

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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

[Arising out of Order dated 07.10.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Principal Bench, New Delhi), in C.P. (IB)
No.156(PB)/2021]

IN THE MATTER OF:

Aarti Singal

53 – Jor Bagh, Lodi Road,
New Delhi – 110003

...Appellant

Versus

1. State Bank of India

Having its corporate office at
State Bank Bhawan, Madame Cama Road,
Nariman Point, Mumbai,
Maharashtra – 400021
And having its offices at
Stressed Assets Management Branch – 1
12th Floor, 1, Tolstoy Marg,
Jawahar Vyapar Bhawan,
Janpath, New Delhi – 110001
Email: srideepa.bhattacharyya@cyri;shroff.com

...Respondent No. 1

**2. Mr. Surendra Raj Gang,
Resolution Professional**

Having registered Office address at:
GT Restructuring Services LLP,
L41 Connaught Circus,
New Delhi – 110001
Email: srideepa.bhattacharyya@cyri;shroff.com

...Respondent No. 2

Present:

For Appellant : Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Mr. Mayank Biyani and Ms. Anchal Singh, Advocates.

For Respondents : Mr. Sanjeev Sen, Sr. Advocate with Ms. Srideepa Bhattacharya, Ms. Neha Shivhare, Ms. Anjali Singh, Ms. Prahalad Balaji and Mr. Pragyan Mishra, Advocates for SBI.

WITH

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

[Arising out of Order dated 07.10.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Principal Bench, New Delhi), in C.P. (IB)
No.156(PB)/2021]

IN THE MATTER OF:

Aarti Singal

W/o Shri Sanjay Singal Aged about 63 years
R/o 53 – Jor Bagh, Lodi Road,
New Delhi – 110003
Email: Soayib@pslchambers.com

...Appellant

Versus

1. State Bank of India

Having its corporate office at
State Bank Bhawan, Madame Cama Road,
Nariman Point, Mumbai,
Maharashtra – 400021
And having its offices at
Stressed Assets Management Branch – 1
12th Floor, 1, Tolstoy Marg,
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Janpath, New Delhi – 110001
Email: srideepa.bhattacharyya@cyri;shroff.com

...Respondent No. 1

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Email: srideepa.bhattacharyya@cyri;shroff.com

...Respondent No. 2

Present:

For Appellant : Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Mr. Mayank Biyani and Ms. Anchal Singh, Advocates.

For Respondents : Mr. Sanjeev Sen, Sr. Advocate with Ms. Srideepa Bhattacharya, Ms. Neha Shivhare, Ms. Anjali Singh, Ms. Prahalad Balaji and Mr. Pragyan Mishra, Advocates for SBI.

WITH

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

[Arising out of Order dated 07.10.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Principal Bench, New Delhi), in C.P. (IB)
No.157(PB)/2021]

IN THE MATTER OF:

Sanjay Singal

53 – Jor Bagh, Lodi Road,
New Delhi – 110003

...Appellant

Versus

1. State Bank of India

Having its corporate office at
State Bank Bhawan, Madame Cama Road,
Nariman Point, Mumbai,
Maharashtra – 400021

And having its offices at
Stressed Assets Management Branch – 1
12th Floor, 1, Tolstoy Marg,
Jawahar Vyapar Bhawan,
Janpath, New Delhi – 110001

Email: srideepa.bhattacharyya@cyri;shroff.com

...Respondent No. 1

**2. Mr. Surendra Raj Gang,
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...Respondent No. 2

Present:

For Appellant : Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Mr. Mayank Biyani and Ms. Anchal Singh, Advocates.

For Respondents : Mr. Sanjeev Sen, Sr. Advocate with Ms. Srideepa Bhattacharya, Ms. Neha Shivhare, Ms. Anjali Singh, Ms. Prahalad Balaji and Mr. Pragyan Mishra, Advocates for SBI.

WITH

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

[Arising out of Order dated 07.10.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Principal Bench, New Delhi), in C.P. (IB)
No.157(PB)/2021]

IN THE MATTER OF:

Sanjay Singal

S / o Shri B. B. Singal Aged about 63 years
R/ o 53 – Jor Bagh, Lodi Road,
New Delhi – 110003
Email: Soayib@pslchambers.com

...Appellant

Versus

1. State Bank of India

Having its corporate office at
State Bank Bhawan, Madame Cama Road,
Nariman Point, Mumbai,
Maharashtra – 400021
And having its offices at
Stressed Assets Management Branch – 1
12th Floor, 1, Tolstoy Marg,
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Email: srideepa.bhattacharyya@cyri;shroff.com

...Respondent No. 1

**2. Mr. Surendra Raj Gang,
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...Respondent No. 2

Present:

For Appellant : Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Mr. Mayank Biyani and Ms. Anchal Singh, Advocates.

For Respondents : Mr. Sanjeev Sen, Sr. Advocate with Ms. Srideepa Bhattacharya, Ms. Neha Shivhare, Ms. Anjali Singh, Ms. Prahalad Balaji and Mr. Pragyan Mishra, Advocates for SBI.

ORDER

ASHOK BHUSHAN, J.

These appeals by personal guarantors of the corporate debtor M/s. Bhushan Power and Steel Limited have been filed challenging the order passed by the adjudicating authority (National Company Law Tribunal, Principal Bench, New Delhi) admitting Section 95 application filed by the State Bank of India (SBI) against the personal guarantors. Order by adjudicating authority has been passed under Section 100 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code' or 'the IBC') directing for admission of petition and initiation of insolvency resolution process against the personal guarantors.

2. Learned Sr. counsel Mr. Sanjeev Sen appearing for the SBI has raised a preliminary objection regarding maintainability of these appeals. Mr. Sen submits that order impugned has been passed under Section 100 admitting personal insolvency resolution process against the appellant which is under Part III of the IBC Code. It is submitted that the present appeal which has been filed under Section 61 of the IBC Code is not maintainable since an order passed under Section 100 is not appealable under Section 61. It is submitted that Section 61 is in Part II of the IBC whereas proceeding of personal guarantors are proceedings in Part III, hence present appeal is not maintainable. Mr. Sen further submits that appeal is creature of the statute and no appeal having been provided against the order of Section 100, the present appeal need to be rejected.

3. Learned counsel for the respondent in support of his submissions has relied on the judgment of the Hon'ble Orissa High Court in the matter of **'Sandeep Jajodia' Vs. 'IDBI Bank & Anr.'** in **Writ Petition (C) No. 49/2022** decided on 27.07.2023 and a judgment of the Hon'ble Calcutta High Court in the matter of **'Mackeil Ispat & Forging Ltd.' Vs. 'State Bank of India'** reported in **2019 SCC OnLine CAL 8610**.

4. Learned counsel Mr. Sen submits that submission of the respondent is not that NCLT had no jurisdiction to entertain application under Section 95 filed by the SBI. The limited submission of the respondent is that the present appeal is not maintainable under Section 61, hence the appeal need to be rejected on this ground alone.

5. Learned counsel Mr. Sandeep Bajaj appearing for the appellant, personal guarantors refuting the submissions of counsel for the respondent submits that the present appeal is fully maintainable under Section 61. It is submitted that the forum for filing an application under Section 95 against the personal guarantor is NCLT as per Section 60 of the IBC. When the NCLT is forum for filing an application against personal guarantors, appeal shall also lie under Section 61, since the order is passed by the NCLT. It is submitted that adjudicating authority for the purposes of Part III is the Debt Recovery Tribunal (DRT) and order passed under Section 100 admitting personal insolvency against the appellant is not an order passed by DRT rather by NCLT, hence the appeal shall lay. It is submitted that the issue is fully covered by the judgment of the Hon'ble Supreme Court in **'Lalit Kumar Jain' Vs. 'Union of India & Ors.'** reported in **(2021) 9 SCC 321** and in

‘Embassy Property Developments Pvt. Ltd.’ Vs. ‘State of Karnataka & Ors.’ reported in **(2020) 13 SCC 308**.

6. Learned counsel for the appellant further submits that judgment of Hon’ble Orissa High Court relied by the appellant was judgment delivered in context of a writ petition filed in the High Court challenging the Order passed by NCLT. In the said context, the Hon’ble High Court noticed the submissions regarding availability of alternate remedy before the NCLAT and it was held that alternate remedy is not absolute bar and the said judgment has no application. Referring to judgment of Hon’ble Calcutta High Court in **‘Mackeil Ispat & Forging Ltd.’ (Supra)**. It is submitted that the said case has also not appropriately considered all relevant statutory provisions of the IBC and in any view of the matter, the judgment was delivered prior to judgment of Hon’ble Supreme Court in **Lalit Kumar Jain (Supra)**, where law has been declared.

7. We have considered the submissions of counsel for the parties and perused the records.

8. The personal guarantor to the corporate debtor has been notified with effect from 23.11.2017 by notification issued by Ministry of Corporate Affairs, Government of India, Central Government on 15.11.2019. The Part II of the IBC contains the provisions of Sections 4 to 77A and Part II deals with Insolvency Resolution and Liquidation for Corporate Persons and Part III deals with Insolvency Resolution and Bankruptcy for Individuals and Partnership

Firm. Section 79(1) defines adjudicating authority, which is in following words:

“79. *In this Part, unless the context otherwise requires,—*

(1) **“Adjudicating Authority”** means the Debt Recovery Tribunal constituted under sub-section (1) of [section 3](#) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;”

9. Section 179 provides for adjudicating authority for individuals and partnership firm. Section 179(1) is as follows:

“179. Adjudicating Authority for individuals and partnership firms.—

(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.”*

10. Section 60 of the IBC Code was amended by Act 26/2018, Section 60 as amended, provides as follows:

“60. Adjudicating Authority for corporate persons.—

(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 person is 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 ¹ [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.

(3) An insolvency resolution process or ² [liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(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.

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate 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.”

11. Section 60(1) clearly provides that adjudicating authority in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors and thereof shall be the NCLT

having territorial jurisdiction over the place where the registered office of the corporate person is located. Although Part III deals with individuals and partnership firms for which the adjudicating authority is DRT but for the insolvency resolution process of personal guarantors of corporate persons forum is the NCLT. In the present case, SBI Respondent has filed Section 95(1) application before NCLT due to the reason that for insolvency resolution process of personal guarantors, it is the NCLT which is the forum. When SBI has invoked Section 60(1) for forum for proceeding against the personal insolvency resolution process, which order is appealable under Section 61. Section 61(1) provides as follows:

“61. Appeals and Appellate Authority.–

(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.”

12. We need to first notice the judgment relied by counsel for the respondent of Hon’ble Orissa High Court in **‘Sandeep Jajodia’ (Supra)**. Sandeep Jajodia case was a case where order of NCLT was challenged by means of writ petition and it was argued that petitioner has alternate remedies before the NCLT, which submission was noticed in para 25 of the judgment, which is as follows:

“25. Another contention of the Opposite Party No.1/ Bank was that the Writ Petitioner ought to have filed an appeal under Section 61 of the Code challenging the impugned order. Such contention is completely misconceived as the Order was passed under Section 95 of the Code, which is under Part-III of IBC. Section 61 appeal provision is under Part II IBC. No appeal lies

*against the impugned order. Therefore, no alternative remedy is available to the Writ Petitioner. In any event, alternative remedy is not an absolute bar to file writ petition. Writ petition is maintainable even if efficacious alternative remedy is available if question involved is one of jurisdiction. For the aforesaid proposition, the following judgments can be relied on: **Kolkata Municipal Corporation & Anr. v. Union of India, Kolkata Municipal Corporation & Anr. v. Union of India, Kamal K. Singh v. Union of India, Godrej Sara Lee Ltd. v. The Excise and Taxation Officer cum-Assessing Authority, Radha Krishnan Industries v. State of Himachal Pradesh.***

13. Para 25 of the judgment was judgment where contention of the bank was noticed, however, the High Court observed “in any event, alternate remedy is not absolute bar to file writ petition”. Writ petition is maintainable even if efficacious alternate remedy is available if question involve is one of the jurisdictions. The said judgment thus does not support the submission of the respondent.

14. Another judgment relied by the respondent is the judgment of the Hon’ble Calcutta High Court in **‘Mackeil Ispat & Forging Ltd.’ (Supra)** was a case where writ petition was filed challenging an order of NCLT refusing leave to the corporate debtor to file a supplementary affidavit. It is not clear from judgment that it arose out of personal insolvency of personal guarantors rather the said proceedings were initiated by the bank against the corporate debtor. In the above reference from paragraphs 16 to 21, following was observed:

*“**16.** It is seen from Section 61(1) that the language used is, notwithstanding anything to the contrary contained under the Companies Act, 2013, any person aggrieved by the order of the Adjudicating Authority*

under that Part (Part II) may prefer an appeal to the National Company Law Appellate Tribunal.

17. *However, in contrast, the very next Section, that is, Section 62 of the IBC provides for an appeal to the Supreme Court against “an order” of the NCLT to the Supreme Court, thereby creating an explicit distinction between the language of the two successive sections between the appeal preferable against the order of an Adjudicating Authority and that of the NCLT.*

18. *Seen in such context, it cannot be presumed that the legislature carved out such a distinction without any meaning or reason. Going through the provisions of Part II of the IBC, as rightly argued on behalf of the petitioner, specific provisions have been laid down in the said Part, which confer power on the Adjudicating Authority (the NCLT) to pass an order. There are no other provisions than those referred to by the petitioner for passing any order by the Adjudicating Authority under Part II.*

19. *The submission of learned senior counsel for the opposite party as regards the applicability of Section 60(5)(c) of the IBC to the present case is unacceptable, since the said clause merely provides for the jurisdiction and power of the NCLT. Sub-section (5) of Section 60 lays down that notwithstanding anything to the contrary contained in any other law for the time being in force, the NCLT shall have jurisdiction to entertain or dispose of the matters provided therein, including those mentioned in clause (c), that is, 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 the IBC.*

20. *The said provision does not empower the Adjudicating Authority to pass any order, as contemplated in Section 61(1) of the IBC, but merely confer jurisdiction on the NCLT (the Adjudicating Authority) to incidentally decide questions of facts as well, arising out of or in relation to the insolvency resolution. The said provision confers power and jurisdiction on the Adjudicating Authority to deal with such questions while deciding matters under the IBC, which would culminate in orders under Part II, but do not provide for any occasion for the Adjudicating Authority to pass an order. Section 60(5) of the IBC is*

merely enabling, charting out the territory of the powers of the Adjudicating Authority, and does not contemplate any order being passed by the said authority.

21. Moreover, the language of Section 62 of the IBC, which ex facie shows that “an order” that is, any order of the NCLT is appellable whereas, by explicit contrast, Section 61(1) provides for an appeal only against “the order of the Adjudicating Authority” under Part II. Since Section 61(1) cannot be read in isolation of the other provisions of Part II, the expression “the” has to be relatable to the previous provisions conferring authority on the Adjudicating Authority to pass orders.”

15. Hon’ble Calcutta High Court rejected the submission regarding applicability of Section 60(5)(c) and the Court took the view that Section 61 does not confer jurisdiction on the NCLT to incidentally decide question of facts as well. The above judgment thus clearly was on different context and does not help the respondent.

16. Now we come to the judgment of the Hon’ble Supreme Court relied by the appellant i.e., judgment of **‘Embassy Property Developments Pvt. Ltd. (Supra)**, where Hon’ble Supreme Court noticing the scheme of the IBC has observed that insolvency resolution of the corporate debtor and personal guarantors and any order passed by the NCLT is appealable to the NCLAT under Section 61. In para 11 following has been observed:

*“11. It is beyond any pale of doubt that the IBC, 2016 is a complete code in itself. As observed by this Court in *Innoventive Industries Ltd. v. Icici Bank* [*Innoventive Industries Ltd. v. Icici Bank*, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356 : AIR 2017 SC 4084] it is an exhaustive code on the subject-matter of insolvency in relation to corporate entities and others. It is also true that the IBC, 2016 is a single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency*

resolution of corporate persons and others in a time-bound manner. The Code provides a three-tier mechanism, namely, (i) the NCLT, which is the adjudicating authority, (ii) the Nclat, which is the appellate authority, and (iii) this Court as the final authority, for dealing with all issues that may arise in relation to the reorganisation and insolvency resolution of corporate persons. Insofar as insolvency resolution of corporate debtors and personal guarantors are concerned, any order passed by the NCLT is appealable to Nclat under Section 61 of the IBC, 2016 and the orders of the Nclat are amenable to the appellate jurisdiction of this Court under Section 62. It is in this context that the action of the State of Karnataka in bypassing the remedy of appeal to Nclat and the act of the High Court in entertaining the writ petition against the order [Vasudevan v. State of Karnataka, 2019 SCC OnLine NCLT 681] of the NCLT are being questioned.”

17. The next judgment relied by the appellant is of the Hon'ble Supreme Court is '**Lalit Kumar Jain' (Supra)**. Lalit Kumar Jain was a case where challenge was made before the Hon'ble Supreme Court to the notification issued by Central Government on 15.11.2019 by which Section 2(e), Section 78, Section 79, Section 94 to Section 187 were brought into force. It was the notification with regard to personal guarantors, IBC Code was enforced, and in the said judgment, Hon'ble Supreme Court had occasion to consider the statutory scheme with regard to personal guarantors as well as statutory scheme against individuals and partnership firms, where it was noticed that for insolvency resolution and bankruptcy of individuals and partnership firms, the adjudicating authority is DRT and for corporate insolvency of personal guarantor is the NCLT and appeal against order of DRT lies to DRAT and appeal against the order of the adjudicating authority lies to NCLAT. Para 63 of the judgment is as follows:

“63. Section 78(3) of the Code states that the adjudicating authority, for the purpose of Part III (that deals with insolvency resolution and bankruptcy of individuals and partnership firms) would be the Debt Recovery Tribunal (“DRT”) that was established under the Rdbfi Act. The adjudicating authority for corporate insolvency (companies, LLPs and limited liability entities), on the other hand, is NCLT. The appeal from NCLT lies to the National Company Law Appellate Tribunal (“Nclat”). The appeal from the DRT lies to the Debt Recovery Appellate Tribunal (“DRAT”). This Court hears appeals from both the Nclat and the DRAT.”

18. The Hon’ble Supreme Court in the above case has occasion to consider amendment made in Section 2(e). The objective of amendment and notification has clearly noticed in paragraph 95. Hon’ble Supreme Court held that amendments 2018 also altered Section 60 and insolvency resolution process of three categories i.e., corporate debtors, corporate guarantor of corporate debtor and personal guarantor to corporate debtor, were to be considered by the same forum i.e., NCLT. In para 96 following has been held:

“96. The Amendment of 2018 also altered Section 60 in that insolvency and bankruptcy processes relating to liquidation and bankruptcy in respect of three categories i.e. corporate debtors, corporate guarantors of corporate debtors and personal guarantors to corporate debtors were to be considered by the same forum i.e. NCLT.”

19. Hon’ble Supreme Court in the above judgment has thereafter subsequently considered the rationale for having distinguished and classified personal guarantor separately from other individuals in paragraphs 112, 113 & 114, following was laid down:

“112. The argument that the insolvency processes, application of moratorium and other provisions are incongruous, and so on, in the opinion of this Court, are insubstantial. The insolvency process in relation

to corporate persons [a compendious term covering all juristic entities which have been described in Sections 2(a) to (d) of the Code] is entirely different from those relating to individuals; the former is covered in the provisions of Part II and the latter, by Part III. Section 179, which defines what the adjudicating authority is for individuals [**“179. Adjudicating authority for individuals and partnership firms.—(1) Subject to the provisions of Section 60, the adjudicating authority, in relation to insolvency matters of individuals and firms shall be the Debts 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;(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 (14 of 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.”**] is “subject to” Section 60. Section 60(2) is without prejudice to Section 60(1) and notwithstanding anything to the contrary contained in the Code, thus giving overriding effect to Section 60(2) as far as it provides that the application relating to insolvency resolution, liquidation or bankruptcy of personal guarantors of such corporate debtors shall be filed before NCLT where proceedings relating to corporate debtors are pending. Furthermore, Section 60(3) provides for transfer of proceedings relating to personal guarantors to that NCLT which is dealing with the proceedings against corporate debtors. After providing for a common adjudicating forum, Section 60(4) vests NCLT “with all the powers of the DRT as contemplated under Part III of this Code for the purpose of sub-section (2)”. Section 60(4) thus (a) vests all the powers of DRT with NCLT and (b) also

vests NCLT with powers under Part III. Parliament therefore merged the provisions of Part III with the process undertaken against the corporate debtors under Part II, for the purpose of Section 60(2) i.e. proceedings against personal guarantors along with corporate debtors. Section 179 is the corresponding provision in Part III. It is “subject to the provisions of Section 60”. Section 60(4) clearly incorporates the provisions of Part III in relation to proceedings before NCLT against personal guarantors.

113. It is clear from the above analysis that parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the adjudicating authority was common with the corporate debtor to whom they had stood guarantee. The fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to such corporate persons, does not lead to incongruity. On the other hand, there appear to be sound reasons why the forum for adjudicating insolvency processes — the provisions of which are disparate—is to be common i.e. through NCLT. As was emphasised during the hearing, NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realising some part of the creditors' dues from personal guarantors.

114. In view of the above discussion, it is held that the impugned notification is not an instance of legislative exercise, or amounting to impermissible and selective application of provisions of the Code. There is no compulsion in the Code that it should, at the same time, be made applicable to all individuals, (including personal guarantors) or not at all. 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 the same forum (though not insolvency provisions) as such corporate debtors. The notifications under Section 1(3), (issued before the impugned notification was issued) disclose that the Code was brought into force in stages, regard being had to the categories of persons to whom its provisions were to be applied. The impugned notification, similarly inter alia makes the provisions of the Code applicable in respect of personal guarantors to corporate debtors, as another such category of persons to whom the Code has been extended. It is held that the impugned notification was issued within the power granted by Parliament, and in valid exercise of it. The exercise of power in issuing the impugned notification under Section 1(3) is therefore, not ultra vires; the notification is valid.”

20. Hon’ble Supreme Court held that after providing a common adjudicating forum Section 64 vests NCLT with all powers of DRT. NCLT is also vested powers under Part III. It was held that “parliament therefore merged the provisions of Part III with the process undertaken against the corporate debtor under Part II for the purposes of Section 60, i.e., proceeding against personal guarantor along with corporate debtor”. When the NCLT is the forum for filing Section 95 application, which forum is provided under Section 60 the appellate jurisdiction under Section 61 can very well be availed by the personal guarantor.

21. Learned counsel for the respondent had submitted with regard to order of Section 100 no forum of appeal is provided and appeal being creature of statute, no appeal shall lay. In this context, we may refer to Sections 181 & 182 of the IBC which provides for appeal against order of DRT with regard to Part III. Thus, any order passed under Part III is appealable to the Debt Recovery Appellate Tribunal and it is not acceptable that no appeal was

provided by legislature with regard to order passed by the NCLT with regard to personal guarantors.

22. Learned counsel for the appellant has also relied on the judgment of this Tribunal in **‘Anita Goyal’ Vs. ‘Vistara ITCL (India) Ltd. & Anr.’** reported in **2025 SCC OnLine NCLAT 37**, where the question was raised regarding the forum of initiating insolvency resolution process against the personal guarantor of the corporate debtor and this Tribunal after considering all relevant provisions of the IBC held that NCLT has jurisdiction to entertain Section 95 application filed by the financial creditor. Conclusions were recorded in paragraph 43, which are as follows:

“43. In view of the foregoing discussions, we are not proceeded to accept the submissions of the Appellant that NCLT Delhi has no jurisdiction to entertain Section 95 Application filed by the Financial Creditor against the Personal Guarantor for initiating insolvency resolution process. We do not find any substance in any of the submissions raised by the Appellant. There is no merit in the any of the Appeal(s). Both the Appeal(s) are dismissed accordingly. There shall be no order as to costs.”

23. When NCLT is a forum for filing Section 95 application which legal position is not even refuted by the SBI, who itself has filed the application under Section 95, submission of the respondent that no appeal shall lie against said order cannot be accepted. The law by the Hon’ble Supreme Court in **‘Lalit Kumar Jain’ (Supra)** is clear and categorically lays down that insolvency resolution process of personal guarantor have been integrated in with the insolvency resolution process of the corporate debtor and the forum

being Section 60 i.e., NCLT, appeal against an order of NCLT shall lay to NCLAT.

24. We, thus do not find any substance in submission of counsel for the respondent that present appeal is not maintainable. We reject the objection raised by the respondent and hold that appeals maintainable under Section 61 of the IBC.

List these appeals 'for admission' on **21st April, 2025.**

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

03rd April, 2025

himanshu