

In a situation where Application for initiation of CIRP for the Corporate Debtor is pending at NCLT then, initiation of CIRP of the Corporate Debtor is not a prerequisite for initiating IR Process against the Personal Guarantor of that Corporate Debtor before the NCLT.

CASE TITLE	PNB HOUSING FINANCE LTD. VS MR. MOHIT ARORA. ¹
CASE CITATION	Company Petition No. (IB)-395(ND)2021
DATE OF ORDER	29.09.2021
COURT/TRIBUNAL	NCLT, Bench II, Delhi
CASES REFERRED	Altico Capital India Ltd. Vs. Rajesh Patel & Ors. Lalit Kumar Jain v. Union of India & Others
SECTION/REGULATION REFERRED	Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy Rules, 2019.

Brief of the case:

An Application was preferred by M/s PNB Housing Finance Ltd. (Applicant), under Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 for initiating the Insolvency Resolution Process against Mr. Mohit Arora (Personal Guarantor), who is the Managing Director of Supertech Ltd. (the Corporate Debtor). It was submitted by the Applicant that there were multiple IBC proceedings pending against the Corporate Debtor before the Adjudicating Authority.

Decision:

Hon'ble NCLT disposed of the application with following observations:

"31. ...in the case herein, there is a situation where various IB applications for initiation of CIR process against the Corporate Debtor are pending. In our considered view, the moment the IB application in relation to Insolvency resolution of the Corporate Debtor is pending before this Adjudicating Authority, the provisions of Section 60(1) get attracted and the jurisdiction to entertain insolvency process against the personal guarantor would, therefore, lie with the NCLT.

32....we would like to summarise that in the case herein, since (i) there are pending IB cases in relation to initiation of insolvency resolution of the Corporate Debtor; ii) Section 60(2) of IBC 2016 is without prejudice to Section 60(1) as held by the Hon'ble Supreme Court in the matter of Lalit Kumar Jain V. Union of India; and iii) Section 179(1) of IBC 2016 is subject to Section 60 of IBC 2016, which includes Sub-Section (1), therefore, in our considered view, the jurisdiction in relation to the insolvency resolution (and liquidation) for corporate persons including corporate debtor and personal guarantors thereof shall be the National Company Law Tribunal in terms of Section 60(1) of IBC 2016.

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¹https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102085082021/04/Order-Challenge/04_order-Challenge_004_16333468721022940615ae538802e3.pdf