NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2121 of 2024

In the matter of:

Aarti Singal ....**Appellant**

Vs.

State Bank of India & Anr. ...**Respondents**

Company Appeal (AT) (Insolvency) No. 2124 of 2024

In the matter of:

Aarti Singal ....**Appellant**

Vs.

State Bank of India & Anr. ...**Respondents**

Company Appeal (AT) (Insolvency) No. 2114 of 2024

In the matter of:

Sanjay Singal ....**Appellant**

Vs.

State Bank of India & Anr. ...**Respondents**

Company Appeal (AT) (Insolvency) No. 2115 of 2024

In the matter of:

Sanjay Singal ....**Appellant**

Vs.

State Bank of India & Anr. ...**Respondents**

For Appellant	**Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Mr. Mayank Siyani, Advocates.**
For Respondents	**Mr. Sanjiv Sen, Sr. Advocate with Ms. Srideepa Bhattacharya, Ms. Neha Shivhare, Mr. Uday Khare, Ms. Anjali Singh, Mr. Prahalad Balaji, Mr. Pragyan Mishra, Advocates for SBI.**

ORDER

(Hybrid Mode)

21.04.2025: These Appeals have been filed by Personal Guarantors of the Corporate Debtor challenging the order admitting Section 95 application filed by the State Bank of India against the Personal Guarantor as well as two IAs being IA No.155 of 2024 and IA No.2595 of 2024 filed by the Personal Guarantor praying for deferment of proceedings under Section 95 which application has been rejected by the same order. All the Appellants aggrieved by the order dated 07.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi have come up in these Appeals.

2. We have heard Shri Sandeep Bajaj, Learned Counsel for the Appellant and Shri Sanjiv Sen, Learned Senior Counsel for the State Bank of India.

3. Counsel for the Appellant submits that Section 95 application ought not to have been admitted since in the CIRP against the Corporate Debtor, Resolution Plan has already been approved on 05.09.2019 and under Clause 1.8 F of the Resolution Plan, the right of Financial Creditor is confined only to recover the amount of Personal Guarantor which is only unrecovered financial debt. Submission is that since the Resolution Plan has changed the quantum of debt, the proceedings under Section 95 ought not to have proceeded with.

4. Shri Sanjiv Sen, Learned Senior Counsel for the State Bank of India submits that there is no error in the initiation of the CIRP against the Personal Guarantor and the question about the quantum of debt or any part of debt already realized by the Bank can be gone into at the time of finalization of the repayment plan as per the provisions of the IBC. He has also placed reliance on judgment of this Tribunal in ***"Hari Singh Thakur vs. Sandeep Kumar Bhatt (RP) and Anr.- 2024 SCC OnLine NCLAT 1182"***.

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

6. The present Appeals have been filed by the Personal Guarantors challenging the initiation of the CIRP against the Personal Guarantor by admitting Section 95 application by passing an order under Section 100 and further rejecting the two applications for deferment of the proceedings as noted above. The initiation of proceedings under Section 95 is on account of invocation of the Personal Guarantee of Personal Guarantor on 13.02.2018. When the Personal Guarantee of the Guarantors were invoked, the cause of action arose to the Bank to file an application under Section 95 and the application was filed subsequent to invocation of bank guarantee. It is on the record that the CIRP against the Corporate Debtor had also commenced in which Resolution Plan has been approved on 05.09.2019. Counsel for the Appellant has relied on Clause 1.8 F of the Resolution Plan which reads as follows:-

> *""(F) Notwithstanding anything stated in this Resolution Plan, the financial Creditors shall have the right to recover any unrecovered financial debt owed*

> *by the Company to them by recourse to the personal guarantees and corporate guarantees executed by the Existing Promoters or any third party ("Guarantors") in favor of the secured financial Creditors provided that the Guarantors shall not have any right of subrogation, reimbursement or indemnity against the Company or any of its assets under the Applicable laws and/or under the terms of the personal and corporate guarantees or otherwise."*

7. There can be no dispute that Resolution Plan is binding on all including the Financial Creditor. Clause 1.8 F as has been relied by the Counsel for the Appellant only provide that the financial creditors shall have the right to recover any unrecovered financial debt owed by the company to them by recourse to the personal guarantees. Thus, in event under the Resolution Plan any amount is recovered by the financial creditor allowance of the said amount has to be given while preparing a repayment plan with regard to personal guarantors' insolvency. However, we do not agree with the submission of the Appellant that by change of quantum of the debt, the very initiation of the CIRP against the personal guarantor is vitiated. The financial creditor has right to file an application under Section 95 when after invoking the personal guarantee, the debt is not paid and thereafter, after giving a notice under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, the proceeding has been initiated. The judgment relied by Counsel for the Respondent in ***"Hari Singh Thakur"*** (supra) do support the submission of the Respondent. In the above judgment, this Tribunal held following in paragraph 6:-

> *"6. The submission of the Appellant that the debt has not been correctly shown in the application is not a question which can be ground to reject the application under Section 95. The question of debt and adjustment of any amount already realized by the Bank are the question which has to be taken into consideration when payment plan is finalized. As far as the valuation of the assets, it is always open for the Appellant to object before the Adjudicating Authority by bringing appropriate material, if any. The said argument is also not an argument for challenging admission of Section 95 application."*

8. We, thus, are of the view that there is no error in the initiation of the CIRP against the personal guarantor i.e. Appellant herein and the submission which has been raised by the Appellant regarding the recovery of certain amount by the financial creditor under the Resolution Plan is a question that need to be addressed by the Resolution Plan at the time of finalizing the repayment plan against the personal guarantor.

9. With the above observations, we dismiss these Appeals.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

Anjali/nn