

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
27-02-2024 AT 10:30 AM**

CP(IB) No. 359/95/HDB/2022
u/s. 95 of IBC, 2016

IN THE MATTER OF:

M/s. Catalyst Trusteeship Limited

...Petitioner

VS

Mr. G Yoganand (Manjeera Retail Holdings Pvt Ltd)

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Learned Counsel Mr Palash Taing, for Financial Creditor present through Video Conference. Learned Counsel Mr G Bheemachary, for Personal Guarantor present physically.

Following the judgment of the Hon'ble Supreme Court of India, in Surendra B. Jiwrajka vs Omkara Assets Reconstruction Private Limited in W.P.(C) No. 149/2022 and batch, we hereby appoint Shri. Maruti Venkata Subba Rao Poluri, having IBBI Registration No. IBBI/IPA-002/IP-N00924/2019-2020/13001, e-mail: [cssubbarao\[at\]gmail\[dot\]com](mailto:cssubbarao[at]gmail[dot]com), to act as Resolution professional in the instant matter as her name appears on the current database of IBBI. The Resolution Professional shall file report within 10 days from the date of this order.

Petitioner is directed to pay sum of Rs. 50,000/- towards initial expenses of Resolution Professional. Matter stands adjourned to 15.04.2024 for report.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

S.No.3

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CP(IB) No. 359/95/HDB/2022

And

IA (IBC) 1594/2023 in CP(IB) No. 359/95/HDB/2022

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M/s. Catalyst Trusteeship Limited

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Mr. G Yoganand (Manjeera Retail Holdings Pvt Ltd)

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C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Order in IA 1594/2023

1. This is an application filed by the personal guarantor, for re-opening the matter and to permit the personal guarantor to advance additional submissions.
2. According to the applicant, the 'Bench-I' of NCLT, Hyderabad, has no jurisdiction to entertain the present application filed under section 95 of IBC, since insolvency proceedings of the Corporate Debtors of personal guarantor were pending before the 'Bench-II' of NCLT, Hyderabad, and therefore, as per sub-sections (2) and (3) section 60, an application relating to insolvency resolution or liquidation or bankruptcy of the corporate debtor's personal guarantor should have been considered and heard by the same bench which was considering the application of insolvency resolution or liquidation of the corporate debtor.

3. In support, this submission the applicant relied on the judgment of this Hon'ble NCLAT, in the matter of State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia, Personal Guarantor to Corporate Debtor [CA(AT) Insolvency No. 60 of 2022], wherein it was held that,

‘the application filed under section 95(1) should have been heard by the same Bench which was considering the insolvency resolution or liquidation proceedings of the corporate debtor’.

4. Applicant also relied on the ruling of Hon'ble NCLAT, in Monica Jajoo vs PHL Fininvest Private Limited & Ors.on 21 July, 2023, CA(AT) (Ins) No.1344 & 1345 of 2022 wherein it was held that:-

“23. As noted above, the transfer petition bearing No. TA(IBC)- 36(PB)/2022 was filed before the Adjudicating Authority. It is also a fact that even though this application was filed before the Adjudicating Authority (Bench-IV), it did not take the transfer application into consideration before passing both the Impugned Orders, which is a requirement of law as per [section 60\(1\)](#) and (2) of the IBC. Sub sections (1) and (2) of [section 60](#) lay down a requirement of law, which stipulates and mandates that an application relating to insolvency resolution or liquidation of corporate guarantor of a corporate debtor shall be filed before 'such' NCLT, where a CIRP or liquidation proceedings of the 'same' corporate debtor is pending. This requirement of law has also been noted in the matter of State Bank of India, Stressed Asset Management Branch (supra) of this Tribunal”.

5. The respondent/financial creditor resisted the application, *contending*, inter-alia, that section 60 (1) of IB Code, also clearly states that the NCLT bench viz., the Adjudicating Authority is based on the territorial jurisdiction over the place where the registered office of the corporate persons is located. **Therefore, it was not the intention of the legislature that proceedings would have to be heard by the "same" bench and as long as the proceedings were being heard by the same Adjudicating Authority/NCLT. The composition of the bench should not matter.**

State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia, Company Appeal No. 60 of 2022, NCLAT New Delhi dated 27.01.2022, wherein it was held that- [Para-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 proceedings 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...”

6. **Alliance Broadband Services Private Limited vs. Manthan Broadband Services Pvt. Ltd. (in liqn.), IA No. GA/3/2022 In CS/54/2019**, wherein it was held that “the object of Section 60(2) is to group together:- (a) the CIRP or liquidation proceedings of a CD, and (b) the Insolvency Resolution/ Liquidation/ bankruptcy of a CG or PG of a very same Corporate Debtor so that a single forum may deal with both”.
7. According to the respondent the ruling in re, Monica Jajoo, is not applicable to the case on hand and is ‘per in curium’ in view of the ruling of Hon’ble NCLAT in r State Bank of India vs Bhanwarlal Jajodia on 27 January, 2022, where in it was held that.

“ 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 Company Appeal (AT) (Insolvency) No.75 of 2024, 77 of 2024 & 1341 of 2023 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. Therefore, the short and the only point that arises for our consideration is;

Whether Section 60(2) of the IBC contemplate filing of Section 95 application in the same *court room* of the NCLT, which has entertained insolvency proceedings?

9. After having heard Mr. Vivek Reddy, Ld. Sr. Counsel for the Applicant and Mr. Krishnendu Datta Ld. Sr. Counsel for the respondent, on 26.02.2024 we reserved the matter for orders, giving liberty to both sides to file written submissions.

10. While it was so, on 15.02.2024 the respondent/financial creditor filed a memo to take on record the the ruling of Hon’ble NCLAT, in *Bhavesh Harkishandas Mehta V Kookmin Bank & Anr. Company Appeal (AT)(Insolvency) nO.75/2024* wherein a three Member Bench of held that,

“ We, thus, are of the view that the judgment of this Tribunal in "Monica Jajoo" does not lay down the correct law. The interpretation which is sought to be advanced by the Appellant in event it is accepted shall lead to uncertainty and conflict regarding jurisdiction of a NCLT to entertain an application under Section 95. As observed above, all applications and petitions filed in NCLT including its benches have to be heard and decided as per the general and special order of the President. Applications are listed in different court of one bench of NCLT as per the general and special order of the President. When a matter is listed before a particular court of bench of NCLT, the Court where the matter is listed has necessarily jurisdiction to entertain it. The submission that court has no jurisdiction since application Company Appeal (AT) (Insolvency) No.75 of 2024, 77 of 2024 & 1341 of 2023 of insolvency is pending in different court of same bench if accepted the same will be contrary to general and special order of the President under which Section 95 application is listed in different court. We, thus, are of the view that in the facts of the present case, impugned order dated 18.12.2023 passed

by Court III of the NCLT, Mumbai Bench was well within its jurisdiction. Similarly, the impugned order passed by NCLT, Court 1 dated 17.08.2023 was well within the jurisdiction of the court which passed the order. No infirmity can be found with the impugned order on the submission which has been advanced by the Appellant in the present appeal”.

11. We therefore ordered notice on the above memo to the personal guarantor and pursuant thereto, the personal guarantor e-filed written submissions, *inter-alia*, contending that:

- a. That financial creditor cannot rely on the above ruling at this belated stage.
- b. This petition is not maintainable and is liable to be dismissed as the financial creditor does not have any authority to file any petition in as much as no document has been placed on record along with the petition demonstrating the authority.

In support of this plea, learned Sr. Counsel placed reliance in re, Phoenix ARC Private Limited(Trustee of Phoenix Trust FY 17-8)V/s. Cherupushpam Films Private Limited and others wherein it was held as below: “ There is a mandatory obligation placed on the financial creditor or to the party claiming to be the financial creditor to produce the fundamental document before the Applicant seeks to initiate CIR Proceedings against the corporate debtor. A trust cannot claim to be a financial creditor by virtue of the Assignment Agreement alone”.

- c. That purported assignment in favour of financial creditor herein cannot be looked into as the same does not demonstrate confirmation by facility Agent in accordance with Clause 18.2 and Clause 18.5, Schedule 14 of facility agreement, besides non-registration of facility agreement.

12. In view of the objections, supra, we once again heard the Ld. Counsels for both sides. At the outset, we wish to state that, in the light of the ruling of the three Member Bench of Hon’ble NCLAT, in *Bhavesh Harkishandas Mehta*, supra, wherein it was categorically held that the law laid down in re, *Monica Jajoo*, supra, is not the correct law, the contentions raised by the personal guarantor relying on the said ruling, can no longer survive as such the same are hereby rejected.

13. A bare perusal of the ruling in re, *Bhavesh Harkishandas Mehta*, it quite clear that even when an insolvency proceeding is pending in different court rooms of a particular Bench of the NCLT, the proceedings under

section 95 can be entertained by *another* court of the same Bench. Admittedly, the Court 2 where the insolvency proceedings of the corporate debtor is pending is part of Hyderabad Bench. Hence the present application filed under Section 95 of IBC, can certainly be entertained by Court I of NCLT, Hyderabad Bench. The point is answered accordingly.

14. As regards the other contentions, *supra*, raised by the personal guarantor in the written submission filed on 24.02.2024, we wish to state that the said pleas cannot be examined at this stage of proceedings, in view of the clear finding in the ruling of Hon'ble Supreme Court of India in , *Dilip B Jiwrjka vs Union of India and Others*, in **Writ Petition (Civil) No 1281 of 2021** where in it was held that;

“No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;”

“ The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application.”

15. Since the matter is now at the stage of appointment of RP, we refrain ourselves from hearing on the above pleas, at this stage of the proceedings.
16. Therefore, in the light of our finding on the point above, this application is liable to be dismissed. Accordingly, t he same is hereby dismissed. No costs.
17. In the result this IA No.1594/2023 is dismissed, however without costs.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)