

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) Insolvency No. 60 of 2022

IN THE MATTER OF:

State Bank of India, **...Appellant**
Stressed Asset Management Branch

Vs.

Mahendra Kumar Jajodia **...Respondent**
Personal Guarantor to Corporate Debtor

For Appellant: Malvika Trivedi, Sr. Advocate with Mr. Akash Tandon,
Mr. Ashish Chudhury, Santosh Kumar, Bhargavi
Kannar, Akanksha Tripathi, Rituparna Sanyal, Mansi
Chaudhary, Advocates

For Respondent: Advocate Supriyo Gole

With

Company Appeal (AT) Insolvency No. 61 of 2022

IN THE MATTER OF:

State Bank of India, **...Appellant**
Stressed Asset Management Branch

Vs.

Bhanwar Lal Jajodia, **...Respondent**
Personal Guarantor to Corporate Debtor

For Appellant: Malvika Trivedi, Sr. Advocate with Mr. Akash Tandon,
Mr. Ashish Chudhury, Santosh Kumar, Bhargavi
Kannar, Akanksha Tripathi, Rituparna Sanyal, Mansi
Chaudhary, Advocates

For Respondent: Advocate Supriyo Gole

ORDER
(Virtual Mode)

27.01.2022: We have heard Learned Counsel for the Appellant and Respondent in both these Appeals. With the consent of the parties, we dispose of both these Appeals at the admission stage.

2. This Appeal has been filed against the Order dated 05th October, 2021 passed by National Company Law Tribunal, Kolkata Bench, Kolkata. The State Bank of India has filed an Application under Section 95(1) of the

Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') seeking initiation of Corporate Insolvency Resolution Process against the Guarantor. The Application came to be rejected by the Adjudicating Authority as premature by order dated 05th October, 2021. The reason given in for rejection of the Application as pre-mature is in paragraph 2 of the Impugned Order which is to the following effect:

“This is an application filed by the petitioner/financial creditor u/s. 95(1) of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Insolvency Resolution Process against the guarantor. As on date no CIRP or Liquidation Process is pending against the Corporate Debtor because of approval of the Resolution Plan. Section 60(2) of the Code requires that for an insolvency Resolution Process to be initiated against the guarantor there must be CIRP or Liquidation Process is pending against the principal borrower/Corporate Debtor. Since, that requirement is not satisfied in the present case, at this point of time CP(IB)/230/KB/2021 is premature and is dismissed as such.”

3. Learned Counsel for the Appellant submits that NCLT has not correctly interpreted Section 60(2) of the Code. It is submitted that Application was fully maintainable under Section 60(1) of the Code despite there being no pendency of any Corporate Insolvency Resolution Process in National Company Law Tribunal (NCLT in short).

4. Learned Counsel for the Respondent refuting the submissions of Learned Counsel for the Appellant submits that Section 60(2) of the Code clearly provides that Corporate Insolvency Resolution Process (CIRP in short) and Liquidation Process if pending before the NCLT, an Application relating to the Corporate Insolvency Resolution Process of the Corporate Guarantor and Personal Guarantor can be filed before the NCLT. He submits that since

in the present case, no proceedings are pending as contemplated in Section 60(2) of the Code the Application has rightly been rejected by NCLT as premature.

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

6. Section 60 (1) & (2) which falls for consideration in the present case is as follows:

“Section 60: Adjudicating Authority for corporate persons.

**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.

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

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

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

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

10. Sub-Section 1 of Section 60 provides that Adjudicating Authority in relation to Insolvency or Liquidation for Corporate Debtor including

Corporate Guarantor or Personal Guarantor shall be the NCLT having territorial jurisdiction over the place where the Registered Office of the Corporate Person is located. The substantive provision for an Adjudicating Authority is Section 60, sub-Section (1), when a particular case is not covered under Section 60(2) the Application as referred to in sub-section (1) of Section 60 can be very well filed in the NCLT having territorial jurisdiction over the place where the Registered Office of corporate Person is located.

11. The Adjudicating Authority erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor are pending the application under Section 95(1) filed by the Appellant is not maintainable. The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor are pending before the NCLT. In result, we set aside the order dated 05th October, 2021 passed by the Adjudicating Authority. The Application filed by the Appellant under Section 95(1) of the Code is revived before the NCLT which may be proceeded in accordance with the law.

Both the Appeals are allowed, accordingly.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

Basant/nn