

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 75 of 2024**

[Arising out of Order dated 18.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in C.P. (IB) - 1165(MB)/C-III/2023]

**In the matter of:**

**Bhavesh Harkishandas Mehta**

**...Appellant**

**Vs.**

**Kookmin Bank & Anr.**

**...Respondents**

**For Appellant:** Ms. Yahya Batatawala, Ms. Meghna Rao, Ms. Uma Chatterjee, Advocates.

**For Respondents:** Mr. Akshay Sapre, Mr. Abhijeet Swaroop, Ms. Shivani Karmakar, Advocates.

**WITH**

**Company Appeal (AT) (Insolvency) No. 77 of 2024**

[Arising out of Order dated 18.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in C.P. (IB) - 1164(MB)/C-III/2023]

**In the matter of:**

**Atul Harkishan Das Mehta**

**...Appellant**

**Vs.**

**Kookmin Bank & Anr.**

**...Respondents**

**For Appellant:** Mr. Abhijeet Sinha, Sr. Advocate with Ms. Yahya Batatawala, Ms. Meghna Rao, Ms. Uma Chatterjee, Mr. Saikat Sarkar, Advocates.

**For Respondents:** Mr. Akshay Sapre, Mr. Abhijeet Swaroop, Ms. Shivani Karmakar, Advocates.

**WITH****Company Appeal (AT) (Insolvency) No. 1341 of 2023**

[Arising out of Order dated 17.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I in C.P. (IB) - 452(MB)/ 2022]

**In the matter of:****Saranga A. Aggarwal****...Appellant****Vs.****State Bank of India & Anr.****...Respondents****For Appellant:**

Mr. Krishnendu Datta, Sr. Advocate with Mr. Ravi Raghunath, Ms. Varsha Himatsingka, Mr. Aniruth Purusothaman, Advocates.

**For Respondents:**

Mr. Ankur Mittal and Mr. Bhaskar, Advocates for R-1.  
Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Sajal Jain, Advocates for R-2.

**J U D G M E N T**  
**(14<sup>th</sup> February, 2024)**

**Ashok Bhushan, J.**

These three Appeals involving common question of law have been heard together and have been decided by this common judgment.

**2.** Necessary facts giving rise to these Appeals are:-

2.1. Company Appeal (AT) (Insolvency) No.75 of 2024 has been filed against the order dated 18.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in CP(IB)-1165/(MB)/C-III/2023 in an application filed by Kookmin Bank, the Respondent herein under Section 95 of the IBC. In the impugned order, the Adjudicating Authority has appointed a Resolution Professional who was directed to

examine the application and submit a report as provided under Section 99(1) of the IBC. The Appellant, Personal Guarantor of the Corporate Debtor who was Respondent in the application, aggrieved by the impugned order has come up in the Appeal.

2.2. Company Appeal (AT) (Insolvency) No.77 of 2024 has been filed against the order dated 18.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in CP(IB)-1164/(MB)/C-III/2023 in an application filed by Kookmin Bank under Section 95 against the Appellant. The Adjudicating Authority by the impugned order appointed a Resolution Professional who was directed to examine the application and submit a report as provided under Section 99(1) of the IBC.

2.3. Company Appeal (AT) (Insolvency) No.1341 of 2023 has been filed against the order dated 17.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I in C.P.(IB)-452(MB)2022 by which the Adjudicating Authority has appointed a Resolution Professional who was directed to examine the application and file report.

**3.** We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant in Company Appeal (AT) (Insolvency) Nos. 75 & 77 of 2024 and Shri Krishnendu Datta, Learned Senior Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.1341 of 2023. We have also heard Shri Akshay Sapre, Learned Counsel appearing for Kookmin Bank in Company Appeal (AT) (Insolvency) Nos.75 & 77 of 2024 and Shri Ankur Mittal, Learned Counsel appearing for the State Bank of India. Shri Abhishek Anand, Learned Counsel

has also appeared for Respondent No.2 in Company Appeal (AT) (Insolvency) No.1341 of 2023.

**4.** Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant in support of the Appeals submits that the Appellants i.e. Bhavesh Harkishandas Mehta and Atul Harkishan Das Mehta executed a Deed of Personal Guarantee dated 24.11.2022 to the Financial Creditor in respect to the credit facility extended by the Financial Creditor to the Corporate Debtor- 'Compuage Infocom Limited'. Financial Creditor issued a demand notice to the Personal Guarantor, Appellant herein on 29.03.2023 and thereafter filed an application under Section 95 on 31.10.2023 against the Appellant. Another Financial Creditor i.e. 'Plus Unified Engaugement Services Pvt. Ltd.' initiated Section 7 proceedings against the Corporate Debtor which was ongoing before Court V of the NCLT, Mumbai wherein NCLT, Court V passed an order on 02.11.2023 initiating Corporate Insolvency Resolution Process (CIRP). It is submitted that Section 9 application was heard on 12.12.2023 by Court-III and order has been passed on 18.12.2023. It is submitted that as per Section 60(2) of the IBC, the application filed under Section 95 was required to be heard by Court V of the NCLT Mumbai Bench where the proceedings under Section 7 against the Corporate Debtor were pending. The order dated 18.12.2023 passed is without jurisdiction. Learned Counsel for the Appellant in support of his submission relied on three judgments of this Tribunal which shall be referred hereinafter.

**5.** Shri Krishnendu Datta, Learned Senior Counsel appearing for the Appellant in Company Appeal (AT) (Insolvency) No. 1341 of 2023 submits that

the insolvency petition had been filed by the Financial Creditor against the Corporate Debtor- 'AA Estates Private Limited' which proceedings are pending in NCLT, Court-V, Mumbai Bench. The State Bank of India filed an application under Section 95 of the Code against the Appellant as Personal Guarantor on 20.01.2022 in which NCLT, Court-1, Mumbai Bench issued notice on 20.06.2022 while insolvency proceeding against the Corporate Debtor was commenced by NCLT, Court-V on 06.12.2022. The order was passed on 17.08.2023 by the NCLT, Court-1, Mumbai Bench appointing an IRP. It is submitted that the insolvency proceedings under Section 7 being pending in NCLT, Court-V, NCLT Court-1, Mumbai Bench had no jurisdiction to pass order in Section 95 application filed by the SBI. It is submitted that as per sub-section (1) of Section 60, 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. Thus, both for insolvency resolution and personal guarantor proceedings shall be placed before same Bench of NCLT as per Section 60(1). It is submitted that Section 60(2) provides that where a CIRP proceeding of a Corporate Debtor is pending before a NCLT, an application relating to the personal guarantor shall be filed before such NCLT, clearly means that such Bench of NCLT where insolvency proceedings are pending. It is submitted that the clear intendment of sub-section (2) of Section 60 is that both the proceedings should be heard by same Bench. It is submitted that there was no necessity for sub-section (2) of Section 60 unless legislature intended that both the proceedings should be heard by same court.

It is submitted that although legislation is example of a bad drafting but intendment of legislature is clear that both insolvency proceedings and proceedings against personal guarantor should be heard by the same court. In event both the proceedings are held in different courts of the same NCLT Bench, the purpose and object shall not be fulfilled. Learned Senior Counsel for the Appellant has also referred to a 'Discussion Paper of Insolvency and Bankruptcy Board of India' dated 27.09.2023 on the subject discussion paper on appointment of RP, sharing of report prepared by the RP with the personal guarantor and mandating summoning of meeting of the creditors. Counsel for the Appellant has also placed reliance on two judgments of this Tribunal which shall be referred to hereinafter.

**6.** Shri Mr. Akshay Sapre, Learned Counsel appearing for Kookmin Bank refuting the submissions of the Counsel for the Appellant submits that sub-section (2) of Section 60 provides that where a corporate insolvency resolution process proceeding is pending against the Corporate Debtor before a NCLT, an application relating to the personal guarantor of such Corporate Debtor shall be filed before such NCLT. It is submitted that the provision only contemplates filing of an application before such NCLT. The provision never intended that both the applications are to be filed in the same court room. It is submitted that the Bench of NCLT is defined in IBC as well as the NCLT Rules 2016. NCLT Mumbai Bench is one of the Benches of the Tribunal which has been defined as the Adjudicating Authority for the area as contained in the notification. It is submitted that the interpretation put by Counsel for the Appellant of sub-section (2) of Section 60 is erroneous. It is not in the domain

of an applicant to file an application before a particular court. Filing of the application is always in the Registry of the NCLT and which court shall hear the application is the internal domain of the NCLT. The interpretation put by the Appellant is not in accord with the scheme. Counsel has also distinguished cases relied by Counsel for the Appellant in support of his submission, it is submitted that none of the judgments support the interpretation put by Appellant.

**7.** Shri Ankur Mittal, Learned Counsel appearing for the State Bank of India refuting the submissions of the Appellant submits that the NCLT, Mumbai Bench is a Bench of the NCLT which has been notified by the notification dated 01.06.2016 issued by the Central Government in exercise of powers under sub-section (1) of Section 419 of the Companies Act, 2013. It is submitted that the NCLT Mumbai Bench which is located at Mumbai has territorial jurisdiction over State of Chhattisgarh, State of Goa and State of Maharashtra. All applications pertaining to the aforesaid geographical area has to be filed before the NCLT Mumbai Bench. It is submitted that the expression 'shall be filed' as occurring in sub-section (2) of Section 60 only refers to filing to the NCLT Bench and not to a particular Court. The NCLT Mumbai Bench for the purpose of effective adjudication and to deal with the workload, is sitting in multiple combinations i.e. in five courts. Separate courts of NCLT Mumbai Bench have not been notified under any separate gazette notification. All the courts functioning in Mumbai NCLT constitute part of NCLT Mumbai Bench only. In the present case, the CIRP proceedings and proceedings under Section 95 have been proceeded by the same Bench

i.e. NCLT Mumbai Bench, which court shall hear the matter is the matter of internal arrangement of the NCLT and depends on general and special orders issued by the President of the NCLT or the members authorised. Learned Counsel for the Respondent has also referred to Section 421 of the Companies Act, 2013. It is submitted that the judgments relied by the Appellant are distinguishable and does not support the submission of the Appellant.

**8.** We have considered the submissions of the Counsel for the parties and perused the record.

**9.** The questions to be answered in this Appeal are:

(i) Whether when an insolvency proceeding is pending in different court room of a particular Bench of the NCLT, if the proceedings under Section 95 have been entertained by another court of the same Bench, the order passed under Section 95 application by the court different from court where insolvency proceeding is pending, is without jurisdiction?

(ii) Whether Section 60(2) of the IBC contemplate application for personal guarantor before NCLT or its Benches or it contemplates filing of Section 95 application in the same court room of the NCLT?

**10.** Both the questions being inter-related, we proceed to consider the above questions together.

**11.** NCLT has been constituted under Section 408 of the Companies Act, 2013. Section 408 of the Companies Act is as follows:-



**“408. Constitution of National Company Law Tribunal.—** *The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.”*

**12.** Section 419 of the Companies Act, 2013 provides for ‘Benches of Tribunal’. Central Government by Notification can constitute such number of Benches of the Tribunal as specified under Section 419. Sub-section (1), (2) and (3) of Section 419 are as follows:-

**“419. Benches of Tribunal.—** *(1) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.*

*(2) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.*

*(3) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:*

*Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the*

*powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify:*

*Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.....”*

**13.** As per Section 419 of the Companies Act, the Central Government has issued notification dated 01.06.2016 constituting 10 Benches of NCLT. Notification dated 01.06.2016 is as follows:-

**“NOTIFICATION**

*New Delhi, the 1<sup>st</sup> June, 2016*

**S.O. 1935(E).**- *In exercise of the powers conferred by sub-section (1) of section 419 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the following Benches of the National Company Law Tribunal mentioned in column (2) of the table below, located at the place mentioned in column (3) and to exercise the jurisdiction over the area mentioned in column (4), namely:-*

<b>Serial Number</b>	<b>Title of the Bench</b>	<b>Location</b>	<b>Territorial Jurisdiction of the Bench</b>
(1)	(2)	(3)	(4)
1.	(a) National Company Law Tribunal, Principal Bench. (b) National Company Law Tribunal, New Delhi Bench	New Delhi	(1) State of Haryana. (2) State of Rajasthan (3) Union Territory of Delhi
2.	National Company Law Tribunal, Ahmedabad Bench	Ahmedabad	(1) State of Gujarat. (2) State of Madhya Pradesh

			(3) Union territory of Dadra and Nagar Haveli. (4) Union Territory of Daman and Diu.
3.	National Company Law Tribunal, Allahabad Bench	Allahabad	(1) State of Uttar Pradesh (2) State of Uttarakhand
4.	National Company Law Tribunal, Bengaluru Bench	Bengaluru	(1) State of Karnataka
5.	National Company Law Tribunal, Chandigarh Bench	Chandigarh	(1) State of Himachal Pradesh. (2) State of Jammu and Kashmir (3) State of Punjab. (4) Union territory of Chandigarh.
6.	National Company Law Tribunal, Chennai Bench	Chennai	(1) State of Kerala. (2) State of Tamil Nadu (3) Union Territory of Lakshadweep (4) Union territory of Puducherry.
7.	National Company Law Tribunal, Guwahati Bench	Guwahati	(1) State of Arunachal Pradesh (2) State of Assam (3) State of Manipur (4) State of Mizoram (5) State of Meghalaya (6) State of Nagaland (7) State of Sikkim (8) State of Tripura
8.	National Company Law Tribunal, Hyderabad Bench	Hyderabad	(1) State of Andhra Pradesh (2) State of Telangana
9.	National Company Law Tribunal, Kolkata Bench	Kolkata	(1) State of Bihar (2) State of Jharkhand (3) State of Odisha (4) State of West Bengal (5) Union territory of Andaman and Nicobar Islands
10.	National Company Law Tribunal, Mumbai Bench	Mumbai	(1) State of Chhattisgarh (2) State of Goa (3) State of Maharashtra

**14.** We, in the present case, are concerned with NCLT Mumbai Bench. NCLT Mumbai Bench transacts its business by two members out of which one is Judicial Member and another is Technical Member sitting in different Courts. The powers of the Tribunal as per sub-section (3) of Section 419 shall

be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member.

**15.** Sub-section (1) of Section 419 which empowers Central Government to constitute Benches of the Tribunal and sub-section (3) provides the powers of the Tribunal shall be exercisable by Benches consisting of two Members.

**16.** The expression 'Benches' has been defined in the IBC under sub-section (2) of Section 3 which is as follows:-

***“3. Definitions.- .....(2) “bench” means a bench of the Adjudicating Authority;***

**17.** Section 5(1) defines 'Adjudicating Authority'. Section 5(1) is as follows:-

***“5. Definitions. – In this Part, unless the context otherwise requires, –  
(1) “Adjudicating Authority”, for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013)”***

**18.** From the above definition, it is clear that the 'Adjudicating Authority' is a NCLT which is constituted under Section 408 of the Companies Act, 2013 and the 'Bench' means a Bench of the Adjudicating Authority i.e. a Bench of NCLT. Under Section 419, Central Government has constituted Benches of the NCLT.

**19.** Now we come to Section 60 of the Code. Section 60 is part of Chapter VI which deals with ‘Adjudicating Authority for Corporate Persons’. Sub-section (1) and (2) of Section 60 are 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 [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.”*

**20.** Section 60(1) provides that 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. Thus, Section 60(1) provides for Adjudicating Authority where insolvency proceedings or proceedings against personal guarantor has to be initiated. NCLT thus is a

NCLT which has territorial jurisdiction over the corporate persons. Sub-section (2) of Section 60 falls for consideration in the present case. Sub-section (2) of Section 60 provides that where a corporate insolvency resolution process of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution of a personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal. Sub-section (2) uses two expressions before NCLT i.e. 'a' and 'such'. The provision makes it clear that when insolvency resolution process of a corporate debtor is pending before a NCLT, an application relating to insolvency of personal guarantor shall be filed before such NCLT. Uses of expression 'a' and 'such' makes it clear that both the proceedings have to be before the same NCLT.

**21.** Both the parties have referred to the judgment of this Tribunal in ***“State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia, Personal Guarantor to Corporate Debtor- Company Appeal (AT) (Insolvency) No.60 of 2022”*** decided on 27.01.2022. Sub-sections (1) and (2) of Section 60 came for consideration in the above judgment where following has been laid down in paragraphs 7 and 8:-

*“7. Sub-Section 1 of Section 60 provides that Adjudicating Authority for the corporate persons including corporate debtors and personal guarantors shall be the NCLT. The Sub-Section 2 of Section 60 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. 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.*

*8. 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 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. 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)."*

**22.** In the above case, the Adjudicating Authority has rejected the application under Section 95 filed against the personal guarantor on the ground that no insolvency proceedings are pending. Adjudicating Authority

held that unless the proceedings are pending, no application can be filed under Section 95 which interpretation was disapproved by this Tribunal in the above case. While considering sub-sections (1) and (2) of Section 60 in the above context, above observations were made in paragraphs 7 and 8. Sub-section (2) of Section 60 when uses expression NCLT, use of NCLT clearly contemplates also a Bench of NCLT. As in the present case, the applications have been filed before the NCLT, Mumbai Bench.

**23.** NCLT Rules framed under Section 469 of the Companies Act, 2013 also defines 'bench' in sub-rule (7) of Rule 2, which is as follows:-

***“2. Definitions. ...-(7) “Bench” means a Bench of the Tribunal constituted under section 419 of the Act and includes Circuit Benches constituted by the President with prior approval of the Central Government to sit at such other geographical locations as may be necessary having regard to requirements.”***

**24.** From the definition of 'bench' as contained in the IBC as well as NCLT Rules, 2016 read with Sections 408 and 409, it is clear that the word 'bench' refers to a bench of NCLT as constituted under Section 419. The expression 'bench' as contained in IBC and NCLT Rules 2016 as well as under Section 419 of the Companies Act, 2013 only refers to Bench of NCLT. The legislature never contemplated NCLT for courts of particular Bench of NCLT sitting in composition of two members in a court, court of NCLT hearing a petition or application was not under contemplation in sub-section (2) of Section 60.



Sub-section (2) of Section 60 refers to NCLT which includes also a bench of NCLT, hence, the bench shall mean a bench constituted under Section 419.

**25.** We have noticed that Section 419(3) provides that the powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member. The above provision was for the purposes of laying down how the power of NCLT shall be exercisable. The expression ‘benches’ as occurring in Section 419(3) has to be read along with the expression ‘benches’ as used in Section 419(1) of the Companies Act, 2013. Principal bench as well as the benches of the tribunal constituted under Section 419(1) has to exercise jurisdiction by two members; one judicial member and one technical member.

**26.** We may also refer Rule 16 of the NCLT Rules, 2016 which provides for ‘functions of the President’. Rule 16 of the NCLT Rules, 2016 is as follows:-

***“16. Functions of the President.- In addition to the general powers provided in the Act and in these rules the President shall exercise the following powers, namely:-***

- (a) preside over the consideration of cases by the Tribunal;*
- (b) direct the Registry in the performance of its functions;*
- (c) prepare an annual report on the activities of the Tribunal;*
- (d) transfer any case from one Bench to other Bench when the circumstances so warrant;*
- (e) to withdraw the work or case from the court of a member.*

*(f) perform the functions entrusted to the President under these rules and such other powers as may be relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal.”*

**27.** All powers regarding functioning of the NCLT is to be under the special and general orders of the President. The President is a head of the NCLT and exercises general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal. The NCLT including its benches function under general superintendence and control under the President. The President is master of the Roster with regard to cases filed before the NCLT and its benches. Allocation of work in NCLT and its benches is as per the general and special order of the President.

**28.** The Benches of the NCLT may consist of two or more members posted at particular bench. In a particular bench business are transacted if there are more than two members in different court room. For example, in NCLT Mumbai Bench, there are five courts who are transacting business with regard to cases filed before NCLT Mumbai Bench.

**29.** Learned Counsel for the Appellant contends that what is contemplated under sub-section (2) of Section 60 is when a CIRP against the Corporate Debtor has been filed before one particular court of a bench of the NCLT, an

application against personal guarantor should be filed in the same court of the NCLT.

**30.** When we look into the Scheme of the IBC and the Rules framed thereunder i.e. NCLT Rules 2016, it is clear that Section 60(2) only provided for filing of the application against personal guarantor before the same NCLT where insolvency resolution process against the corporate debtor is pending. Legislature neither contemplated nor intended hearing of both the applications by one particular court room. A bench of NCLT is a unit and filing of application and petitions are before the bench of the NCLT and not before a particular court. How the different courts transact their business and how the cases are listed before different court of a particular bench are delineated by general and special order passed by the President. An applicant who has filed an application before the NCLT has no right to claim that his application be heard by particular court of a bench. Transaction of business by different courts of bench of NCLT, as observed above, is in the domain of the President of the NCLT and sub-section (2) of Section 60 never intended to provide for hearing of a particular application by a particular court. In the legislative scheme, hearing of cases, applications and petitions by a particular court of NCLT Bench was not in contemplation nor the provision was made in that light. Submission of the Appellant that sub-section (2) of Section 60 is an example of bad drafting and what was intended by legislature was that both the proceedings should be heard by one court room cannot be accepted. All legislation has to be accepted to be enacted containing clear legislative policy and there is no warrant to accept the submission of the Appellant that sub-

section (2) of Section 60 is an example of bad drafting. Where the petition filed for insolvency resolution under Sections 7, 9 and 10 as well as application filed under Section 95 against the personal guarantor are to be heard together or heard separately is a matter of general or special order issued by the President for hearing the application filed in a particular bench and no fetter can be read under sub-section (2) of Section 60 on exercise of general and special order passed by the President for hearing of the applications.

**31.** We, in the present case, have to answer the question raised by the Appellant that the order passed by a different court from one where insolvency application is pending, is without jurisdiction. We, thus, in the present case has to consider as to whether the order passed under Section 95 directing for appointment of a Resolution Professional for submitting a report is without jurisdiction only on the ground that it is passed by different court than one where insolvency application is pending. Whether the court where Section 95 application is pending was required to necessarily sent the proceedings before Court where insolvency proceedings is pending can be answered holding that since the court did not lack jurisdiction it was not necessary for the court to refuse to proceed to hear.

**32.** Now we come to the cases which have been relied by Counsel for the Appellant in support of his submission. The judgment of this Tribunal in ***Mahendra Kumar Jajodia*** (supra) was a case where this Tribunal were examining the question as to when no insolvency proceeding pending against corporate debtor whether an application under Section 95 can be entertained by the Adjudicating Authority. The Adjudicating Authority in the said case

has refused to entertain the application against which Appeal filed was allowed by this Tribunal and it was held that even if no insolvency proceedings are pending against the Corporate Debtor, application under Section 95 can be entertained. In the above context, sub-section (2) of Section 60 was interpreted in Paragraphs 7 and 8 of the judgment, already noticed and extracted above. The judgment was not considering the issue which has been raised in the present appeal, hence, no assistance can be taken by the Appellant from the above judgment.

**33.** The next case of this Tribunal relied by the Appellant in **“Schweitzer Systemtek India Pvt. Ltd. vs. Phoenix ARC Pvt. Ltd. & Ors.- 2017 SCC OnLine NCLAT 235”**. In the above case, an order was passed by the Adjudicating Authority admitting Section 7 application and imposing an order of moratorium. The expression ‘its’ as occurring in Section 14 with regard to moratorium was under consideration in the above case. In the above context, Section 60 was also noticed by this Tribunal. Observation has been made on Section 60 in Paragraph 6 which is to the following effect:-

*“6. In this respect one may also refer to Section 60 of the I & B Code, as per which under sub-section (2) if Corporate Insolvency Resolution Process, or liquidation proceeding of a corporate debtor is pending before the 'Adjudicating Authority, an application relating to the 'insolvency resolution' or 'bankruptcy' of a personal guarantor required to be filed before the same Bench of Adjudicating Authority, meaning thereby, separate application for initiation of resolution process require to be filed*

*against the guarantor before the same very Bench of the Adjudicating Authority who is hearing the corporate resolution process or liquidation proceeding against principal corporate debtor.”*

**34.** Learned Counsel for the Appellant has relied on the words ‘same very bench of the Adjudicating Authority’ as occurring in paragraph 6 of the judgment. The words ‘same very bench’ as occurring in Section 6 has to be understood as per the definition of bench as contained in the IBC. This Tribunal in the above case was not considering hearing of Section 95 application by a particular court and observation in paragraph 6 cannot be read to mean that what was held by this Tribunal was that the same bench of the NCLT should hear both the insolvency resolution process application as well as application against personal guarantor. Reliance on the said judgment is thus wholly erroneous.

**35.** Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant has placed reliance on judgment of the Hon’ble Supreme Court in **“Amulya Chandra Kalita vs. Union of India and Ors.- (1991) 1 SCC 181”**. In the above case, the question which came for consideration before the Hon’ble Supreme Court was that whether the Administrative Member of the Central Administrative Tribunal could alone decide the case in the face of the Hon’ble Supreme Court’ earlier decision in **“S.P. Sampath Kumar v. Union of India- (1987) 1 SCC 124”**. The Hon’ble Supreme Court answered the said question in holding that as per the provision of Administrative Tribunals Act, 1985, every bench of tribunal must consist of a Judicial Member and an

Administrative Member, hence, the case could not have been disposed of by the Judicial Member alone. In paragraph 4, following was held:-

*“4. In view of the above state of the law we have no hesitation in coming to the conclusion that the matter ought not to have been disposed of by the Administrative Member alone. We, therefore, set aside the impugned order and remand the matter to the Tribunal for disposal in accordance with law by a bench properly constituted as required by Section 5(2) of the statute. The civil appeal is accordingly disposed of.”*

**36.** The question which arose for consideration in the above case was entirely different and has no bearing on the issue which has been sought to be raised in the present case. The above judgment is clearly distinguishable.

**37.** Another judgment of this Tribunal relied by the Appellant is **“Monica Jajoo vs. PHL Fininvest Pvt. Ltd. & Anr.- 2023 SCC OnLine NCLAT 348”** in which a two members bench was hearing a case arising out of a proceeding under Section 95 against personal guarantor. In the above case, application under Section 95 was heard by Court IV of NCLT, New Delhi by which order, proceedings were initiated and Resolution Professional was appointed. It was contended that the liquidation proceedings of the Corporate Debtor were pending in Bench III (Court III of the NCLT, New Delhi), hence, application under Section 95 with regard to which order was passed by Court IV of NCLT New Delhi is not in accordance with law. Judgment of this Tribunal in **“Mahendra Kumar Jajodia”** (supra) was relied. Two member bench in the

aforesaid case noticed Section 60 of the IBC and made following observations in paragraphs 23 and 24:-

*“23. As noted above, the transfer petition bearing No. TA(IBC)- 36(PB)/2022 was filed before the Adjudicating Authority. It is also a fact that even though this application was filed before the Adjudicating Authority (Bench-IV), it did not take the transfer application into consideration before passing both the Impugned Orders, which is a requirement of law as per section 60(1) and (2) of the IBC. Sub sections (1) and (2) of section 60 lay down a requirement of law, which stipulates and mandates that an application relating to insolvency resolution or liquidation of corporate guarantor of a corporate debtor shall be filed before ‘such’ NCLT, where a CIRP or liquidation proceedings of the ‘same’ corporate debtor is pending. This requirement of law has also been noted in the matter of State Bank of India, Stressed Asset Management Branch (supra) of this Tribunal.*

*24. We are, therefore, of the view that Bench-IV of NCLT, New Delhi could not have heard and adjudicated upon the application under section 95 and thereafter application for replacement of the RP under section 98 and it should have transferred these applications to Bench-III which was already considering the liquidation proceedings of the corporate debtor under the IBC.”*

**38.** The above observations of this Tribunal indicate that what was held in the above case was on the basis of judgment of this Tribunal in **“Mahendra**



**Kumar Jajodia**” (supra). We have already noticed that the judgment of this Tribunal in **“Mahendra Kumar Jajodia”** (supra) was not considering the issue which has arisen in the present case, hence, this Tribunal could not have relied in the said judgment for laying down the proposition as contained in paragraphs 23 and 24 noticed above. We have already held that the word ‘NCLT’ used in sub-section (2) of Section 60 refers to NCLT including its benches and was not to a particular court room. Thus, the conclusion to which this Tribunal arrived in **“Monica Jajoo”** case is not in accord with the statutory scheme delineated by the IBC. Reliance on judgment of this Tribunal in **“Mahendra Kumar Jajodia”** (supra) was misplaced, hence, two-member bench erred in laying down that sub-section (2) of Section 60 provides both in liquidation proceeding as well as Section 95 proceedings have to be heard by the same court of NCLT.

**39.** We, thus, are of the view that the judgment of this Tribunal in **“Monica Jajoo”** does not lay down the correct law. The interpretation which is sought to be advanced by the Appellant in event it is accepted shall lead to uncertainty and conflict regarding jurisdiction of a NCLT to entertain an application under Section 95. As observed above, all applications and petitions filed in NCLT including its benches have to be heard and decided as per the general and special order of the President. Applications are listed in different court of one bench of NCLT as per the general and special order of the President. When a matter is listed before a particular court of bench of NCLT, the Court where the matter is listed has necessarily jurisdiction to entertain it. The submission that court has no jurisdiction since application

of insolvency is pending in different court of same bench if accepted the same will be contrary to general and special order of the President under which Section 95 application is listed in different court. We, thus, are of the view that in the facts of the present case, impugned order dated 18.12.2023 passed by Court III of the NCLT, Mumbai Bench was well within its jurisdiction. Similarly, the impugned order passed by NCLT, Court 1 dated 17.08.2023 was well within the jurisdiction of the court which passed the order. No infirmity can be found with the impugned order on the submission which has been advanced by the Appellant in the present appeal.

**40.** In view of the foregoing discussions, we answer both the above questions in following manner:-

- (i) When an insolvency proceeding is pending in different court room of a particular Bench of the NCLT, the proceedings under Section 95 can be entertained by another court of the same Bench as per general or special order of the President and order passed under Section 95 application by the court different from court where insolvency proceeding is pending, shall not be without jurisdiction.
- (ii) Section 60(2) of the IBC contemplate filing of application for personal guarantor before NCLT or its Benches and not to a particular courtroom of NCLT or its benches.

**41.** In result, both the Appeals are dismissed. We make it clear that we have not gone into and considered the merits of the application under Section 95

filed by the Financial Creditor and it is for the Adjudicating Authority to proceed and decide the application in accordance with law.

**[Justice Ashok Bhushan]  
Chairperson**

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

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

**New Delhi  
Anjali**