

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

22nd July, 2023

Subject: Judgement¹ dated 21st July, 2023 of National Company Law Appellate Tribunal Principal Bench, New Delhi in the matter of Monica Jajoo VS PHL Fininvest Private Limited & Anr. [Company Appeal (AT) (Ins) No. 1344 & 1345 of 2022]

I. BRIEF BACKGROUND

The present appeal has been filed before National Company Law Appellate Tribunal (NCLAT) against the orders dated 29/08/2022 and 16/09/2022 in IA 4447/ND/2022 in IB No. 381(ND)/2021 passed by AA (NCLT benches, New Delhi, Mumbai)

Corporate Debtor (CD) had availed certain credit facilities from the financial creditor (FC) on the strength of a facility agreement entered into between FC and the CD. Subsequently, the said facilities were assigned to PHL Fininvest Private Limited (Assignee).

Subsequently, the assignee filed an application under section 95(1) of the Code seeking to initiate personal insolvency against the Appellant/ personal guarantor of CD (PG to CD) on 21.06.2021. AA, Bench-IV of NCLT, New Delhi vide orders dated 29.08.2022 admitted the application and appointed resolution professional (RP). Owing to service of SCN on the said RP, FC filed an IA under section 98(1) of the Code for replacement of RP which was decided by AA, Bench-IV of NCLT, Mumbai vide orders dated 16.09.2022 and allowed replacement.

Aggrieved by the orders of AA, the PG to CD has approached NCLAT on the grounds that the procedure followed by the AA in the adjudication of applications under section 95 and 98(1) of the Code are against the procedure prescribed under the Code and AAs who have passed the above orders lacked jurisdiction to deal with matters, as the liquidation proceedings are pending before Bench-III NCLT, New Delhi.

II. ISSUE:

Whether the Company Petition (IB) 381/ND/2021 was heard and the two orders dated 29.08.2022 and 16/09/2022 were passed by different benches of the NCLT when a different bench was considering liquidation proceedings against CD?

III. OBSERVATION:

NCLAT observed that the Bench IV, New Delhi did not take note of the transfer application pending with its Bench before passing the admission orders as required under section 60(1) and (2) of the Code. While allowing the appeal of PG to CD, NCLAT considered the mandate

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under section 60(1) and (2) of the Code which stipulates that an application relating to insolvency resolution and liquidation of corporate guarantor of CD shall be filed before such NCLT where CIRP or liquidation proceedings of the same CD are pending, held that different benches of AA could not have adjudicated the application for admission under section 95 and replacement of RP in terms of section 98 of the Code; rather the AA, Bench-IV of NCLT, New Delhi should have transferred the matter to AA, Bench-III of NCLT, New Delhi where the liquidation proceedings are being heard.