

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 458 of 2025

(Arising out of Order dated 24.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-III in IB-654(PB)/2023)

IN THE MATTER OF:

INDIAN BANK
SAM LARGE BRANCH
17, PARLIAMENT STREET
NEW DELHI- 1 10 001
E-Mail: armbdelhi@indianbank.co.in

.... Appellant

Vs

1. ANJANEE KUMAR LAKHOTIA
B-37, 1st FLOOR, SWAMI NAGAR,
MALVIYA NAGAR, NEW DELHI- 1 10017
Email- delhi@mblinfra.com

2. STATE BANK OF INDIA
(Representing New Working Capital Consortium)
STRESSED ASSETS MANAGEMENT BRANCH-II
-1 1th FLOOR, JAWAHAR VYAPAR BHAWAN
S.T.C. BUILDING, JANPATH, 1 TOLSTOY MARG
NEW DELHI- 1 10 001
E-Mail: agmcll.50950@sbi.co.in ;
agm3infra2.sarg@sbi.co.in

3. ROSHAN LAL JAIN
RESOLUTION PROFESSIONAL
AN-46 B, SHALIMAR BAGH
NORTH WEST DELHI
DELHI- 1 10088
Email: roshanljain@yahoo.co.in

.... Respondents

Cont'd.../

Present:

For Appellant: Mr. Amod K. Dalela, Mr. Pradeep Pandey, Advocates.

For Respondents: Mr. Arusuya Salwan, Mr. Rachit Wadhwa, Advocates for R-1.

Mr. Abhijeet Sinha, Sr. Advocate with Ms. Shweta Dubey, Ms. Kanishka Prasad, Advocates for R-2.

Mr. Sumit Sinha, Advocate with Mr. Roshan Lal Jain in person for R-3.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by the Indian Bank challenging the order dated 24.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-III by which an application under Section 95(1) filed by the Indian Bank has been rejected by the Adjudicating Authority under Section 100 of the I&B Code.

2. Brief facts of the case necessary to be noticed for deciding this appeal are:

- (i) Erstwhile Allahabad Bank has granted various financial facilities to the Corporate Debtor - M/s MBL Infrastructure Limited in the year 2010 onwards. The financial facilities

were extended to the Corporate Debtor by consortium of banks lead bank being State Bank of Mysore.

- (ii) The deed of guarantee dated 17.02.2016 was executed by the Appellant in favour of the State Bank of Mysore – the lead Bank.
- (iii) The accounts of the Corporate Debtor were declared NPA on 21.12.2016. The Corporate Debtor – M/s MBL Infrastructure Limited was admitted to CIRP by order dated 30.03.2017 passed by NCLT, Kolkata Bench.
- (iv) The Allahabad Bank now Indian Bank has filed its claim in the CIRP of the Corporate Debtor and was member of the CoC. In the CIRP of the Corporate Debtor, the Respondent No.1 – Anjanee Kumar Lakhotia, the Suspended Director of the Corporate Debtor submitted a Resolution Plan. The Resolution Plan dated 22.11.2017 proposed by Anjanee Kumar Lakhotia – Respondent No.1 herein was approved with 78.50% vote share of the CoC. NCLT, Kolkata vide order dated 18.04.2018 also approved the Resolution Plan.
- (v) Approval of the Resolution Plan by NCLT was unsuccessfully challenged before this Tribunal and the Hon'ble Supreme Court. The Resolution Plan submitted by

the Suspended Director was ultimately received approval by the Hon'ble Supreme Court vide judgment dated 18.01.2022 in CA 8411 of 2019. NCLT, Kolkata Bench has directed the Working Capital Consortium of the Corporate Debtor to take necessary steps for the implementation of the approved Resolution Plan on 11.03.2022, which was upheld by this Tribunal by order dated 23.05.2023. Order of this Tribunal dated 23.05.2023 was also upheld by the Hon'ble Supreme Court.

- (vi) Under the Resolution Plan, the debt of all the lenders was restructured and was proposed to be paid in phased manner. The Respondent No.1 herein, the Personal Guarantor was required to submit a fresh guarantee to the consortium of bank. A new Deed of Guarantee dated 04.07.2024 was executed by the Respondent No.1 in favour of the SBICAP Trustee Company Limited.
- (vii) The Appellant was one of the dissenting Financial Creditor who did not voted for approval of Resolution Plan. By virtue of approval of plan, the dissenting financial creditor was entitled to receive liquidation value in priority.
- (viii) Subsequent to the approval of plan, an application under Section 95(1) was filed by the Indian Bank being IB-

654(PB)/2023 Application was filed to initiate insolvency process against the Personal Guarantor – Anjanee Kumar Lakhotia.

- (ix) The State Bank of India filed an application for impleadment in Section 95(1) application, which although was opposed by the Appellant but the Adjudicating Authority passed an order dated 26.07.2024 allowing the Intervention Application P-7 filed by the State Bank of India. The State Bank of India opposed the application filed under Section 95(1). It was contended by the State Bank of India that there are procedures laid down in the inter-se agreement on enforcement of security interest. The restructured debt under the Resolution Plan is secured by new Personal Guarantee which has been given by the Respondent No.1 on 04.07.2024. It is submitted that dissenting Financial Creditor cannot be allowed to initiate proceeding for personal insolvency of the Personal Guarantor which himself was Resolution Applicant whose Resolution Plan was approved. The value of the personal guarantee as existing in 2017 given by Anjanee Kumar Lakhotia was noticed in the Resolution Plan and debt of all lenders including the Indian Bank was restructured and

mode and manner of payment to all lenders was given in the Resolution Plan.

- (x) By order dated 01.04.2025, the State Bank of India was allowed time to file an Additional Affidavit bringing extract of Resolution Plan. In pursuance to order dated 01.04.2025, State Bank of India has filed an Additional Affidavit bringing on record relevant extract of the Resolution Plan of the Corporate Debtor.
- (xi) The Adjudicating Authority after hearing the parties and considering all the materials on record rejected the application under Section 95(1) filed by the Appellant by order dated 24.01.2025. Aggrieved by which order, this appeal has been filed.

3. We have heard Shri Amod K. Dalela, learned counsel for the Appellant, Shri Arusuya Salwan, learned counsel appearing for the Respondent No.1 – Personal Guarantor, Shri Abhijeet Sinha, learned senior counsel appearing for Respondent No.2 – State Bank of India and learned counsel appearing for the Resolution Professional.

4. Learned counsel for the Appellant submits that the personal guarantee although was given to the State Bank of Mysore – lead bank but the personal guarantee has to be treated to be given to all members of the

consortium and after approval of the Resolution Plan, the personal guarantee given by Resolution No.1 dated 17.02.2016 shall not extinguish. Indian Bank was fully entitled to initiate process for insolvency resolution of the Personal Guarantor. The personal guarantee given by Respondent No.1 was rightly invoked by the Indian Bank before filing Section 95 application. It is submitted that Resolution Plan of the Corporate Debtor which was approved in the year 2017 does not affect the personal guarantee given by the Respondent No.1. Learned counsel for the Appellant has also relied on judgment of Hon'ble Supreme Court in **“Lalit Kumar Jain vs. Union of India, (2021) 9 SCC 321”** in support of his submission that approval of Resolution Plan shall not extinguish the personal guarantee given by the Personal Guarantor. Learned counsel for the Appellant submits that mere fact that a fresh personal guarantee has been taken from Respondent No.1 by the consortium of banks shall not retrospectively extinguish the personal guarantee given by Respondent No.1.

5. Learned counsel for the State Bank of India refuting the submission of the Appellant contend that the Resolution Plan was submitted by Respondent No.1 – the Promoter and Personal Guarantor himself. The debt of all lenders were restructured in the Resolution Plan and was to be paid in the phased manner. The Personal Guarantor himself having given the Resolution Plan, a fresh personal guarantee was executed by the Personal Guarantor on 04.07.2024 for implementation of the approved Resolution Plan. It is submitted that in view of obtaining fresh guarantee, the Indian

Bank which is dissenting Financial Creditor cannot proceed to file an application under Section 95 against the Respondent No.1. It is submitted that the Appellant being dissenting Financial Creditor, who has not approved the Resolution Plan is entitle for liquidation value as per Section 30(2) of the I&B Code. In view of the approved Resolution Plan by Respondent No.1 – Suspended Director of the Corporate Debtor himself, all aspects of the matter including value of the assets of the Personal Guarantor as was existing in the year 2017 have taken note of in the Resolution Plan. Contents of the Resolution Plan and treatment to the claims of all lenders clearly makes it impermissible to the Appellant to initiate any proceeding under Section 95(1) against the Personal Guarantor.

6. We have heard learned counsel for the Appellant and perused the record.

7. The fact that in the CIRP of the Corporate Debtor – M/s MBL Infrastructure Limited, Resolution Plan submitted by the Promoter i.e. Respondent No.1 was approved by the NCLT in the year 2017 is matter of record. The approval of the Resolution Plan was challenged before this Tribunal and ultimately, in Hon'ble Supreme Court and the Hon'ble Supreme Court also approved the Resolution Plan of the Corporate Debtor. In the year 2023, the consortium of banks has decided to implement the Resolution Plan and the Hon'ble Supreme Court vide order dated 08.01.2024 dismissed the appeal filed by the Bank of Baroda challenging

the order of this Tribunal affirming the order of NCLT. Observation made by the Hon'ble Supreme Court has been noticed in Para 12(f) of the impugned order, which is as follows:

“f. The Hon'ble Supreme Court vide its judgment dated 18.01.2022 dismissed the Appeal filed by the Bank of Baroda. The Hon'ble Supreme Court held that the Resolution Applicant was not eligible under Section 29A, noticing the subsequent facts, including the fact that the Resolution Applicant has already infused Rs.63 crores and the Corporate Debtor is an on-going concern, the Hon'ble Supreme Court did not interfere with the order approving the Resolution Plan and was of the view that Resolution Plan be implemented and held that:

“63. We need to take note of the interest of over 23,000 shareholders and thousands of employees of the Respondent No.1. Now, about Rs. 300 crores has also been approved by the shareholders to be raised by the Respondent No. 1. It is stated that about Rs. 63 crores has been infused into the Respondent No.1 to make it functional. There are many on-going projects of public importance undertaken by the Respondent No.1 in the nature of construction activities which are at different stages.

64. We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution

plan leading to the on-going operation of the Respondent No.1.”

8. The submission of the Appellant that pursuant to approval of Resolution Plan there is subsisting personal guarantee was considered and contention of the Appellant have been noticed in Para 15 and 16 of the judgment and the Adjudicating Authority in Para 17 has made following observation:

“17. The learned Counsel for the State Bank of India submitted that, following the approval of the Resolution Plan, the loan of the Corporate Debtor was effectively restructured, and the security interest was modified. Accordingly, the Respondent No. 1's previous personal guarantee dated 17.02.2016 was extinguished, and a new Deed of Guarantee dated 04.07.2024 was executed by Respondent No.1 in favor of SBICAP Trustee Company Limited. Notably, the implementation of the Resolution Plan is underway, and the Hon'ble Supreme Court has acknowledged that the Successful Resolution Applicant has already infused Rs.63 Crores. In terms of the approved Resolution Plan, the following documents were executed between the Consortium Lenders and Respondent No.1 representing Corporate Debtor on 04.07.2024:

(i). Working Capital Consortium Agreement

(ii). Working Capital Term Loan Agreement

(iii). Personal Guarantee for Working Capital Facility and working capital term loan facility

(iv). Debenture Trust Deed

(v). Security Trustee Agreement in respect of working capital facility and working term loan facility

(vi). Debenture Trustee Appointment Agreement

(vii). Inter-se Agreement (amongst Working Capital Lenders)

(viii). Deed of Hypothecation”

9. It has been submitted by learned counsel for the State Bank of India that following the approval of Resolution Plan, the loan of the Corporate Debtor was effectively restructured and security interest was relinquished and previous personal guarantee dated 17.01.2017 was extinguished and new personal guarantee dated 04.07.2024 was executed in favour of SBICAP Trustee Company Ltd. Fresh personal guarantee has been executed by the Respondent No.1 which has been noticed in Para 17 of the judgment. In Para 20 of the judgment, the Adjudicating Authority has again observed that fresh personal guarantee has been executed by the Personal Guarantor on 04.07.2024. When the debt of all lenders was restructured and security interest were extinguished by asking the Personal Guarantor to submit a fresh personal guarantee to the consortium of bank, we are of the view that relying on the earlier personal guarantee the Appellant cannot proceed to put the Personal Guarantor into personal

insolvency who himself is the Resolution Applicant whose Resolution Plan has been approved upto Hon'ble Supreme Court.

10. The Adjudicating Authority after considering relevant facts and circumstances has rightly not admitted Section 95 application filed by the Appellant. In Para 2.3 of the Resolution Plan, as has been brought on the record along with the Additional Affidavit, which contemplate submission of personal guarantee to the Consortium of Working Capital Lender. It is useful to extract the following part of the extract of Resolution Plan from Para 2.3:

“Personal guarantee of Sh A.K.Lakhotia to consortium working capital lenders, equipment/ECB lenders as per the resolution plan. The net Worth of guarantor as on 31.3.2017 is Rs. 18.37 crs.”

11. The liabilities of the Personal Guarantor on 31.03.2017 was assessed as Rs.18.37 Crores which was taken into account in the Resolution Plan and considering the outstanding, Lenders included letter of credit of Bank Guarantees and a composite plan was submitted which was approved. The letter dated 22.10.2017 addressed to the Resolution Professional by the Resolution Applicant – Anjanee Kumar Lakhotia is part of the record at page 5-6 of the Additional Affidavit, which reads as follows:

*“AK Lakhotia
B-37, 1st Floor, Soami Nagar
New Delhi 110017
Date: November 22, 2017*

*Mr. Sanjeev Ahuja
Resolution Professional
MBL Infrastructures Ltd.*

Sir

Resolution Plan

This has reference to COC meetings hold on 29th June, 10th August, 4th September, 16th October, 2017, 15th November, 2017, 13th November, 2017 and 18th November, 2017 where the resolution plan submitted by me in terms of the Insolvency & Bankruptcy Code 2016 was discussed. Further amendments have been made in the Resolution Plan as per the suggestions made by COC members and PNB Investment Services Ltd, the financial advisors of COC.

In terms of requirement of Insolvency & Bankruptcy Code 2016 read with Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, I confirm that the resolution plan inter-alia, provide for the following measures required for implementing it:

- a) Sale of some of the assets which are encumbered. Please refer to page no. 16, 43, 44, 67 of Resolution Plan.*
- b) Modification of security interest. Please refer to page no. 16-19, 41-67 of Resolution Plan.*

- c) *Curing or waiving of any breach of the terms of any debt due from the corporate debtor. Please refer to page no. 45, 68 of Resolution Plan.*
- d) *Reduction in the amount payable to creditors. Nil.*
- e) *Extension of maturity date or change in interest rate or other terms of debt due from corporate debtor. Please refer to page no. 16-19, 41-67 of Resolution Plan.*
- f) *Amendment of the constitutional documents of the Corporate Debtor. A provision in the resolution plan which would otherwise require consent of the members of the Corporate Debtor under the constitutional document of the corporate debtor shall take effect notwithstanding that such consent has not been obtained. Please refer to page no. 66, 73 of Resolution Plan*
- g) *Issuance of securities of the Corporate Debtor, for cash, property, securities or in exchange for claims or interest. Please refer to page no. 16, 19, 43, 45, 67, 72, 73 of resolution plan.*
- h) *Obtaining necessary approval from Central and State Government or other*

authorities. Please refer to page no. 19, 43, 50, 67, 68, 73 of Resolution Plan.

- i) Does not contravene any of the provision of the law for the time being force.*

Please refer to page no. 68 of Resolution Plan.

Further the Resolution Plan provides details of the sources of funds that will be used to pay:”

12. The above indicate that the Resolution Plan included clause for modification of security interest, issuance of securities of the Corporate Debtor, for cash, property, securities or in exchange for claims or interest. The Resolution Plan, thus, dealt with all securities.

13. There can be no quarrel to the proposition laid down by the Hon’ble Supreme Court in **“Lalit Kumar Jain vs. Union of India” (Supra)** that approval of Resolution Plan shall not ipso facto be treated extinguishment of personal guarantee. The present is a case where it is the Personal Guarantor, who has given guarantee, had submitted the Resolution Plan where Resolution Plan was approved. The assets of the Personal Guarantor as existing on the date when personal guarantee was given i.e. on 31.03.2017 has taken note of in the Resolution Plan and with respect to securities and all claims of lenders Resolution Plan provide for payment to lenders.

14. Learned counsel for the Appellant apart from relying on judgment of **“Lalit Kumar Jain vs. Union of India” (Supra)** has placed reliance on

several other judgments of this Tribunal and the Hon'ble Supreme Court. Learned counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in ***"Maharashtra State Electricity Board vs. Official Liquidator, High Court of Ernakulam, 1982 AIR 1497"*** where the Hon'ble Supreme Court held that under Section 128 of the Indian Contract Act, 1872, the liability of the Guarantor is co-extensive with that of the Principal Debtor unless specified otherwise, and the liquidation of the Principal Debtor does not absolve the Guarantor of liability. There can be no dispute to the above proposition that liability of the Guarantor is coextensive with the Principal Debtor but present is a case where effect and consequence of the approval of the Resolution Plan has to be considered and looked into.

15. Learned counsel for the Appellant has also relied on judgment of this Tribunal in ***"Kunwar Raj Bhagat vs. Gujarat Hydrocarbons and Power SEZ Ltd. and Anr., Company Appeal (AT) (Ins.) No.1096 of 2020"***, where it was held that liability of the Guarantor remains even if the Principal Borrower's debt is discharged under the Resolution Plan. The Judgment of Hon'ble Supreme Court in ***"Lalit Kumar Jain vs. Union of India"*** we have already notice that the Hon'ble Supreme Court categorically laid down that approval of Resolution Plan shall not ipso facto extinguish the guarantee of the Personal Guarantors.

16. The next judgment of Hon'ble Supreme Court relied by learned counsel for the Appellant in ***“Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta, (2020) 8 SCC 531”*** is also with the same proposition that sanction of Resolution Plan and finality imparted by Section 31 of I&B Code does not per se operate as discharge of Guarantor's liability.

17. Judgment of Hon'ble Supreme Court in ***“BRS Ventures Investment Ltd. vs. SREI Infrastructure Finance Ltd. and Anr., Civil Appeal No.4565 of 2021”*** has been relied where the Hon'ble Supreme Court has laid down that payment of a sum under the Resolution Plan of Corporate Guarantor does not extinguish the liability of Principal Borrower to repay the entire loan amount, after deducting the amount recovered from the Guarantor. There can be no quarrel to the proposition laid down by the Hon'ble Supreme Court in above cases.

18. The Hon'ble Supreme Court in ***“Narendra Singh Panwar vs. Pashchimanchal Vidyut Vitran Nigam Ltd.”*** vide its judgment dated 12.01.2023 has reiterated proposition laid down in ***“Lalit Kumar Jain vs. Union of India”*** that approval of Resolution Plan does not ipso facto absolve the Guarantor of his or her liability, which arises out of an independent contract of Guarantee. To the same effect is judgment of this Tribunal in ***“Roshan Lal Mittal & Ors. Vs. Rishabh Jain and Ors.”*** as well as judgement of this Tribunal in ***“UV Asset Reconstruction Company***

Ltd. vs. Electrosteel Castings Ltd., Company Appeal (AT) (Ins.) No.975 of 2022 decided on 24.01.2024”.

19. The judgments relied by learned counsel for the Appellant, as noted above, clearly lays down that by approval of Resolution Plan, the personal guarantee is not ipso facto discharged. The present is a case where Resolution Plan has been submitted by the Personal Guarantor himself and we have noted certain features of the Resolution Plan and the fact that Resolution Applicant has been asked to submit a fresh personal guarantee which personal guarantee has again been executed by the Personal Guarantor. The Appellant being a dissenting Financial Creditor, who has opposed the Resolution Plan, is entitled for liquidation value as payment in the Resolution Plan to which proposition learned counsel for the Appellant has no objection. We have already noticed the submission of the parties and come to the conclusion that application under Section 95 filed by the Applicant has rightly been rejected by the Adjudicating Authority.

20. The State Bank of India as the lead bank of the consortium who has approved the Plan had filed an Intervention Application in Section 95 application and opposed the move of the Applicant – Indian Bank to initiate personal insolvency against the Personal Guarantor, who was permitted to intervene by the Adjudicating Authority and the State Bank of India has brought all relevant facts and material before the Adjudicating Authority

relying on which the Adjudicating Authority has rejected the Section 95 application filed by the Indian Bank.

21. We, thus, are of the view that no grounds have been made out to interfere with the order impugned in the present appeal. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

21st May, 2025

Archana