.

(7) These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.

(8) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(9) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

21. Particulars to be set out in the address for service.- *The address for service of summons shall be filed with every appeal or petition or application or caveat on behalf of a party and shall as far as possible contain the following items namely:-*

(a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;

(b) the name of the town or village;

(c) the post office, postal district and PIN Code, and

(d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any.

22. Initialling alteration.- *Every interlineations, eraser or correction or deletion in any appeal or petition or application or document shall be initialled by the party or his authorised representative presenting it.*

23. Presentation of petition or appeal .- *(1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or*

petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.

(3) All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.

(5) In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative

6) The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum of appeal.

***24. Number of copies to be filed**.- The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.*

***26. Endorsement and Verification.-** (1) At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.*

(2) Every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules...."

Rule 2(14) *"filed" means filed in the office of the Registry of the Tribunal;*

9. On the conjoint reading of the provisions referred to Supra show that Rule 10 of IBBI (application to Adjudicating Authority for Insolvency Resolution Process or Personal Guarantor to Corporate Debtor) Rules 2019, prescribed the procedure for filing of the application and documents under Chapter-III and Part-III of the application and as per the Rule 10 of the Adjudicating Authority Rules, the provisions of the NCLT Rules are applicable. The provisions referred to Rule 10 are relate to the presentation of the petition or appeal. Since the respondent claims that the Respondent has filed an application under Section 94 of the IBC, 2016 before the application filed by the Applicant, therefore, we would like to refer to the relevant provisions of Sections 94 & 95 of the IBC, 2016 the same are reproduced below:

"94. Application by debtor to initiate insolvency resolution process. –

(1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

(2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.

(3) An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.

(4) A debtor shall not be entitled to make an application under sub-section (1) if he is –

(a) an undischarged bankrupt;

(b) undergoing a fresh start process;

(c) undergoing an insolvency resolution process; or

(d) undergoing a bankruptcy process.

(5) A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.

95. Application by creditor to initiate insolvency resolution process. –

(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.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against-

(a) any one or more partners of the firm; or

(b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such

Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and 98 documents relating to-

(a)the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified..."

10. On conjoint reading of the provisions shows that neither in Section 94 nor in Section 95 the word filing is referred. Rather in both the Sections 94 & 95, the word submitting an application is mentioned. Now we read the Sections 94 & 95, in terms of the submissions made by the Respondent and we observe that the debtor or the creditor under Section 94 & 95 respectively may apply either personally or through Resolution Professional for initiating the Insolvency Resolution Process by submitting an application.

11. And in terms of the Section 96 of the IBC, 2016 , when an application is filed under Section 94 & 95, an interim moratorium shall commence on the

date of the application in relation to all the debts and shall cease to an effect on the date of admission of such application. Since under Section 96 the word **"filed"** is referred to therefore, we would like to see the definition of filing as referred to supra. On perusal of the definition referred to supra, we observe that term filed means filed in the office of the Registry of the Tribunal. Nowhere it is mentioned under Section 2(14) of the IBC, 2016 that the filing means the date when the number is given by the Registry on the application filed by the Applicant. Rather word **"filed"** means the day, when the application is filed or in terms of Section 94 or 95 when the application is submitted in the office of the Registry of the Tribunal ,that would be treated as a date for filing of the application.

12. At this juncture, we would like to refer to the scanned copy of the filing receipt issued by the Registry to the applicant and date of filing of respondent application available on the record and same are reproduced below:

IB-114/22 ANNEXURE-A1

6

National Company Law Tribunal

Your Payment has been Successful

Case Title :	STATE BANK OF INDIA THROUGH CHANCHAL DUA Vs. SHRI DINESH KUMAR BASAI
Payee Name :	STATE BANK OF INDIA THROUGH CHANCHAL DUA
Case Type :	Company Petition IB
NCLT Transaction Id :	0710100385872021
Bank Transaction Id :	0110210020558
Transaction Date and Time :	01-10-2021 22:08:49
Filing Number :	0710102/ 07188/ 2021
Amount :	2000 Rs. Only

NATIONAL COMPANY LAW TRIBUNAL
राष्ट्रीय कंपनी विधि अधिकरण

ANNEXURE-A-3

9

Search Case By:* ◉ Case No Wise

Case Type:* | Case No:* 770 | Location* National Co | Case Year:*

Search

+ CHOOSE YOUR CASES

Sr. No	Reg.No.	Date of Filing	Case Title	Select
1	0710102087272021	2021-11-30	DINESH KUMAR BASIA Vs. M/s Earth Infrastructures Limited	

13. On conjoint reading of these two documents show that date of filing of application by the SBI against Krishan Kumar Basai is 01/10/201 and filing number is 07101020/7186/2021, where as filing number of respondent is 07101020/7885/2021. Admittedly, the date of application filed by the Applicant is prior to the date of filing of the application by the Respondent under Section 94 of the IBC, 2016. Of course, the application filed on behalf

of the Applicant was not listed earlier, rather it was listed after the listing of the application filed by the Respondent.

14. But the question is whether Section 96 of the IBC, 2016 came into force, the day when the application was listed for hearing or day when the application was filed under Section 94 & 95.

15. Mere plain reading of the provisions referred to supra show that an interim moratorium under Section 96(1)(a) shall commence on the date of the applications in relation to all the debts and shall as cease to have effect on the date of admission of such application. Therefore, the date of filing of the application is the prime consideration so far applicability of Section 96 of IBC, 2016 is concerned. Here in the case in hand, as we have already observed that the application filed by the Applicant was prior to the date of filing of the application by the respondent. Hence the interim moratorium in terms of Section 96 of the IBC, 2016 shall commence on the date of the filing of application in terms of Rule 2(14) of the NCLT Rules and not on the date when the application was numbered or listed for hearing. Therefore, we are unable to accept the contention of the Respondent that his application u/s 94 IBC is filed prior to the filing of the application by the applicant u/s 95 of the IBC.

16. Hon'ble NCLAT in Company Appeal (AT) Insol. No. [illegible]/2021 in para 25 held **that as is clear from Section reproduced above, relevant is that when application is filed under Section 95, the interim moratorium will automatically. Thus, the effect of interim moratorium immediately starts when the application is filed. No adjudication is involved there.**

17. In sequel to the above, we are of the considered view that since the moratorium shall commence on the date of filing of the application u/s 95 of the IBC by the applicant SBI, therefore, any subsequent application filed by the debtor/respondent u/s 94 of the IBC is not maintainable in terms of the moratorium granted under Section 96 of the IBC, 2016. Accordingly, we have no option but to appoint the RP Shri Chanchal Dua.

Name	: Shri. Chanchal Dua
Address	: 5/36, First Floor, Ramesh Nagar, New Delhi – 110015
Email ID	: chanchalduaco@gmail.com
IBBI Registration No.	: IBBI/IPA-003/IP-N00083/2017-2018/10821
Mobile No.	: 9958990842

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

19. The Applicant and his Counsel are directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional, Mr. Chanchal Dua, immediately by all modes for information and compliance.

20. List the matter on 14.07.2022.

- Sd -

(HEMANT KUMAR SARANGI)
MEMBER (T)

- Sd -

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)