

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi - 110001

6th May, 2022

Subject: Judgment¹ dated 6th May, 2022 of the Hon'ble Supreme Court in the matter of Mahendra Kumar Jajodia etc. Vs. State Bank of India, Stressed Asset Management Branch [Civil Appeal No(s). 1871-1872 of 2022]

The Hon'ble Supreme Court (SC) vide its order dated 6th May, 2022, has upheld the decision of the National Company Law Appellate Tribunal (NCLAT) which provided that, application filed under section 95(1) of the Code is maintainable even if no CIRP or Liquidation proceeding of the corporate debtor are pending before the Adjudicating Authority. The Hon'ble NCLAT, in its order dated 27th January, 2022, has made some important findings and observations as under:

Sl. No.	Subject / Issue	Ruling	Para / Page No.
1	Adjudicating Authority for personal guarantors to corporate debtor	a) Section 60(1) provides that Adjudicating Authority for the corporate persons including corporate debtors and personal guarantors shall be the NCLT.	7/3-4
		b) Section 60 (2) 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.	7/3-4
		c) The idea is that both proceedings be entertained by one and the same NCLT. Section 60(2) does not in any way prohibit filing of proceedings under section 95 of the Code even if no proceeding is pending before NCLT.	7/3-4
		d) 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	8/4

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		<p>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.</p> <p>e) 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).</p> <p>f) Section 60(2) begins with expression '<i>Without prejudice to sub-section (1)</i>' thus provision of section 60(2) is without prejudice to section 60(1) and are supplemental to section 60(1).</p> <p>g) Section 60(1) 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.</p> <p>h) The substantive provision for an Adjudicating Authority is section 60 (1), when a particular case is not covered under section 60(2) the application as referred to in section 60 (1) can be very well filed in the NCLT having territorial jurisdiction over the place where the registered office of corporate Person is located.</p>	<p>8/4</p> <p>9/4</p> <p>10/4-5</p> <p>10/4-5</p>
	Conclusion	Application filed under section 95(1) of the Code cannot be rejected on the ground that no CIRP or Liquidation proceeding of the corporate debtor are pending before the NCLT.	11/5