

NCLT HAS JURISDICTION OVER PERSONAL GUARANTORS EVEN IF NO CIRP/LIQUIDATION IS PENDING AGAINST CORPORATE DEBTOR : SUPREME COURT

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PUBLISHED 11 May 2022

Supreme Court bench comprising of Justice S Abdul Nazeer and Justice Vikram Nath held that NCLT has jurisdiction over proceeding against personal guarantors of corporate debtor under Insolvency and Bankruptcy Code (“**I&B Code**”) even if no corporate insolvency resolution proceeding (“**CIRP**”) or liquidation proceeding is pending against the Corporate Debtor under I&B Code.¹

The judgment settle the ambiguity regarding the jurisdiction of NCLT on personal guarantors of corporate debtor arose out of contradictory judgments of NCLTs, DRTs and High Courts. The ambiguity is due to interpretation of Section 60 (2) of I&B Code. Section 60 of the I&B Code is the jurisdictional clause and lays down adjudicating authority for corporate persons. Section 60 (1) and 60 (2) is reproduced below:

“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.*

*60(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.*

Section 60 (1) states that the adjudicating authority for corporate person including personal guarantor of corporate debtor is the NCLT having territorial jurisdiction over the place where the registered office of the corporate person located. Section 60 (2) states that where CIRP/liquidation is pending against a corporate debtor before a NCLT, an application against personal guarantor of such corporate debtor can be before such NCLT.

Relying upon Section 60(2) of the I&B Code it was held on many occasions that NCLT has no jurisdiction over personal guarantors unless CIRP or liquidation process is pending against the principal borrower/corporate debtor before such NCLTs.

Holding a similar view, in the instant case, the NCLT dismissed the application filed against the personal guarantor and held as follows:

“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.”

The applicant approached NCLAT challenging the above order of NCLT. After analysing Section 60 (1) and (2), NCLAT explained purpose of Section 60 (2) as follows:

“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.”

While holding that the NCLT erred in dismissing the application on the ground of lack of jurisdiction under Section 60 (2), NCLT distinguished both section as below:

“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.”

However, the confusion continued when the Supreme Court stayed the above order of NCLAT. By this order, the Supreme Court settled the confusion once for all and upheld the order of NCLAT holding it didn't find any cogent reason to interfere with the order of NCLAT.

[1] Mahendra Kumar Jajodia versus State Bank of India, Civil Appeal No. 1871/2022
https://www.livelaw.in/pdf_upload/6511202274835604order06-may-2022-1-416983.pdf