(2025) 03 NCLAT CK 0669

In the National Company Law Appellate Tribunal

Case No : Company Appeal (AT) (Insolvency) No. 345 of 2025

???? ?apital Ltd. Transferee of Tata Capital Financial Services Ltd. APPELLANT

Vs

Arjun Agarwal & Anr. RESPONDENT

Date of Decision : 12-03-2025

Acts Referred:
Insolvency and Bankruptcy Code 2016 — Section 95

Citation : (2025) 03 NCLAT CK 0669

Hon'ble Judges : Ashok Bhushan, Chairperson;Arun Baroka, Member (T)

Bench : Division Bench

Advocate : Ekta Bhasin , Aastha Trivedi, Meenakshi Manot , Abrode Sinha

Final Decision : Allowed

Judgement

12.03.2025 : This Appeal has been filed by the Financial Creditor challenging the Order dated 08.01.2025 passed by the Adjudicating Authority, by which Section 95 Application filed by the Appellant has been dismissed.

2. The Adjudicating Authority in the Impugned Order held that since there are no insolvency resolution proceeding pending against the Corporate Debtor, Application under Section 95 is not maintainable.

3. Learned Counsel for the Appellant submits that the issue is fully covered by the Judgment of this Tribunal in the matter of 'Mrs. Anita Goyal' Vs. 'Vistara ITCL (India) Ltd. & Anr.' in Comp. App. (AT) (Ins.) No. 2282/2024 decided on 23.01.2025. It is submitted that this Tribunal has also considered the issue and held that Application under Section 95 is maintainable even though no CIRP process is pending against the Corporate Debtor.

4. Learned Counsel for the Appellant relies on the Judgment which has elaborately considered the issue. It is further relevant to notice that the Judgment which is impugned in the present Appeal was also cited by the Respondents in Paragraph 42 and this Tribunal took the view that the Judgment

of the NCLT delivered in the present case is not taken into note earlier binding Judgment.

5. It is useful to extract Paragraph 42 of the Judgment of this Tribunal dated 23.01.2025 which is as follows:

"42. Learned Counsel for the Appellant has relied on judgment of NCLT Kolkata Bench in Aditya Birla Finance Ltd. vs. Sarita Mishra and Tata Capital Financial Services Ltd. vs. Arjun Agarwal. Coming to the judgment of NCLT in Aditya Birla Finance Ltd. vs. Sarita Mishra, the said proceeding was initiated by Financial Creditor against Personal Guarantor under Section 95, sub-section (1). The Application came to be rejected by NCLT Kolkata Bench, holding that NCLT shall have jurisdiction only when the proceedings for insolvency resolution or liquidation is pending against the Corporate Debtor and the Application under Section 95 filed by the Financial Creditor was dismissed. It is relevant to notice that NCLT Kolkata Bench had noticed the judgments of this Tribunal in State Bank of India vs. Mahendra Kumar Jajodia as well as Mahendra Kumar Agarwal vs. PTC India Financial Services case, but NCLT proceeded to distinguish the said judgments without there being any real distinction in the issue, which has arisen for consideration. To the similar effect is another judgment of NCLT Kolkata Bench in Tata Capital Financial Services Ltd. vs. Arjun Agarwal decided on 20.12.2024, i.e., on the same date, on which judgment of Aditya Birla Finance Ltd. was delivered. In the said judgment also the same view was taken by the NCLT Kolkata Bench while dismissing Section 95 Application filed by the Financial Creditor. The above two judgments, delivered by NCLT Kolkata Bench are in teeth of binding judgments of State Bank of India vs. Mahendra Kumar Jajodia and Mahendra Kumar Agarwal vs. PTC India Financial Services (supra) and artificial distinction, which is sought to be drawn by NCLT Kolkata Bench is illusory and without any basis. The NCLT Kolkata Bench was clearly bound by the precedent declared by this Tribunal, especially when judgment of this Tribunal in State Bank of India vs. Mahendra Kumar Jajodia was affirmed by the Hon'ble Supreme Court by its order dated 06.05.2022 as noticed above. In view of the law laid down by this Tribunal in State Bank of India vs. Mahendra Kumar Jajodia where the Application filed by Financial Creditor without there being any pending proceeding against Corporate Debtor, was held to be fully maintainable, both the judgments of NCLT do not lay down correct law and are per incuriam. The above judgments relied by Appellant, thus, cannot support the submissions advanced by the Appellant that NCLT has no jurisdiction to entertain Section 95 Application filed by the Financial Creditor."

6. This Tribunal ultimately in Paragraph 43 has held as follows:

"43. In view of the foregoing discussions, we are not proceeded to accept the submissions of the Appellant that NCLT Delhi has no jurisdiction to entertain Section 95 Application filed by the Financial Creditor against the Personal Guarantor for initiating insolvency resolution process. We do not find any substance in any of the submissions raised by the Appellant. There is no merit in the any of the Appeal(s). Both the Appeal(s) are dismissed accordingly. There shall be no order as to costs.”

7. In view of the Judgment of this Tribunal dated 23.01.2025, theImpugned Order cannot be sustained and is accordingly set aside. Section 95 Application is revived before the Adjudicating Authority to be heard and decided on merits.

8. Learned Counsel for the Respondent has submitted that this Tribunal may clarify that this Tribunal has not examined any of the issues on the merits and the question of merits be left opened to be considered by the Adjudicating Authority in accordance with law.

9. We accept the submission of the Respondent and we make it clear that we have not entered into the merits of the Application and it is for the Adjudicating Authority to consider and take appropriate decision in accordance with law.

The Appeal is allowed. Section 95 Application is revived for fresh consideration.

