

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-395(ND)2021

IN THE MATTER OF :

**PNB Housing Finance Ltd.
9th Floor, Antriksh Bhawan,
22 Kasturba Gandhi Marg,
Connaught Place
New Delhi-110001**

...Financial Creditor

Versus

**Mr. Mohit Arora
(Managing Director of Supertech Ltd.)
C1/10, Sector 36, Noida
Gautam Budh Nagar
Uttar Pradesh-201303**

**Also at
1114, Hemkund Chambers,
11th Floor, 89, Nehru Place,
New Delhi-110019**

**Also at
B-28-29, Sector 58, Noida,
Uttar Pradesh-201307**

...Personal Guarantor/Respondent

Order Delivered on: 29.09.2021

SECTION: 95(1) of IBC 2016

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Financial Creditor	:	Adv. Astha
For the Respondent	:	Mr. Alok Dhir, Ms. Varsha Banerjee, Mr. Kanishk Khetan, Mr. Mukund Rawat, Advs.

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Under consideration is the Application preferred by M/s PNB Housing Finance Ltd. **(the ‘Applicant/Financial Creditor’)**, under Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019. The Application is filed for initiating the Insolvency Resolution Process **(the “IR Process”)** against Mr. Mohit Arora (hereinafter, referred to as **‘Personal Guarantor/Debtor’**, who is the Managing Director of Supertech Ltd. **(the ‘Corporate Debtor’)**).

2. The factual matrix of the case is that the Applicant/Creditor viz., PNB Housing Finance Ltd. is a Company incorporated under the erstwhile Companies Act, 1956. The Applicant/Creditor Company is in the business of Housing Finance. It is stated by the Applicant that a Loan Agreement dated 10.03.2017 was executed by and between the Applicant/Creditor and the Corporate Debtor herein along with its co-borrowers, namely, Sarv Realtors Private Limited and ASP Sarin Realty Private Limited.

3. It is stated by the Applicant that in order to secure the aforesaid loan amount, an irrevocable Deed of Guarantee dated 10.03.2017 was executed by the Personal Guarantor herein, in favour of the Financial Creditor, in terms of which the Guarantor unconditionally and absolutely agreed to pay, without demur, all the amounts payable by the Corporate Debtor under the Loan Agreement dated 10.03.2017.

4. It is further stated by the Applicant that the Corporate Debtor committed breach of the Loan Agreement dated 10.03.2017, inter alia, by making defaults in payments of the monthly instalments due and payable to the Financial Creditor on various dates including but not limited to 30.04.2019, 31.05.2019, 30.06.2019, 31.07.2019, 31.08.2019, 30.09.2019 and 31.10.2019. In the circumstances, it is added that the Financial Creditor was constrained to recall the Loan Facility and as a result, the account of the Corporate Debtor was declared as a “Non-Performing Asset” on 31.07.2019 in the books of accounts of the Financial Creditor.

5. It is further added by the Applicant that it has also invoked the personal guarantee tendered by the Guarantor vide its Loan Recall Notice dated 15.09.2018.

6. It is submitted by the Applicant that accordingly it had issued a Demand Notice through Speed Post in Form-B on 09.07.2021 to the Personal Guarantor/Respondent, seeking payment of the outstanding/unpaid debt of Rs. 3,58,91,09,333.74/-. The Tracking Report depicting successful delivery of the Demand Notice is annexed on page no. 130-131 of the Petition. The scanned copy of the same is reproduced overleaf :



You are here Home>> Track Consignment

Track Consignment

[Quick help](#)

* Indicates a required field.

* Consignment Number

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
Connaught Place SO	09/07/2021 15:00:43	201303	59.00	Speed Post Parcel Domestic	Sec37 Noida SO	15/07/2021 16:25:16

Event Details For : ED921847683IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
15/07/2021	16:25:16	Sec37 Noida SO	Item Delivery Confirmed
14/07/2021	10:50:08	Sec37 Noida SO	Out for Delivery
12/07/2021	10:26:55	Sec37 Noida SO	Item Received
11/07/2021	07:51:42	Ghaziabad Ma RMS TMO	Item Dispatched
11/07/2021	04:10:43	Ghaziabad Ma RMS TMO	Item Received
11/07/2021	02:55:36	Ghaziabad NSH	Item Dispatched
11/07/2021	02:49:16	Ghaziabad NSH	Item Bagged
11/07/2021	01:38:32	Ghaziabad NSH	Item Received
09/07/2021	16:27:46	Connaught Place SO	Item Dispatched
09/07/2021	16:18:43	Connaught Place SO	Item Bagged
09/07/2021	15:00:43	Connaught Place SO	Item Booked

131

24/07/2021

Track Consignment

[Sign In](#) [Register](#)

▼ A ♂ हिन्दी 🔍



You are here Home>> Track Consignment

Track Consignment

[Quick help](#)

* Indicates a required field.

* Consignment Number

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
Connaught Place SO	09/07/2021 15:00:43	110019	59.00	Speed Post Parcel Domestic	Kalkaji HO	10/07/2021 17:04:55

Event Details For : ED921847670IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
10/07/2021	17:04:55	Kalkaji HO	Item Delivery Confirmed
10/07/2021	09:08:17	Kalkaji HO	Out for Delivery
10/07/2021	08:12:04	Kalkaji HO	Item Received
09/07/2021	16:27:46	Connaught Place SO	Item Dispatched
09/07/2021	16:20:30	Connaught Place SO	Item Bagged
09/07/2021	15:00:43	Connaught Place SO	Item Booked

7. It is submitted by the Applicant that there are multiple IBC proceedings pending against the Corporate Debtor before this Tribunal viz: IB/360/2020; IB/98/2021; CP(IB)-30/2021; IB/1044/2020; IB/2187/2019; IB/647/2020 and IB/2396/2019.

8. That during the course of final hearing on 03.08.2021, the Ld. Counsel for the Personal Guarantor appeared on the advance notice and opposed the prayer made by the Applicant on the ground of maintainability of the present Application. Both the parties have also filed their written submissions as regards to maintainability of the present petition.

9. It is averred by the Respondent in its written submissions :

“1. That the instant written synopsis is being filed on behalf of the Personal Guarantor/Respondent pursuant to Order of this Hon’ble Tribunal dated 03.08.2021 to the limited extent of raising objections on the maintainability (under Section 60) of the application filed by the Financial Creditor under Section 95 of the Insolvency and Bankruptcy Code, 2016 (“Code”). The Respondent reserves its right to file a detailed counter as regards the defects in the application, facts and merits of the instant matter at the appropriate time.

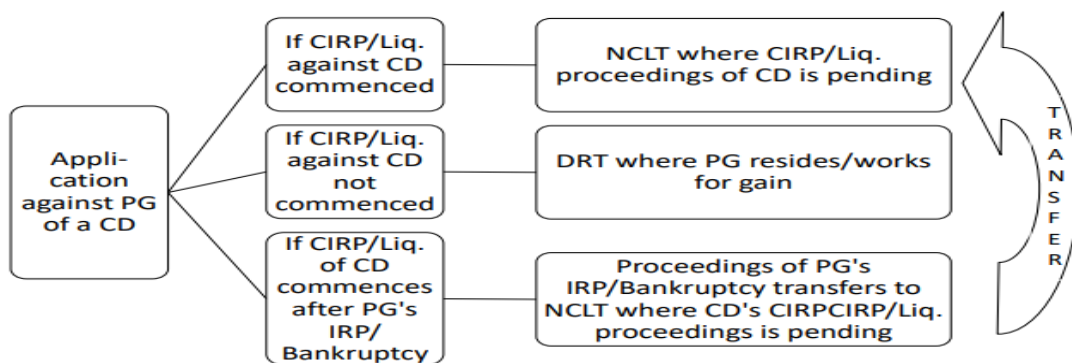
2. At the outset, the Respondent states that the instant application is without jurisdiction and not maintainable under Section 95 read with Section 60(1) & (2) of the Code. The case of challenge to the jurisdiction has to be reviewed in the conduct of various provisions of the Code starting with Section 2 (e) & (g) of the Code. It is submitted that Section 2(e) and (g) of the Code provides that the provisions of the Code shall be applicable to “personal guarantors to corporate debtors” and “individuals, other than persons referred to in clause (e)”, thereby meaning individuals other than personal guarantors.

3. The proceedings under the Code for these classes are also different in as much as Personal Guarantor to a Corporate Debtor proceedings are a part of Part – II proceedings whereas insolvency resolution of individuals

other than personal guarantors to corporate debtors fall under Part – III. Section 179 envisages the Debt Recovery Tribunal to be the Adjudicating Authority to individuals however, this section, i.e., Section 179 is subject to the provisions of Section 60 which defines the National Company Law Tribunal as the Adjudicating Authority in case of personal guarantors to corporate debtors. The provisions of Section 60 of the Code are clear and unequivocal as the same clearly defines the process to be carried on for insolvency resolution of personal guarantors to corporate debtors while also specifying the Adjudicating Authority in case of Section 2(e) individuals depending on the stages of resolution for each distinct category. Part – II and Part – III of the Code specifically uses and mentions terms such as “initiation”, “pending” and “filing” which have a clear and unambiguous meaning.

4. Section 60(1) & (2), state an exception to Section 179 in as much as if such individuals are personal guarantors to corporate debtors and a corporate insolvency resolution process/liquidation process is pending against such corporate debtors, then the NCLT shall be the Adjudicating Authority for such personal guarantors to corporate debtors as against the DRT. Further, if CIRP/Liquidation is not pending in terms of pendency of a CIRP pursuant to an admission order, then, by virtue of the provisions of Section 179, such personal guarantors being individuals, the jurisdiction to entertain an application for insolvency resolution of such personal guarantors shall lie with the DRT.”

10. That further, the Personal Guarantor has placed a diagrammatic chart in his written submissions to convey his understanding regarding jurisdiction, the scanned copy of the which is reproduced below :



11. Thus, the Personal Guarantor has submitted that if the CIRP/ Liquidation proceedings against the Corporate Debtor have not commenced, which is the case in the present proceedings, the jurisdiction to entertain an application against the Personal Guarantor shall lie with the DRT, where the Personal Guarantor resides/ works for gain.

12. The Personal Guarantor has placed reliance on the decision of Mumbai Bench of NCLT dated 09.07.2021 passed in the matter of **Altico Capital India Ltd. Vs. Rajesh Patel & Ors.** in I.A No. 1062/2021 in C.P. No. 293/2020. The Order dated 09.07.2021 is reproduced below:

“I.A. 1062/2021

The above I.A. is filed by the Financial Creditor under section 95 of IBC against the personal guarantor. However, on an enquiry from the Bench it came out that the Corporate Debtor for which the personal guarantee has been given is not under CIRP. In view of the above, the present I.A. cannot be prosecuted and therefore the above I.A. 1062/2021 is disposed of and CP 293/2020 is also dismissed.”

13. Further, the Personal Guarantor has placed reliance on para 118 and 123 of Judgment dated 21.05.2021 of the Hon’ble Supreme Court passed in the matter on **Lalit Kumar Jain v. Union of India & Others, (2021) SCC OnLine SC 396**, which is quoted below :

“118. The impugned notification authorises the Central Government and the Board to frame rules and regulations on how to allow the pending actions against a personal guarantor to a corporate debtor before the Adjudicating Authority. The intent of the notification, facially, is to allow for pending proceedings to be adjudicated in terms of the Code. Section 243, which provides for the repeal of the personal insolvency

laws has not as yet been notified. Section 60(2) prescribes that in the event of an ongoing resolution process or liquidation process against a corporate debtor, an application for resolution process or bankruptcy of the personal guarantor to the corporate debtor shall be filed with the concerned NCLT seized of the resolution process or liquidation. Therefore, the Adjudicating Authority for personal guarantors will be the NCLT, if a parallel resolution process or liquidation process is pending in respect of a corporate debtor for whom the guarantee is given. The same logic prevails, under Section 60(3), when any insolvency or bankruptcy proceeding pending against the personal guarantor in a court or tribunal and a resolution process or liquidation is initiated against the corporate debtor. Thus if A, an individual is the subject of a resolution process before the DRT and he has furnished a personal guarantee for a debt owed by a company B, in the event a resolution process is initiated against B in an NCLT, the provision results in transferring the proceedings going on against A in the DRT to NCLT.”

“123. 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 the NCLT. As was emphasized during the hearing, the 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 realizing some part of the creditors' dues from personal guarantors....”

14. It is further submitted by the Personal Guarantor that the DRT-II, Chennai in the matter of **KEB Hana Bank vs. Mr. Rohit Nath (IBC SR. No. 2643/2020)**, initiated the Insolvency Proceedings against the Personal Guarantor to the Corporate Debtor, who was not undergoing CIRP /Liquidation. It is added by the Respondent that it clearly establishes the fact that the appropriate forum for the application against Personal Guarantors to Corporate Debtors, who are not undergoing CIRP/Liquidation, is the DRT and not the NCLT.

15. That in response to the contentions of the Personal Guarantor, it is argued by the Applicant that the Adjudicating Authority for individuals (Personal Guarantor) shall be, what has been provided under Section 60 of the Code [as amended vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018] [effective from 06.06.2018]. The Applicant has submitted that a bare perusal of Section 60 of the Code shows that this Section has following three limbs/situations, under which an Application can be entertained before this Adjudicating Authority :

“A) Section 60(1) deals with the situation where the Adjudicating Authority will be NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located. {fresh filing}

B) Whereas Section 60(2) deals with a situation where, the Adjudicating Authority would be NCLT where CIRP or liquidation proceedings of a Corporate Debtor is pending. {pending CIRP against CD}

C) Section 60(3) which deals with the situation where the Adjudicating Authority would be NCLT which has seized of the matter against the Corporate Debtor and the insolvency resolution process or liquidation or bankruptcy proceeding is already pending against the Corporate Guarantor or Personal Guarantor in any Court or Tribunal shall be transferred to such NCLT dealing with CIRP or liquidation process of such Corporate Debtor. {Transfer}”

16. It is further submitted by the Applicant that all the aforesaid three sub-sections of Section 60 are independent of each other and come into effect in three different situations. This can also be deduced from perusal of the judgment passed by the Hon'ble Supreme Court in the matter of **Lalit Kumar Jain Vs UOI** (Transferred Case (Civil) No. 245/2020). The aforesaid interpretation of Sub-section (1), (2) and (3) of Section 60 can also be drawn from a bare perusal of the judgment passed by the Hon'ble NCLAT on 08.01.2019 in the matter of **Ferro Alloys Corporation Limited vs. Rural Electrification Corporation Limited**, [Company Appeal (AT) (Insolvency) No. 92 of 2017) which was upheld by the Hon'ble Supreme Court vide order dated 11.02.2019, wherein the Hon'ble NCLAT has categorically held that it is not necessary to initiate CIRP process against the principal borrower before initiating CIRP against the Corporate Guarantor.

17. It is added by the Applicant that the Hon'ble NCLAT, while passing the aforesaid Judgment relied upon the landmark judgment in the matter of **Bank of Bihar Limited vs. Dr. Damodar Prasad & Anr. (1969) 1 SCR 620**, wherein the Hon'ble Supreme Court held that “under Section 128 of the Indian Contract Act, save as provided in the contract, the liability of the surety is co-extensive with that of the principal debtor. The surety became thus liable to pay the entire amount. His liability is immediate. It cannot be deferred until the creditor exhausted his remedies against the principal debtor. Further the Hon'ble Supreme Court held that the Financial Creditor has not only right to recover the outstanding dues by filing a suit, but also has a right to initiate resolution process against the corporate person, whose liability is co-extensive with that of the principal borrower.

18. That it is submitted further by the Applicant that the notification relating to Part III was challenged in the matter of **Lalit Kumar Jain Vs. Union of India**, wherein the Hon'ble Supreme Court in para 99 and 100 of the Judgement held that “.....*Section 179, which defines what the Adjudicating Authority is for individuals 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 corporate debtors shall be filed before the NCLT, where proceedings relating to corporate debtors are pending.....*”. It is contended by the Applicant that

it is clear from the aforesaid analysis that the Parliamentary intent was to treat the personal guarantor differently from other categories of individuals.

19. After hearing submissions of both the parties, perusing the documents placed on record and written submissions of the parties, this Bench is of the view that the issue which needs adjudication is that :

“Whether initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor is a prerequisite for maintainability of an application under Section 95 of the IBC, 2016 filed for initiating IR Process of the Personal Guarantor of that Corporate Debtor before the National Company Law Tribunal ?”

20. That to decide this issue, it is necessary to check as to when the DRT can entertain an application under the IBC. Hence, we refer to the contents of Section 179(1) of IBC, 2016, which are reproduced below:

“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”.

21. From the plain reading of Section 179(1) of IBC, 2016, it is amply clear that the provision is subject to Section 60 of the IBC, 2016, which implies that whenever Section 60 is attracted, the provision of Section 179(1) of IBC, 2016 shall not be applicable and the jurisdiction shall vest with NCLT.

22. Now, in order to see when the provision of Section 179(1) is not applicable, it is necessary to visit Section 60(1) (2) and (3) of IBC, 2016 -

*(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 a 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 [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before the National Company Law Tribunal.*

*(3) An insolvency resolution process or [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.*

(Emphasis provided)

23. That evidently, the contents of Section 60(1), 60(2) and 60(3) indicate three different situations/circumstances with regard to the jurisdiction of this Adjudicating Authority to entertain application for initiating IR

process against the Personal Guarantor. This would be evident from the following analysis of Section 60(1), 60(2) and 60(3) :

a) That Section 60(1) depicts a situation, where the CIR process or Liquidation process has not been initiated. The same can be inferred from the words **“in relation to”** *insolvency resolution and liquidation for corporate* persons, which includes the Pre-CIRP Period.

b) That Section 60(2) depicts a situation, where the Corporate Insolvency Resolution Process or Liquidation process is already initiated and pending. The same can be inferred from the words **“is pending”**. Further, the Hon’ble Supreme Court in the matter **of Lalit Kumar Jain Vs Union of India & Ors., Transferred Case (Civil) No. 245/2020 dated 21.05.2021**, has interpreted Section 60(2) as :

“95.....Section 60(2) prescribes that in the event of an ongoing resolution process or liquidation process against a corporate debtor, an application for resolution process or bankruptcy of the personal guarantor to the corporate debtor shall be filed with the concerned NCLT seized of the resolution process or liquidation.....”

c) That Section 60(3) deals with the provision of transfer of proceedings from DRT to NCLT in case the CIR Process and Liquidation is pending against the Corporate Debtor. The same has been summarized by the Hon’ble Supreme Court in the matter of Lalit Kumar Jain (Supra), the relevant extract of which are reproduced below :

“95.... The same logic prevails, under Section 60(3), when any insolvency or bankruptcy proceeding pending against the personal guarantor in a court or tribunal and a resolution process or liquidation is initiated against the corporate debtor. Thus if A, an individual is the subject of

a resolution process before the DRT and he has furnished a personal guarantee for a debt owed by a company B, in the event a resolution process is initiated against B in an NCLT, the provision results in transferring the proceedings going on against A in the DRT to NCLT.”

24. That the provisions of the Personal Guarantor were notified by the Central Government vide Gazette Notification dated 15.11.2019 by virtue of which the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred as '**Personal Guarantor Rules 2019**') came into effect from 01.12.2019.

25. At this stage, we would like to visit the definition of 'Guarantor' as provided in the Personal Guarantor Rules 2019. As per Rule 3(f) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019, the term "guarantor" has been defined as:

“(f) “guarantor” means a debtor who is a **personal guarantor** to a **corporate debtor** and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;”

26. Further, the term **Personal Guarantor** used under Rule 3(f) Personal Guarantors to Corporate Debtors) Rules, 2019 has been defined under Section 5(22) of IBC, 2016, which reads as below:

(22) “Personal guarantor” means an individual who is the surety in a contract of guarantee to a **corporate debtor**;

27. That the term “**Corporate Debtor**” used under Rule 3(f) of the Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors Rules, 2019 is defined under Section 3(8) of the IBC, 2016 which reads as below :

“Corporate debtor” means a **corporate person** who owes a debt to any person;

28. That the term “corporate person”, used in the definition of Corporate Debtor is defined under Section 3(7) of IBC, which reads as :

(7) “Corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2019), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

29. Now, we examine the case herein in the light of the aforesaid definitions given in the law. The Personal Guarantor herein has given the guarantee in respect of the loan availed by M/s. Supertech Ltd. to the Applicant/PNB Housing Finance Ltd. That the main argument of the Respondent/Personal Guarantor is that to initiate IR Process against the Personal Guarantor before this Adjudicating Authority (NCLT), it is necessary that the Corporate Debtor should be under CIR Process or Liquidation, which is not the case in the present matter. We observe that Rule 3(f) of the Personal Guarantor Rules 2019 (Supra), which defines the term ‘Guarantor’, nowhere stipulates that the Corporate Debtor shall be

under CIR Process or Liquidation. Hence, the Personal Guarantor herein, is deemed to have been covered under the definition of the Guarantor as defined under Rule 3(f) of the Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors Rules, 2019.

30. That as averred by the Applicant, being a matter of fact, there are various Applications filed against the Corporate Debtor in the NCLT to initiate CIR process, which are pending adjudication before this Adjudicating Authority. As per the details furnished by the Applicant, these applications are registered as IB/360/2020; IB/98/2021; CP (IB) 30/2021; IB/1044/2020; IB/2187/ 2019; IB/647/ 2020 and IB/2396/2019.

31. While going through the Section 60(1), we have seen that the Adjudicating Authority, **in relation to** the insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the NCLT having territorial jurisdiction over the place where the registered office of a corporate person is located. Hence, in the case herein, there is a situation where various IB applications for initiation of CIR process against the Corporate Debtor are pending. In our considered view, the moment the IB application **in relation to** Insolvency resolution of the Corporate Debtor is pending before this Adjudicating Authority, the provisions of Section 60(1) get attracted and the jurisdiction to entertain insolvency process against the personal guarantor would, therefore, lie with the NCLT.

32. In the light of the aforesaid facts, we would like to summarise that in the case herein, since (i) there are pending IB cases in relation to initiation of insolvency resolution of the Corporate Debtor; ii) Section 60(2) of IBC 2016 is without prejudice to Section 60(1) as held by the Hon'ble Supreme Court in the matter of **Lalit Kumar Jain V. Union of India**; and iii) Section 179(1) of IBC 2016 is subject to Section 60 of IBC 2016, which includes Sub-Section (1), therefore, in our considered view, the jurisdiction **in relation to** the insolvency resolution (and liquidation) for corporate persons including corporate debtor and personal guarantors thereof shall be the National Company Law Tribunal in terms of Section 60(1) of IBC 2016.

33. Hence, **we conclude that in a situation where Application(s) in relation to the Corporate Debtor for initiation of CIRP is pending at National Company Law Tribunal (NCLT) then, initiation of CIRP of the Corporate Debtor is not a prerequisite for maintainability of an application under Section 95 of the IBC, 2016 filed for initiating IR Process against the Personal Guarantor of that Corporate Debtor before the NCLT.**

34. The Applicant has contended in its Application annexed with documents that the Personal guarantor/debtor has committed prima facie default in making repayment of the loan alongwith the interest to the Applicant, for which he has given the personal guarantee to the Applicant on behalf of the Corporate Debtor. Hence, we are inclined to proceed in the matter in accordance with the law. As regards, the issue of limited notice

to the personal guarantor as held by the Hon'ble NCLAT in the matter of **Ravi Ajit Kulkarni V. State Bank of India in Company Appeal (AT) (Insolvency) No. 316 of 2021** vide its judgement dated 12.08.2021, since the Personal Guarantor has already caused appearance on the advance notice, there is no need for issuing further notice.

35. It is, therefore, made known to everyone that on filing this Application by the Applicant/Creditor, the interim-moratorium commences as stipulated under Section 96 (1) (a) in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim- moratorium period, the following are prohibited:

- (a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and
- (b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

This shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

36. The Applicant/Creditor has proposed the name of Mr. Rakesh Prasad Khandelwal, Insolvency Professional, for appointment as Resolution Professional, who has accepted to be appointed and declared that he is eligible to be appointed and that no disciplinary proceedings are pending against him. Therefore, Mr. Rakesh Prasad Khandelwal is

appointed as the Resolution Professional in exercise of the powers conferred under Section 97 of the IBC, 2016 on this Authority subject to the Regulation 4 (1) and (2) of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The details of the Resolution Professional are as under:

Name : Mr. Rakesh Prasad Khandelwal
Registration No. : IBBI/IPA-002/IP-N00639/2018-19/11950
E-mail : rpkl@gmail.com
Address : E-504, Ispatika Apartments, Plot No. 29,
Sector 4, Dwarka, New Delhi 110078
Mobile No. : 9995678610

37. Mr. Rakesh Prasad Khandelwal, Resolution Professional (RP) shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 read with the Rules made thereunder. **The RP is directed to examine the Application and make recommendations along with the reasons in writing for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016.** The RP shall give a copy of the report under Sub-Section (7) of Section 99 to the Applicant/Creditor, as soon as the same is filed before this Authority.

38. For the purpose of making report/recommendations, nothing expressed herein shall be construed as an opinion/observation on the reported *prima facie* default of the personal guarantor.

39. The Applicant or his Counsel and the Registrar/Court Officer are directed to serve the copy of this Order along with copy of the Application and documents immediately on the Resolution Professional so appointed by all modes for information and compliance.

40. List the matter on 11.10.2021.

Sd/-

(L. N. Gupta)
Member (T)

Sd/-

(Abni Ranjan Kumar Sinha)
Member (J)