

(2025) 12 BOM CK 1681
In the Bombay High Court
Case No : Writ Petition No. 9380 Of 2024

Kotak Mahindra Bank Ltd

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-12-2025

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 60, 96
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 13(2), 14

Citation : (2025) 12 BOM CK 1681

Hon'ble Judges : M.S. Sonak, J; Advait M. Sethna, J

Bench : Division Bench

Advocate : Shanay Shah, Hamza Lakhani, Nishant Rana, Chinmayee Ghag, Bijal K. Gogri, Vinit Jain, Ashutosh Mishra, Gaurav Mhatre, Shazia Ansari, S. D. Vyas

Final Decision : Disposed Of

Judgement

M.S. Sonak, J

1. Heard learned Counsel for the parties.
2. We issue Rule in all these Petitions, given our order of 25 November 2025.
3. The learned Counsel state that substantially similar issues of law and facts arise in all these Petitions and therefore, they could be disposed of by a common judgment and order.
4. The learned Counsel for the Petitioners had submitted that the issue raised in these Petitions is squarely covered by the decision of the Hon'ble Supreme Court in the case of Lalit Kumar Jain Vs Union of India 2021 9 SCC 321. Therefore, by our order of 25 November 2025, we had posted these matters for final disposal at the admission stage. We had already directed the Petitioners to serve a fresh notice upon the Respondents along with the copy of this order.
5. Our order dated 25 November 2025 reads as follows: -

"1. Mr Shah and Ms Gogri, learned counsel for the Petitioners state that the Respondents in these matters have been duly served and an affidavit of service is also filed.

2. The learned counsel for the Petitioners state that the issue raised in these Petitions is covered by the decision of the Hon'ble Supreme Court in the case of Lalit Kumar Jain vs. Union of India 2021 9 SCC 321.

3. Accordingly, we post these matters for final disposal at the admission stage on 10 December 2025 for "Directions/Disposal".

4. The Petitioners should serve a fresh notice upon the Respondents along with a copy of this order.

5. All concerned to act upon an authenticated copy of this order."

6. In compliance with the directions issued on 25 November 2025, the Petitioners have once again served all the Respondents and have even filed their affidavits of service. Mr Vinit Jain appears on behalf of the Debt Recovery Tribunal (DRT), and Ms Vyas appears for the Respondent-State. The other Respondents, despite service, have not appeared.

7. Given our order of 25 November 2025, posting these matters for final disposal at the admission stage on 10 December 2025, we have heard the learned Counsel and proceed to dispose of these Petitions finally.

8. Mr Shah, the learned Counsel for the Petitioner, submitted that there is ample material to suggest that the 2nd Respondent put up the 3rd Respondent only to stall the proceedings initiated by the Petitioner under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). In any event, and without prejudice, He submitted that in terms of the law laid down by the Hon'ble Supreme Court in Lalit Kumar Jain (supra), the insolvency proceedings initiated by the 3rd Respondent are required to be transferred to the National Company Law Tribunal (NCLT).

9. Mr Shah submitted that in Lalit Kumar Jain (supra), upon considering the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) has clarified the legal position and held that NCLT would be in the best position to consider the whole picture about the nature of assets available, either during the Corporate Debtor Insolvency Process (CIRP) or even later. Accordingly, he submitted that the proceedings initiated by the 3rd Respondent before the DRT would not be maintainable and, in any event, liable to be transferred to the NCLT where the CIRP of the principal borrower is on. Mainly for this reason, He submitted that the Rule in all these Petitions be made absolute by declaring the proceedings before DRT are incompetent and without jurisdiction.

10. Ms Gogri, the learned Counsel for the Petitioner in Writ Petition No. 1494 of 2024, while adopting the arguments of Mr Shanay Shah, submits that the 2nd Respondent in her Petition has initiated the proceedings before the DRT. Further,

she pointed out that she was pressing for relief in terms of prayer clause (a) in addition to the other prayers. She points out that prayer clause (a) seeks quashing and setting aside of the DRT's order dated 2nd May 2022 by which the DRT has declared the interim moratorium under Section 96 of the IBC.

11. The contesting Respondents in this case, though served repeatedly, have chosen not to appear. Since notice of final disposal has already been issued, we see no difficulty in proceeding in their absence.

12. The learned Counsel for the DRT and the State Government are not, in that sense, any contesting Respondent. As such, they rightly left the matter for the determination of this Court.

13. For deciding these Petitions, we refer briefly to the facts in Writ Petition No. 9385 of 2024. In this case, the Petitioner is a Secured Creditor who granted a loan of Rs. 14.90 Crores to the principal borrower, PTRAAANS Logistics India Pvt. Ltd (now known as Orbiigo Heavy Lifters Pvt. Ltd.). The said loan was guaranteed by Mr. Pravin Jain, Mrs. Kalpana Pravin Jain and M/s. Pravin Jain HUF, by giving their personal guarantees and creating a mortgage over several immovable properties.

14. The Petitioner initiated proceedings under the SARFAESI Act by issuing notice under Section 13(2) on 25th April 2019 (page 153 of the Petition). The amount outstanding as on that date was Rs. 15,00,25,465.47 [principal outstanding – Rs. 14,50,00,000/- + interest receivable, penal interest and other charges Rs. 50,25,465.47].

15. Consequent to the above notice, an action was initiated by the Petitioner before the Chief Metropolitan Magistrate, Esplanade, Mumbai, under Section 14 of the SARFAESI Act. By order dated 1st April 2021 (page 171 of the Petition), the application was allowed for taking physical possession of the mortgage properties.

16. The Petitioners contend that the 2nd and 3rd Respondents initiated collusive proceedings only to stall the proceedings under the SARFAESI Act. They submitted that the date for taking over possession of the assets was fixed on 22 April 2022. However, on 20 April 2022, an insolvency application, Insolvency Application No. 3 of 2022, was filed by Respondent No. 3 against Respondent No. 2 (Kalpana Jain) under Section 95 of the IBC before DRT-1, Mumbai.

17. By an email dated 21 April 2022, the Respondent No. 2 informed the Petitioners' Advocate about the filing of the Insolvency Application before DRT and that an interim moratorium had been initiated against the 2nd Respondent under Section 96 of the IBC.

18. On 2nd May 2022, when the matter was listed before the DRT, the 2nd Respondent, after sending the above-referred email, chose not to appear, either in person or through her Advocate. But the DRT still issued a notice to the Respondents and declared that a moratorium under Section 96 of the IBC

commenced on the date of filing of the application, i.e., 20 April 2022.

19. The learned Counsel for the Petitioners has made several submissions to demonstrate how the proceedings initiated by the 3rd Respondent were, in fact, collusive proceedings between the 2nd and 3rd Respondents. However, at this stage, we are not required to consider such issues, as the learned Counsel for the Petitioners, relying upon Lalit Kumar Jain (*supra*), has submitted that the jurisdiction to even entertain the application under the IBC now lies with the NCLT, and not the DRT.

20. In Lalit Kumar Jain (*supra*), the Hon'ble Supreme Court, after considering the provisions of the IBC in detail and the interplay between the respective jurisdictions of the NCLT and the DRT, has made the following observations at paragraphs 108, 112 and 113:-

"108. The impugned notification authorises the Central Government and the Board to frame rules and regulations on how to allow the pending actions against a personal guarantor to a corporate debtor before the adjudicating authority. The intent of the notification, facially, is to allow for pending proceedings to be adjudicated in terms of the Code. Section 243, which provides for the repeal of the personal insolvency laws has not as yet been notified. Section 60(2) prescribes that in the event of an ongoing resolution process or liquidation process against a corporate debtor, an application for resolution process or bankruptcy of the personal guarantor to the corporate debtor shall be filed with NCLT concerned seized of the resolution process or liquidation. Therefore, the adjudicating authority for personal guarantors will be NCLT, if a parallel resolution process or liquidation process is pending in respect of a corporate debtor for whom the guarantee is given. The same logic prevails, under Section 60(3), when any insolvency or bankruptcy proceeding pending against the personal guarantor in a court or tribunal and a resolution process or liquidation is initiated against the corporate debtor. Thus if A, an individual is the subject of a resolution process before the DRT and he has furnished a personal guarantee for a debt owed by a company B, in the event a resolution

process is initiated against B in an NCLT, the provision results in transferring the proceedings going on against A in the DRT to NCLT

112. The argument that the insolvency processes, application of moratorium and other provisions are incongruous, and so on, in the opinion of this Court, are insubstantial. The insolvency process in relation to corporate persons [a compendious term covering all juristic entities which have been described in Sections 2(a) to (d) of the Code] is entirely different from those relating to individuals; the former is covered in the provisions of Part II and the latter, by Part III. Section 179, which defines what the adjudicating authority is for individuals is "subject to" Section 60. Section 60(2) is without prejudice to Section 60(1) and notwithstanding anything to the contrary contained in the Code, thus giving overriding effect to Section 60(2) as far as it provides that the

application relating to insolvency resolution, liquidation or bankruptcy of personal guarantors of such corporate debtors shall be filed before NCLT where proceedings relating to corporate debtors are pending. Furthermore, Section 60(3) provides for transfer of proceedings relating to personal guarantors to that NCLT which is dealing with the proceedings against corporate debtors. After providing for a common adjudicating forum, Section 60(4) vests NCLT "with all the powers of the DRT as contemplated under Part III of this Code for the purpose of sub-section (2)". Section 60(4) thus (a) vests all the powers of DRT with NCLT and (b) also vests NCLT with powers under Part III. Parliament therefore merged the provisions of Part III with the process undertaken against the corporate debtors under Part II, for the purpose of Section 60(2) i.e. proceedings against personal guarantors along with corporate debtors. Section 179 is the corresponding provision in Part III. It is "subject to the provisions of Section 60". Section 60(4) clearly incorporates the provisions of Part III in relation to proceedings before NCLT against personal guarantors.

113. It is clear from the above analysis that parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection

between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the adjudicating authority was common with the corporate debtor to whom they had stood guarantee. The fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to such corporate persons, does not lead to incongruity. On the other hand, there appear to be sound reasons why the forum for adjudicating insolvency processes - the provisions of which are disparate - is to be common i.e. through NCLT. As was emphasised during the hearing, NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realising some part of the creditors' dues from personal guarantors."

21. From the above observations, we are satisfied that in this case, the proceedings should have been filed with the NCLT and not the DRT. In any event, even if the proceedings before the DRT, the DRT should have transferred the same to the NCLT. Still, it was faintly suggested that since no proceedings were pending before the NCLT until 16 February 2024, the DRT was the proper authority having jurisdiction over the matter.

22. In the above regard, it is necessary to refer to Section 60 of the IBC, which reads 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 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.

(3) An insolvency resolution process or [liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any Court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of?

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

23. Section 60(1), in terms provides that 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. In this case, the 2nd Respondent was a

personal guarantor. Therefore, the Adjudicating Authority would have been the NCLT, having territorial jurisdiction over the registered office of the corporate person, not the DRT.

24. Mr Shah referred to the decision of the National Company Law Appellate Tribunal (NCLAT) order in *State Bank of India v. Mahendra Kumar Jajodia* (2022) 233 Company Cases 36 to submit that even where an application under Section 9 of IBC filed by any operational creditor was not pending before the NCLT, still, it is the NCLT which would have the jurisdiction given the provisions of Section 60 of the IBC. The NCLAT has held that 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 very well be filed in the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located.

25. The NCLAT held that the adjudicating authority had erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor was pending, the application under Section 95(1) filed by the Appellant in the said case was not maintainable. The NCLAT held that the application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the application filed by the Appellant was maintainable. It could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor were pending before the NCLT.

26. Mr Shanay Shah submitted that the Hon'ble Supreme Court dismissed the Civil Appeal against the NCLAT's above-referred order in the case of *Mahendra Kumar Jajodia Vs. State Bank of India* (2022) ibclaw.in 16 SC.

27. The record establishes that in this matter, an application under Section 9 of IBC was already filed by the operational creditor against the principal borrower, which was admitted on 16 February 2024. (See page 35 of the Petition). This has the effect of a moratorium order being issued against the principal borrower. Therefore, Section 60(2) of the IBC becomes operational and no proceedings before the DRT under Section 95 read with Section 179 would be competent or maintainable. This position has been crystallised by the Hon'ble Supreme Court in *Lalit Kumar Jain* (supra) in the paragraphs referred to hereinabove.

28. Therefore, we are satisfied that the applications filed by the 3rd Respondent before the DRT were not maintainable or competent. The DRT, given the law laid down in *Lalit Kumar Jain* (supra), should have either dismissed the applications for want of jurisdiction or transferred the same to NCLT, at least after the Petitioners herein pointed out the pendency of proceedings before the NCLT and the NCLT's order dated 16 February 2024.

29. Since the DRT had no jurisdiction to entertain the 3rd Respondent's application, even the order made by the DRT on 2nd May 2022 would be without jurisdiction. This order is set aside. But liberty is granted to the second and third

respondents to apply for orders before the NCLT.

30. For all the above reasons, we allow these Petitions, set aside the DRT's order dated 2nd May 2022 and direct the DRT to transfer the proceedings pending before it in these matters to the NCLT within four weeks from today.

31. The Rule is made absolute in all these Petitions to the above extent. No costs. All concerned are to act on an authenticated copy of this order.

32. The pending Interim Applications no longer survive and are accordingly disposed of.