(2026) 07 NCLAT CK 0038

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Comp. App. (AT) (Ins) No. 451 of 2025 (Arising out of the Order dated 17.12.2024 passed by the National Company Law Tribunal, Division Bench, Court No. - II, Kolkata, in C.P.(IB) No. 286/2024 And IA.(IB) No. 2023/Kb/2024)

UCO Bank APPELLANT

Vs

Subrata Das and M/s. Harida Vintrade Private Limited RESPONDENT

Date of Decision : 14-07-2026

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 61, 95(1), 60 (1), 60 (2), 179, 95, 5(8), 14, 7, 60, 79, sub-section (1), Par III

Indian Contract Act, 1872 — Section 128

Citation : (2026) 07 NCLAT CK 0038

Hon'ble Judges : Justice Mohammad Faiz Alam Khan, Member (Judicial);Naresh Salecha, Member (Technical)

Bench : Division Bench

Advocate : For Appellant: Mr. Sarfaraz Khan, Ms. Mirza Amir Baig & Mr. A. Wahid Mashaal, Advocates.

Final Decision : Allowed

Judgement

1. There are two appeals filed by the Appellant i.e., UCO Bank who is the Financial Creditor under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") against the Impugned Order dated 17.12.2024 passed by the National Company Law Tribunal, Division Bench, Court No. - II, Kolkata, in C.P.(IB) No. 286/2024 And IA.(IB) No. 2023/Kb/2024) and against the Impugned Order dated 08.01.2025 passed by the National Company Law Tribunal, Special Bench, Court No. - I, Kolkata, in C.P.(IB) No. 285(KB)2024 and IA.(IBC) No. 1988/Kb/2024 ("**Adjudicating Authority**")

Subrata Das, who is a Personal Guarantor and was a Director of the Borrower namely M/s Haridra Vintrade Private Limited, is Respondent in Company Appeal (AT) (INS) 451 of 2025.

Rahul Gupta, who is a Personal Guarantor and was a Director of the Borrower namely M/ s Haridra Vintrade Private Limited, is the is Respondent in Company Appeal (AT) (INS) 452 of 2025.

2. The Appellant contended that the Respondents were Directors of M/s Haridra Vintrade Private Limited, the Principal Borrower, and had executed a Personal Guarantees in respect of the Cash Credit Facility availed by the said company. It was further submitted that the Principal Borrower had approached the Appellant Bank on 06.06.2022 seeking a Cash Credit Facility. The Appellant further submitted that after examining the credentials and documents of the Principal Borrower, the Appellant sanctioned a Cash Credit Facility of Rs. 250 lakhs vide Sanction Letter dated 15.07.2022. The Appellant contended that pursuant thereto, the Respondents executed Letter of Guarantee in favour of the Appellant, thereby personally guaranteeing repayment of the said credit facility.

3. The Appellant submitted that subsequently the loan account of M/s Haridra Vintrade Private Limited became irregular and was classified as a Non-Performing Asset on 30.03.2023 in accordance with the applicable RBI guidelines. The Appellant contended that thereafter Notices of Demand were issued invoking the Personal Guarantees furnished by the Respondents. It was further submitted that on 20.06.2024, a Demand Notice in Form B was served upon the Respondents in relation to the unpaid debt and default committed by the Principal Borrower. However, despite service of the notice, the Respondents failed to provide any reply or discharge the outstanding liability, compelling the Appellant to initiate proceedings under Section 95(1) of the Code before the Adjudicating Authority for initiation of insolvency resolution process against the Personal Guarantors.

4. The Appellant further submitted that the Interim Resolution Professional had also recommended admission of the application, however the Adjudicating Authority rejected the same. The Appellant contended that the impugned order was contrary to the authoritative pronouncements of the Hon'ble Supreme Court and the Appellate Tribunal citing judgements which have settled law that a Financial Creditor can proceed directly against Personal Guarantor without proceeding against the Corporate Debtor.

5. Concluding arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Orders and remand back the cases to the Adjudicating Authority.

Findings

6. At the outset we note that in view of repeated non -appearance of the Respondents despite due service of notice, this Appellate Tribunal has proceeded with the present appeals ex-parte against the Respondents vide order dated 17.07.2025 which reads as under:-

> *"As per office report, service upon Respondent No. 1 has been effected. No one has put in appearance on its behalf, therefore proceeded against ex-parte. List for hearing on*

20.08.2025"

(Emphasis supplied).

7. In order to examine issues raised by the Appellant before us, we feel appropriate to take into consideration the relevant paragraph of the Impugned Order reads as under:

> *"31. In view of the legal position enumerated above as it emanates from in the decisions rendered by the Hon'ble Chief Justice's Division Bench of Madras High Court in Rohit Nath I (Supra) and the Hon'ble Apex Court in Embassy Property (Supra), we can safely conclude that: a. In terms of Section 60 (1) and (2) read with Section 179 of the I&B Code, NCLT is the only Adjudicating Authority in respect of Personal Guarantors to a Corporate Debtor where a corporate insolvency resolution process or liquidation proceeding initiated against a corporate debtor is either pending before a National Company Law Tribunal or is already concluded.*
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> *b. In absence of an "initiated" or "pending" or ' "concluded" CIRP against a Principal Borrower, an application under Section 95(1) to initiate Insolvency Resolution Process against a Personal Guarantor to a Corporate Debtor will not be maintainable before the NCLT. The Recovery Proceedings will lie only before the Debt Recovery Tribunal (DRT) having territorial jurisdiction."*

(Emphasis supplied)

8. From above, it is noted that the Adjudicating Authority is under impression that NCLT can proceed against Personal Guarantor of the Corporate Debtor only if CIRP or Liquidation proceedings against the Corporate Debtor has been initiated or completed.

9. Thus, only issue we have to decide in the present appeal is whether the Adjudicating Authority can proceed against Personal Guarantor of the Corporate Debtor only if the CIRP or Liquidation proceeding has been initiated against the Corporate Debtor or the Adjudicating Authority can proceed against Personal Guarantors of the Corporate Debtor, even the Financial creditor has not initiated any proceeding i.e. any CIRP or Liquidation proceeding against the Corporate Debtor but directly initiated proceedings against the Personal Guarantor of the Corporate Debtor under Section 95 of the Code.

10. We need to appreciate that under IBC, "Financial Debt" expressly including the amount raised under a guarantee and the statutory framework does not stipulate that proceedings against the Personal Guarantor of the Corporate Debtor are contingent on prior initiation of CIRP proceeding against the Corporate Debtor. The Hon'ble Supreme Court in case of ***Laxmi Pat Surana v. Union of India (Civil Appeal No. 2734 of 2020)*** had held that Financial Creditor can initiate CIRP on default and Section 5(8) of the Code includes liability in relation to a guarantee within definition of the Financial Debt.

11. In case of State Bank of India v. V. Ramakrishnan and Anr. [Civil Appeal No. 3595 of 2018] the Hon'ble Supreme Court held that the moratorium under Section 14, applicable to the Corporate Debtor, does not extend to Personal

Guarantor, which reinforced the separation of guarantor’s liability vis -a-vis Corporate Debtor liability. It can be said that the IBC is not contemplated to allow Personal Guarantor to escape independent liability merely because CIRP against the Corporate Debtor is pending or because the Corporate Debtor enjoy a memorandum or even no CIRP has been initiated against the Corporate Debtor at all. We are conscious of the fact that the Financial Creditors have two independent and distinct legal remedies under the Code i.e., firstly against the Corporate Debtor itself under section 7 of the Code and secondly, against the Personal Guarantor of the Corporate Debtor under Section 95 of the Code.

12. We observe that a guarantor is meant to provide an additional credit support so if creditor has necessarily to first litigate exhaustively against the Corporate Debtor, the guarantee would lose much of its value. This is the reason why the law treats surety obligations as immediate upon the default, unless the contract says otherwise. It also needs to be clearly understood that the IBC aims for speed as well as value maximisation of the Corporate Debtor, thus forcing creditors onto a sequential and delayed recovery path will be against the very spirit of the Code.

13. In this connection, we will refer to the judgment of this Appellate Tribunal in ***Anita Goyal Versus Vistra ITCL (India) Ltd. & Anr (Company Appeal (AT) (Insolvency) No.2282 of 2024).*** The relevant paragraph of the said judgement reads as under:

> *“10. Now, we come to the submission of the learned Counsel for the Appellant that NCLT has no jurisdiction to entertain Section 95 Application filed by the Financial Creditor and the Application ought to have been filed before the DRT. Although learned Counsel for the Respondent has contended that the objection regarding jurisdiction having not been raised before the NCLT, we proceed to examine the contention on merit. The issue raised by the Appellant needs consideration and answer in these Appeal(s) to clarify the law on the subject.*
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> *11.The submission which has been pressed by the Counsel for the Appellant is that NCLT shall be the Adjudicating Authority for Personal Guarantor only when proceeding of insolvency resolution process is ongoing against the Corporate Debtor have been initiated and are pending before the NCLT. Reliance has been placed by learned Counsel for the Appellant on Section 60, sub-section (2). It is contended that in the present case, no CIRP or liquidation is going on against the Corporate Debtor, hence, the jurisdiction to entertain Application under Section 95 lies with DRT. Learned Counsel for the Appellant has also relied on Section 79 and 179 of the IBC to support his submission. Learned Counsel for the Appellant also relied on judgment of the Madras High Court in Rohit Nath vs. KEB Hana Bank Ltd., decided on 30.03.2023 as well as two judgments of NCLT, Kolkata in Aditya Birla Finance Ltd. vs. Sarita Mishra – IA (IB) No.356/KB/2024 in Company Petition (IB) No.67 of 2023; and Tata Capital Financial Services Ltd. vs. Arjun Agarwal – I.A. (IB) 1670/KB/2024 in C.P.(IB)51/KB/2024. Learned Counsel for the Appellant has referred to judgments of the Hon’ble Supreme Court in Lalit Kumar Jain vs. Union of India – (2021) 9 SCC 321 and State Bank of India vs. V. Ramakrishnan & Anr. – Civil Appeal No.3595 of 2018.*
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> 21. *Section 179, thus provides for individuals and partnership firms, it is Debt Recovery*

Tribunal, which is Adjudicating Authority. However, Section 179, sub-section (1) begins with wording "Subject to the provisions of section 60,…". The submission which has been pressed by the Appellant is that NCLT shall be Adjudicating Authority only in cases where insolvency resolution process or liquidation proceedings are pending before it and not in case, where no insolvency resolution process or liquidation is pending against the Corporate Debtor, the NCLT shall not be the Adjudicating Authority for insolvency resolution process of Personal Guarantor. Thus, the main ground of the Appellant to challenge the jurisdiction of NCLT is that if no insolvency resolution process is pending against the Corporate Debtor, Section 95 Application before the NCLT is not maintainable and it ought to have been filed before the DRT as per Section 79 and 179.

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.*

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."*

(Emphasis supplied)

We are duty bound to follow the decision of this Appellate Tribunal in earlier matter as discussed above. Moreover, the issue in the present appeal is exactly same and fully applicable in the present appeal.

14. We also note that the Adjudicating Authority has not appreciated that under Section 128 of Indian Contract Act, 1872, when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For quick reference, the said Section 128 of Indian Contract Act, 1872 is reproduced below:

"The liability of the surety is co-extensive with that of the Principal Debtor, unless it is otherwise provided by the Contract."

15. We also take into consideration that Hon'ble Supreme Court of India in the matter of ***''Industrial Investment Bank of India Versus Biswanath Jhunjhunwala***" *[2009 SCC OnLine SC 1515]*, observed as under:

*"15. ***Thevery object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety.In the present case the creditor is a banking company. A guarantee is a collateral security usually taken by a banker. The security will become Useless if his rights against the surety can be so easily cut down."*

(Emphasis supplied)

16. We would also refer to another judgement of the Hon'ble Supreme Court of India in the matter of ***Bank of Bihar Ltd. Versus Damodar Prasad & Anr.*** *[1968 SCC OnLine SC 280]* wherein after having relied upon the judgment of the Division Bench of the Hon'ble Bombay High Court in the case of ***Lachhman Joharimal Vs. Bapu Khandu & Surety Tukaram Khandoji*** has observed as under:

"A creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt."

(Emphasis supplied)

17. We find that surety's liability to pay the debt is not removed by reason of the creditor's omission to sue the principal debtor. Such a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety, and a suit may be maintained against the surety even though the principal debtor has not been sued. The argument is valid in favour of the Appellant to proceed against the Respondents in the present Appeal.

18. We also take into consideration the Appellate Tribunal's earlier judgement in case of ***State Bank of India, Stressed Asset Management Branch Vs. Mahendra Kumar Jajodia & Anr.*** *(2022 SCC OnLine NCLAT 58),* where it was held that Applications filed under Section 95 against the Personal Guarantors are maintainable even in the absence of pending CIRP or liquidation proceedings of

the Corporate Debtor.

19. It can also be observed that looking into the legislative intent, the Hon'ble Supreme Court of India and this Appellate Tribunal have found favour for concurrent jurisdiction of the NCLT and DRT in the adjudicating matter of Insolvency against individuals as Personal Guarantors of the Corporate Debtor

20. We would like to amplify that core legal proposition under the Insolvency regime governed by the code is that liability of a Personal Guarantee is co-existing with that of the Corporate Debtor. The Hon'ble Supreme Court of India in landmark case of ***Lalit Kumar Jain vs. Union of India & Ors.*** *(Transferred Case (Civil) No. 245/2020)* has clearly upheld the framework for Personal Guarantor and confirmed that insolvency proceeding under Section 95 of the Code can be proceeded under Par III of the Code against the Personal Guarantor of the Corporate Debtor, independently of the proceedings against the Corporate Debtor.

21. We hold that it is the legal prerogative under the scheme of the Code, which gives flexibility to the Financial Creditor to proceeded for CIRP against the Personal Guarantor of the Corporate Debtor under Section 95 of the Code along with CIRP proceedings against the Corporate Debtor under Section 7 of the Code or only against Personal Guarantor of the Corporate Debtor under Section 95 of the Code without even initiating any proceeding, against the Corporate Debtor. Typically, such cases arise when Financial Creditors find that there is very low chances of resolution of the Corporate Debtor. We also observe that this is purely within domain of commercial wisdom of the Creditors to decide the legal course of action in such matters. We also hold that the legally correct interpretation is that a creditor is entitled to initiate action against the Personal Guarantor directly, even, if no CIRP or separate legal action has been initiated against the Corporate Debtor. The Personal Guarantor can't insist that the creditors must first exhaust remedies against the Corporate Debtor, because both liabilities are co-extensive and the creditor has a concurrent right of action.

22. Based on above discussion, we find impugned orders are contrary to settled laws. The Adjudicating Authority did not appreciate correct proposition. The impugned orders cannot be sustained. The appeals succeed. The impugned orders are set aside. The matter is remanded back to the Adjudicating Authority to decide in accordance with the law. The original petitions of the Appellant is restored back. Parties are directed to appear before the Adjudicating Authority on **27.07.2026**. No order as to the cost. I.A., if any, stand closed.

