



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Number 225

(May 26, 2025)



**Indian Bank Vs. Anjanee Kumar Lakhotia, State Bank of India, and Roshan Lal
Company Appeal (AT) (Insolvency) No. 458 of 2025
Date of NCLAT Judgement: May 21, 2025**

Facts of the Case: -

The appeal was filed by Indian Bank (hereinafter referred as 'Appellant') against the order dated 24.01.25 passed by the Adjudicating Authority/AA which had rejected its application under Section 95(1) of the IBC for initiating corporate insolvency resolution process (CIRP) against the Personal Guarantor, Mr. Anjanee Kumar Lakhotia, suspended Director of M/s MBL Infrastructure Ltd, State bank of India, and Roshan Lal Jain/RP (hereinafter referred as Respondent no: 1,2,3) respectively.

The case originated from financial facilities extended by a consortium of banks led by Respondent No. 2, with a deed of guarantee executed by Respondent 1 on 17.02.16 in favour of the lead bank. The CD's accounts were declared NPA on 21.12.16 and admitted to CIRP on 30.03.17 by AA. The Appellant filed its claim and was part of the CoC. The RP submitted a Resolution Plan dated 22.11.17, approved by CoC with 78.50% vote share and by AA on 18.04.18. This plan was upheld by the Hon'ble Supreme Court on 18.01.22 in Civil Appeal No. 8411 of 2019, noting infusion of ₹63 crores and the CD's status as an ongoing concern.

To implement the approved Plan, a new Deed of Guarantee dated 04.07.24 was executed by the RP in favour of SBICAP Trustee Company Ltd. The Appellant, being a dissenting financial creditor, did not support the Resolution Plan and was entitled to receive liquidation value. It filed the present Section 95(1) application, opposed by Respondent No. 2, which led the new working capital consortium. The Respondent No. 2 argued that the debt was restructured via the Resolution Plan and a new personal guarantee was executed. It contended that a dissenting creditor could not initiate personal insolvency against a guarantor who submitted and implemented the court-approved Resolution Plan. The AA observed that post-approval, the loan was effectively restructured and the original guarantee dated 17.02.16 was extinguished. The new guarantee dated 04.07.24 was executed along with other documents including the Working Capital Consortium Agreement, Security Trustee Agreement, Debenture Trust Deed, and Inter-se Agreement. These documents formed part of the implementation mechanism of the approved Resolution Plan. The tribunal noted that the assets and liabilities of the Personal Guarantor, including his net worth of ₹18.37 crores as on 31.03.17, were already factored into the Resolution Plan. Therefore, the fresh Section 95 application was deemed not maintainable.



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NCLAT's Observations:

The Appellate Tribunal held that although the general proposition laid down by the Hon'ble Supreme Court in ***Lalit Kumar Jain v. Union of India (2021)*** was that the approval of a Resolution Plan does not *ipso facto* extinguish a personal guarantee, the facts of the present case were distinguishable. Here, it was the Personal Guarantor himself who had submitted and implemented the Resolution Plan. The Plan included a fresh personal guarantee, which replaced the earlier one. The restructuring, security extinguishment, and other components of the Plan were acknowledged by the Supreme Court and Appellate tribunal in earlier rounds of litigation.

The Appellate Tribunal further referred to the Resolution Applicant's letter dated 22.11.17 to the Respondent no. 3, where amendments, restructuring of debts, modification of security interests, and issuance of securities for claims were detailed, reinforcing that all prior securities, including the personal guarantee, had been subsumed under the new structure.

Thus, relying on the extinguished guarantee for initiating personal insolvency under Section 95 was impermissible. The Court reiterated that approval of a Resolution Plan does not *ipso facto* extinguish a guarantee, but where a new guarantee is executed under a Plan approved by all statutory forums including the Supreme Court, the previous guarantee ceases to exist.

Order/Judgement: The Appellate Tribunal upheld the findings of the AA and concluded that the application under Section 95(1) filed by the Appellant was not maintainable. The Tribunal held that no grounds were made out to interfere with the impugned order dated 24.01.25 passed by AA.

Case Review: The appeal was dismissed with no order as to costs.