



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA SPECIAL BENCH (Court-I)  
KOLKATA**

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

*An Application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with  
Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for  
Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019*

In the matter of:

Indian Bank

...FINANCIAL CREDITOR

Versus

Mr. Ankur Prahladka

...RESPONDENT/PERSONAL GUARANTOR

**Date of pronouncement:02/01/2025**

**CORAM:**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri D. Arvind, Member (Technical)**

**Appearance (via video conferencing/physically)**

**For the Financial Creditor**

Mr. Santosh Kr. Roy, Adv.

Mr. R. Sanyal, Adv.

Ms. Zeba Khan, Adv.

Ms. Muskan Saha, Adv.

**O R D E R**

**Per: D. Arvind, Member (Technical)**

1. The Court Convened in a hybrid mode.
2. This C.P. (IB)/ 151 (KB)2024 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent Personal Guarantor to Corporate Debtor Rule, 2019 (“Personal Guarantors Rules”) and

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-I)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

Regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ('Personal Guarantors Regulations') in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016 read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2016.

3. The amount in default is Rs. 38,14, 77,063.05/-(Rupees Thirty Eight Crore fourteen Lac Seventy Seven Thousand Sixty Three paisa five only).
4. The application is complete as required under Section 95 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.
5. Hon'ble Supreme Court in the judgment of **Dilip B. Jiwrajka vs. Union of India & Ors. In WP (Civil) No. 1281 of 2021** dated 09.11.2023 has upheld the Constitutional Validity of the Sections 94 to 100 and the propositions that can be culled out from the Judgments inter-alia are as follows:

- “i. No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;*
- ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to*
- iii. the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- iv. No adjudicatory function of Adjudicating Authority is contemplated at the admission stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*
- v. The resolution professional may exercise the powers vested*

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-I)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024



*under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and CP/IB/337/AHM/2020 12 of 17 to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*

- vi. There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- vii. No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
- viii. The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application; CP/IB/337/AHM/2020 13 of 17*
- ix. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- x. The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and A.”*

6. The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, **Mr. Abhisekh Khemka**, IBBI Registration No. **IBBI/IPA-001/IP-P02038/2020-2021/13151** email- [khemka.abhisekh@gmail.com](mailto:khemka.abhisekh@gmail.com) , was appointed as Resolution Professional, subject to his possessing a valid AFA, in exercise of the power conferred under Section 97 of the IBC, 2016 on this Authority.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024



7. The Resolution Professional was directed to file declaration within seven days to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter which he has given, and to file his report in terms of Section 97 in two weeks.
8. **IA(I.B.C)/1789(KB)2024**
  - a. This IA has been filed by the RP for furnishing the report of the RP. Report has already been served to the Personal Guarantor .As recorded in the daily order dated 5<sup>th</sup> December, 2024, it is brought to our notice that Personal Guarantor is not interested to raise any objection to the Report furnished by the RP.
  - b. Heard. Reserved for orders. Accordingly this **IA stands disposed** off.
9. The Resolution Professional **Mr. Abhisekh Khemka** has vide his report dated 12.08.2024 by way of IA (IBC)/1789(KB)2024, the relevant excerpts of the same has been extracted herein. The RP has recommended admission of the personal guarantor into the Insolvency resolution process. The relevant portion of her report has been extracted and appended below for the sake of convenience.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA**

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

Report u/s 99 of the Code

• I have examined the application, details and documents relating to the petition filed for initiating insolvency proceeding against Mr. Ankur Prahladka and believe that the same are in order, to satisfy the requirements set out in Section 95 of the Code.

• Particulars of Debts, The following details are related to debt of Financial Creditor with respect to Corporate Debtor, M/s Hitaishi KK Manufacturing Company Private Limited and Mr. Ankur Prahladka is personal guarantor to Corporate Debtor

<b><u>PARTICULARS OF DEBT</u></b>		
1	Total debt (including any interest or penalties)	Rs. 38,14,77,063.05 /- (Thirty-Eight Crores Fourteen Lakhs Seventy-Seven Thousand Sixty-Three Rupees and Five Paisa) including interest as on 19.04.2024 as set out in the demand notice dated 20/04/2024
2	Date on which debt was due	04/04/2023
3	Date on which default occurred	30/04/2023
4	Date on which account become NPA	02/07/2023
5	Date on which Intimation Letter sent	20/04/2024
6	Nature of the debt	M/s Hitaishi KK Manufacturing Company Private Limited was sanctioned credit facilities totaling Rs. 39.18 crore on 27/12/2021. Due to non-servicing of interest/installment, the credit facilities sanctioned to the Company were classified as NPA by Indian Bank on 02/07/2023 as per extant guidelines.
7	Secured debt including particulars of security held, the date of its creation, its estimated value as per	<b>A. Primary Security</b> PC (upto 180 days): Hypothecation of fully paid stocks of raw materials, goods in process, finished goods, packing materials etc. meant for export. FBP/ FBN/ AAFBC/ BP agreement, lodgment of export bills accompanied by irrevocable LCs/confirmed orders, cheque drawn on reputed parties on whom satisfactory credit opinion has been received, against export bills.

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH (Court-1)

KOLKATA

IA(I.B.C)/1789(KB)2024

in

C.P. (IB)/151(KB)2024



<p>the creditor (as applicable)</p>	<p>collection basis, hypothecation of book debts.                  LC/SBLC: Application cum agreement, hypothecation of stocks procured under LC/SBLC and cash margin by way of FDRs.                  OCC: Stocks and book debts generated out of the domestic operation of the company.                  BG: Cash Margin &amp; Counter guarantee by the company.                  TL: Plant &amp; Machinery purchased availing Term Loan.</p> <p><b>B. Collateral Security</b></p> <p>1) Equitable mortgage of all that piece and parcel of land measuring more or less 9 Cottahs 6 Chittacks along with one storied structure thereon measuring 5000 Sq. Ft. lying and situated Premises No. 6, Gurudas Dutta Garden Lane also known as 6A, Gurudas Dutta Garden Lane, P.S. Ultadanga under Kolkata Municipal Corporation Ward No. 13, Mouza-Ultadanga, Dihi: Panchanangram, Holding No. 15, Sub Division 9, Division 2, District 24 Parganas (South), Kolkata 700067 in name of M/s Hitaishi KK Manufacturing Company Private Limited</p> <p>2) Equitable mortgage of all that Mart No. A04/32-36 measuring 72 Sq. Mt. located at M/s. India Exposition Mart Ltd. (IEML), Plot No. 25, 27, 28 &amp; 29, Knowledge Park-II, Greater Noida, Institutional Area, District-Gautam Buddha Nagar, UP in name of M/s Hitaishi KK Manufacturing Company Private Limited</p> <p>3) Equitable mortgage of all that piece and parcel of land measuring more or less 11.75 Cottahs along with one sheds measuring 8460 Sq. Ft. lying and situate at Mouza-Digberia, J.L. No. 74, R.S. No. 28, Touzi No. 1178, R.S. Khatian No. 183, R.S. Dag No. 187, under Madhyamgram Municipality, Holding No. 244, Badu Road, P.S. Barasat, District- 24 Parganas (North) in name of Sh. Chandra Prakash Prahladka</p> <p>4) Equitable mortgage of all that piece and parcel of land measuring more or less 25 Decimal or 15 Cottahs together with G+1 storied building thereon measuring 2347 Sq. Ft. lying and situated at Mouza: Bakul, J.L. No. 7, R.S. Khatian No. 864, L.R. Khatian No. 527/1, 214/1, R.S./L.R. Dag No. 226, under Jagathallavpur II Gram Panchayat, Holding No. 2502, P.S. Jagathallavpur, District-Howrah in name of Smt. Urmila Prahladka</p> <p>5) Equitable mortgage of all that piece and parcel of land measuring more or less 1 Bigha 15 Cotahs 1.44 Chittacks along with one storied structure thereon measuring 4658 Sq. Ft. lying and situated at Mouza: Dakshinhat, J.L. No. 73, R.S. Dag No. 45, 46/195, 46/194, 46 under Barasat Municipality, P.S. Barasat, District- 24 Parganas (North) in name of M/s GJK Shellex (India) Private Limited</p> <p>6) Pledge of MMD/RDs held</p>
<p>8. Unsecured debt (as applicable)</p>	<p>NA</p>



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA**

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024



18

9	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	The security was charged to Bank vide Agreement for Open Cash Credit dated 27.12.2021, Agreement of Hypothecation of Movables dated 27.12.2021, Supplemental Letter of Mortgage dated 28.12.2021.
10	Details of any mutual credit, mutual debts, other dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	NA
11	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	NA
12	Record of default with the information utility, if any attach	Cibil Consumer Credit Information Report by Credit Information Bureau (India) Limited dated 30.12.2022 is annexed hereto and marked as <b>Annexure "A"</b> .

- Examined copies of Deed of Guarantee executed by the Personal Guarantors inter-alia Mr. Ankur Prahladka.
- Examined copies of the Sanction letters issued by the Financial Creditor from time to time.
- Examined Demand notice in Form "B" dated 20.04.2024 as per Rule 7(1) of Insolvency and Bankruptcy Application to Adjudicating Authority for



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA**

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024



19

insolvency resolution process of personal guarantors to corporate debtors), 2019 issued to the Guarantor claiming the Dues as on 19.04.2024.

- Examined Statement of Account and certificate under Section 2(a) of Banker's Books of Evidence Act, 1891
- Examined copy of the notice dated 03/07/2023 as per as Section 13(2) of the SARFAESI ACT 2002.
- Examined Schedule containing the details of assets in the name of Guarantor/Respondent.

I have enquired U/s 99(2) by Letter through Speed Post, which was delivered to Mr. Ankur Prahladka on 06.08.2024 to ascertain the debts claimed by the Financial Creditor whether have been repaid?

However, I have not received any response/ communication from Mr. Ankur Prahladka.

A copy of the letter dated 03.08.2024 is annexed hereto and marked as Annexure "B".

Documents referred

- Master Data of the Corporate Debtor
- Account Statement in the books of Financial Creditor
- Securities Document executed by the Corporate Debtor in favour of the Petitioner.
- Demand notice dated 20.04.2024
- Demand notice issued U/s 13(2) of SARFAESI Act
- Relevant extract of application.

Recommendation

I recommend accepting the application against Mr. Ankur Prahladka filed by the financial creditor i.e. Indian Bank to initiate insolvency resolution process.

Reasoning for such recommendation:

- I have examined the application CP (IB) No.151/KB/2024 and the same is found to be satisfying all the ingredients of Sec.95 of IBC
- I have not received any evidence of repayment of the debt claimed in Sec. 95 petition from Mr. Ankur Prahladka.
- I have not received any document whereby the Personal Guarantor agreement dated 27/12/2021 was cancelled by both the parties



CA. Abhishek Khemka

IBBI/IPA-001/IP-P02038/2020/2021/13151

Registered office:

67/24 Stand Road, Cross Road No. 14,

Kolkata 700006

Email: khemka.abhishek@gmail.com



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

10. The Personal Guarantor has chosen not to object to the report of Resolution Professional.

- i) We have considered the report and perused the details of claim indicated therein.
- ii) However we note that no CIRP admittedly and irrefutably has been filed against the principal borrower as yet.

11. On the question whether an application under section 95(1) of The Insolvency and Bankruptcy Code, 2016 will be maintainable without initiating a proceeding against the principal borrower, we discuss as under:

**Analysis and Finding**

1. Apart from various other issues, the personal guarantor has raised the issue of maintainability of the petition before this Adjudicating Authority. Therefore, it becomes expedient to address the issue of maintainability first. The contention of the PGs is that unless there is a CIRP initiated or continuing the application for the IRP of the personal guarantor is not maintainable at NCLT as the Adjudicating authority in such cases shall be DRT.
2. In this regard, a starting point shall be a look on the provisions of the Code, on the issue of the Adjudicating authority for PGs. These are Section 60, Section 79 and Section 179 of IBC 2016 read with Relevant rules. These are reproduced hereunder:
3. Chapter VI of the code is titled “ **Adjudicating Authority for Corporate Persons**” and starts with Section 60 , which is as under:  
**“Section 60: Adjudicating Authority for corporate persons.**

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-I)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

*\*60. (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 the corporate persons 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 such National Company Law Tribunal.*

4. It is thus clear from 60(1) that the Adjudicating Authority **in relation to insolvency resolution and liquidation of the Corporate persons** and Personal guarantor thereof shall be NCLT. It clearly shows links the two proceedings together i.e. One against the Corporate person and the another against Corporate Guarantor and/or Personal guarantor thereof. Evidently when out of two elements that are supposed to be linked together , if one is absent then the other one shall be seen as a plain normal individual who has given a guarantee. This is further borne out of the fact that the term “ Personal Guarantor” has been defined as “ An individual who is surety in a contract of Guarantee to a Corporate Debtor.”
5. It is here that the applicability of Part III of the code dealing with Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms takes stage. Chapter -I thereof contains the following provisions:

**78. Application.**

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-I)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

*This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of **individuals** and partnership firms where the amount of the default is not less than one thousand rupees:*

*Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one lakh rupees.*

**79. Definitions.**

*In this Part, unless the context otherwise requires, -*

*(1) **Adjudicating Authority** means the **Debt Recovery Tribunal** constituted under subsection (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (51 of 1993)*

6. Chapter VI of the code deals with the Adjudicating authority for individual and Partnership firms

***Section 179 of the Code** reads as under:*

*(1) Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the **Debt Recovery Tribunal** having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person.*

*(2) The Debt Recovery Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of—*

- (a) any suit or proceeding by or against the individual debtor;*
- (b) any claim made by or against the individual debtor;*

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

*(c) any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.*

*(3) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.*

**Judicial precedents**

7. Let us examine now some of the important judicial precedents in the matter of jurisdiction of NCLT in the matter relating to Personal Guarantors to the Corporate Debtors.

**Madras High Court**

In the case of Rohit Nath v. KEB Hana Bank Ltd., Hon'ble Madras High Court while dealing with a civil revision petition filed by a PG against a pending PG Proceeding before the DRT. Herein, the Madras High Court, while dismissing the petition, interpreted Section 60(2) of the Code to mean that Section 60 would apply to PGs only when the Corporate Debtor is undergoing CIRP. Further, it also noted that where no CIRP has been initiated against the Corporate Debtor, PG Proceedings must necessarily be carried only to the jurisdictional DRT and not to any other forum.”

**NCLAT – Mahinder Jajodia case**

In this case Hon'ble NCLAT has held that for maintaining a petition under section 95 , the pendency of a CIRP or liquidation proceeding is not a “ sine qua non”. There is no doubt that the petition under section 95 is maintainable, even when there is no CIRP or liquidation pending. NCLAT in the subject order has held as under:



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

*“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.”*

**Lalit Jain – Hon’ble Supreme Court**

*Hon’ble Supreme court in Lalit Kumar Jain v. Union of India has categorically held as under : - “There is sufficient indication in the Code-by Section 2(e), Section 5(22),Section 60 and Section 179 indicating that personal guarantors, though forming part of the larger grouping of individuals, were to be,in view of their intrinsic connection with corporate debtors, dealt with differently, through the same adjudicatory process and by thesame forum (though not insolvency provisions) as such corporate debtors”.*

8. The whole gamut of the codal provisions and the judicial precedents received the consideration of Hon’ble NCLAT , Chennai bench in Mahendra Kumar Agarwal Vs.PTC India Financial Services Ltd. and Another , In its elaborate judgement, Hon’ble NCLAT Chennai have elaborately dealt with various provisions of law and considered the judgements cited comprehensively dealing with the same and duly distinguishing the applicability to the facts of the case under consideration. In conclusion , the Hon’ble NCLAT , Chennai Bench has held as under:

*79. Be that as it may, in view of the detailed foregoing qualitative discussions, this ‘Tribunal’, keeping in mind the respective contentions advanced on either side, and considering the facts and circumstances of the instant case, in a conspectus*

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

*manner, comes to a resultant conclusion that the 'Adjudicating Authority'/'Tribunal', has 'jurisdiction', to 'entertain'/'initiate', the 'Insolvency Proceedings' of the 'Personal Guarantors', even when 'no Corporate Insolvency Resolution Process' proceedings, is 'pending', against the 'Corporate Debtor', and in any event, the 'Corporate Insolvency Resolution Process' proceedings, is pending, and continued to be pending, against the 'Corporate Debtor'.*

9. This is therefore clear that even in the absence of the CIRP or the Liquidation proceedings against the personal guarantor is maintainable. There is absolute clarity on the issue, but on the issue of Adjudicating Authority for the same, the judgement is silent. The issue has been touched upon by Hon'ble NCLAT in Mahendra Jajodia (supra), however it is respectfully submitted that the issue in that matter was whether a petition under section 95 is maintainable even when there was no CIRP pending or initiated against the Corporate Debtor and further on the applicability of Section 60(2). The answer to the first question is of course a resounding yes as already held by Hon'ble NCLAT, but since the nature of the appropriate forum for the same had not been argued before the Hon'ble NCLAT, the comprehensive view on the same i.e. whether the same is maintainable at NCLT or the DRT still remained open.
10. Having regard to the Preamble of the code which is based on the principal of value maximization, it was expedient that the proceedings in regard to the Corporate Debtor as well to the Corporate Guarantor or even the personal guarantor shall be filed before one entity only which can address the very essence of the value maximization. However, if the Corporate Debtor has already been resolved or even liquidated and there is no scope for further value maximization of the Corporate person, the proceedings against the personal guarantor are relegated to a modus of recovery only and not that of resolution of insolvency. An argument was made that the word " Insolvent " as applied to an

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

individual has legal connotations and an undischarged insolvent may lose upon a number of rights and privileges and therefore it is important to label the person as Solvent or say “not insolvent” and therefore the proceedings against an individual may appear to be a “ recovery proceeding ”, but it has to be stamped as Insolvency proceedings out of which the individual if emerges victorious, would be a “discharged insolvent” .

11. Be that as it may, the essence of proceedings against a personal guarantor remains a recovery proceeding, which is clear from the words “Repayment Plan” as against a “Resolution Plan”, which is so generic a word meant for resolving a corporate person. If that not be the case then the provisions of Section 60(2) would lose their relevance, since it stipulates that when the CIRP or liquidation proceeding is pending before a NCLT, 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 such National Company Law Tribunal ostensibly to avoid multiplicity of the judicial fora. However, when this is not so, the proceedings in our humble opinion are **recovery proceedings** only and not being a recovery forum , the NCLT shall not be the Adjudicating authority in such cases. In order to further bolster this assertion we look at Section 60(4), which stipulates that :

*The National Company Law Tribunal shall be the vested with all the powers of the Debt Recovery Tribunal as contemplated under part (III) in this code, for the purpose of Sub- section (2).*

Thus it is recognized by the legislature that for Part-III , the Adjudicating authority shall be Debt Recovery Tribunal unless the context otherwise requires. This context has then been clearly laid bare in Section 60(4) above, that in such a context i.e. where the CIRP/liquidation is proceeding before a National company Law tribunal, the NCLT shall have powers of the DRT.

12. Next we also examine the provisions of Section 60(5) and the same is set out here:



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA

IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

(5) *Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -*

(a) *any application or proceeding by or against the corporate debtor or corporate person;*

(b) *any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*

(c) *any question of priorities or any question of law or facts, **arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code***

It is clear that NCLT shall have jurisdiction on the matters arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor. In other words if any matter is not related to the insolvency or liquidation proceedings of the corporate debtor or corporate person under this code, NCLT shall not have jurisdiction.

With this conjoint reading of various provisions of law as also after having distinguished various judgements brought out above, we hold that since no application for insolvency has been filed against the Corporate Debtor in the instant case, this petition is not maintainable before us, but may be maintainable at other fora.

12. In this view of the matter, ***C.P. (IB) No. 151/KB/2024 is dismissed accordingly.***  
The Petitioner is, however, at liberty to pursue other recovery measures available under the law.
13. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

**D.Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Order signed on this, 2<sup>nd</sup> day of January, 2025



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-1)  
KOLKATA



IA(I.B.C)/1789(KB)2024  
in  
C.P. (IB)/151(KB)2024

*mb*