# NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

**Company Appeal (AT) (Insolvency) No. 292 of 2022**

[Arising out of Order dated 03.02.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court IV in C.P. (IB)-707/ND/2021]

**IN THE MATTER OF:**

**Amit Jain**
S/o Lt. Ravinder Kr. Jain
R/o C-483, Yojna Vihar,
New Delhi – 110092. **...Appellant**

**Versus**

**Siemens Financial Services Pvt. Ltd.**
Having its registered office at
Plot No. 2, Sector 2, Khargar Node
Navi Mumbai – 410210.
Through its authorized representative
Mr. Vaibhav Priyadarshi **...Respondent**

**Present:**

**For Appellant:** **Mr. Simran Jyot Singh and Mr. Sahil Yadav, Advocates.**

**For Respondents:** **Mr. Ashwini Kr. Singh, Advocate.**

## J U D G M E N T

**ASHOK BHUSHAN, J.**

This Appeal has been filed against the order dated 03.02.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench IV in an application under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') filed by the Respondent against the Appellant – the Personal Guarantor. By

*Cont'd.../*

impugned order the Adjudicating Authority ordered to initiate interim moratorium under Section 96 and further appointed Mr. Amit Ojha as Resolution Professional. Notice was issued to the Appellant by the same order. Aggrieved by the order dated 03.02.2022 this Appeal has been filed.

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

(a) The Respondent – Financial Creditor sanctioned loan cum hypothecation amounting to Rs.1,59,00,000/- and Rs.71,00,000/-, respectively to CMI Ltd. (Corporate Debtor/ Principal Borrower). The Appellant stood as Personal Guarantor to the said transaction. Two Master Finance Agreements dated 13.02.2020 were executed by and between the Corporate Debtor, the Appellant – Personal Guarantor and the Respondent – Financial Creditor.

(b) The Corporate Debtor/Principal Borrower defaulted in paying the EMI in 2020.

(c) A Company Petition (IB) No. 707/ND/2021 was filed under Section 95 of the I&B Code by the Respondent in November, 2021, where amount in default has been mentioned as Rs.2,44,57,796/-. The application mentions the date on which account was declared NPA as 11.09.2020. The application was relisted before the Adjudicating Authority on 03.02.2022 on which date impugned order was passed by the Adjudicating Authority issuing notice to the Appellant and appointing Resolution Professional.

3. Learned counsel for the Appellant challenging the impugned order raises following two submissions:

i. It is submitted that in the I&B Code Section 10A was inserted by Ordinance which subsequently became Act 17 of 2020 providing that no application for initiation of Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor shall be filed for any default on or after 25.03.2020 for a period of six months, which was subsequently extended for further period till 24.03.2021. It is submitted that since there is bar from initiation of CIRP against the Corporate Debtor, no CIRP can be initiated against the Personal Guarantor also. Section 10A has to be given interpretation to protect the Personal Guarantor also, failing which the provision will become discriminatory. The condition precedent for invoking insolvency resolution process is default on part of the Principal Borrower. When the default of Principal Borrower is covered by Section 10A, no insolvency resolution process can be initiated against the Personal Guarantor. By necessary implication the protection which is provided to the Corporate Debtor must also be provided to the Personal Guarantor.

ii. Secondly, it is submitted that the Adjudicating Authority did not follow the procedure established by law and no notice was issued before appointing the Resolution Professional. Learned counsel for the Appellant has also relied on the judgment of

this Tribunal in ***"Ravi Ajit Kulkarni vs. State Bank of India, Company Appeal (AT) (Ins.) No. 316 of 2021".***

4. Learned counsel for the Respondent refuting the submissions of learned counsel for the Appellant contends that the Section 10A prohibited initiation of CIRP only against the Corporate Debtor. Section 10A cannot be extended to an application under Section 95(1) since provision of Section 10A is clear and unambiguous. Insofar as limited notice to the Appellant is concerned, demand notice in Form-B was also served on the Personal Guarantor before filing Section 95 Application and further by order dated 03.02.2022 notice has been issued to the Appellant and Appellant has appeared before the Adjudicating Authority on 29.03.2022 and prayed for 14 days' time to file Reply.

5. We have considered submissions of learned counsel for the parties and perused the record.

6. The first question to be considered is as to whether the benefit of Section 10A can also be claimed by a Personal Guarantor and an application under Section 95 shall be barred for a default which has arisen on or after 25.03.2020 till 24.03.2021?

7. Section 10A is to the following effect:-

> *"10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default*

*arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."*

8. Section 10A begins with non-obstante clause. The section contains a prohibition against initiation of CIRP of a **Corporate Debtor** for any default arising on or after 25.03.2020. Object of insertion of Section 10A is well known. The whole country was gripped with corona virus COVID-19 and to extend the protection to Corporate Debtor and to ensure that insolvency resolution process may not be initiated against the Corporate Debtor for any default during the currency of the aforesaid period was with object to permit Corporate Debtor to carry on their activities and they be insulated from threat of insolvency resolution process.

9. When we look into the scheme of I&B Code, Chapter II of Part II deals with Corporate Insolvency Resolution Process. Section 6 of the Code provides as follows:-

> *"6. Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter."*

10. Section 7 contains provision for initiation of CIRP by a Financial Creditor. Section 9 provides for an application for initiation of CIRP by an Operational Creditor. Section 10 provides for initiation of CIRP by Corporate Applicant.

11. Section 95 of the Code is in Part III of the Code which contains 'Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms'. Under Part III, Chapter III deals with insolvency resolution process of which chapter Section 95 is part. Section 95(1) is as follows:-

> *"95(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application"*

12. When Section 10A was inserted in Chapter II of Part I no corresponding amendment was made in Chapter III of Part III of the Code. Had the legislature intended to prohibit filing of application under Section 95(1) by a creditor against the Personal Guarantor for any default committed on or after 25.03.2020, a provision akin to Section 10A could have very well be inserted in Chapter III Part III of the Code.

13. The principles of statutory interpretations are well established. The basic principle of statutory interpretation is that when a word of statute is clear, plain and unambiguous the courts are bound to give effect to that meaning irrespective of consequences. Justice S. R. Das in ***"Commissioner of Agricultural Income Tax, West Bengal vs. Keshab Chandra Mandal, AIR 1950 SC 265"*** observed:-

> *"Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules."*

14. Hon'ble Supreme Court in ***"Lalu Prasad Yadav & Anr vs. State of Bihar & Anr., (2010) 5 SCC 1"*** reiterated the same basic principle of statutory interpretation in Paras 23 and 24:-

> *"23. In Sussex Peerage[6], the House of Lords, through Lord Chief Justice Tindal, stated the rule for the construction of Acts of Parliament that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the Legislature.*
>
> *24. A Constitution Bench of this Court in Union of India & Anr. v. Hansoli Devi and Others[7], approved the rule exposited by Lord Chief Justice Tindal in The Sussex Peerage's case[6] and stated*

*the legal position thus: (Hansoli Devi case[7], SCC p.281, para 9)*

> *"9. … It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson & Co. Ltd.[8] Lord Reid pointed out as to what is the meaning of "ambiguous" and held that: (AC p.735)*
>
> > *'A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."*
>
> *It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been*

*brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of Aswini Kumar Ghose v. Arabinda Bose[9], had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry[10] it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such*

*a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective....."*

15. Hon'ble Supreme Court in ***"Nemai Chandra Kumar & Others vs. Mani Square Ltd. & Others, (2015)14 SCC 203"*** in paras 32 and 33 laid down following:-

*"32. Ordinarily, the Court resorts to the plain meaning rule (also Known as literal rule) for statutory interpretation. The said rule emphasis that the starting point in the statutory interpretation is statute itself and if the language of statute is Clear and unambiguous there is no need to look outside the statue.*

*33. The intention of the legislature is primarily to be gathered from the language used in the statute, "thus paying attention to what has been said as also to what has not been said" as observed by his Court in Dental Council of India v. Hari Prakash[7]. Relevant part of which is quoted hereunder:*

*"7. The intention of the legislature is primarily to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. When the words used are not ambiguous, literal meaning has to be applied, which is the golden rule of interpretation.""*

16. On the basic principle of statutory interpretation, the provision of Section 10A is capable of only one meaning that is suspension of initiation of CIRP was only for a **Corporate Debtor.** Had the legislature intended suspension of initiation of CIRP against the Personal Guarantor also, similar amendment was also required to be made in Chapter III of Part III of the Code. The legislature is presumed to be aware of consequences of statutory provision especially consequences of amendment made in the statute. Whether the suspension of insolvency resolution process has to be for Corporate Debtor and also for individuals including Personal Guarantor is the legislative policy which policy has to be looked into from the amendment brought in the Code by insertion of Section 10A.

17. We are, thus, unable to accept the submission of learned counsel for the Appellant that suspension of CIRP shall also to be accepted for Personal Guarantor as was provided for Corporate Debtor. The statutory scheme does not contain any indication that CIRP shall also remain suspended for Personal Guarantor for any default between 25.03.2020 to 24.03.2021, therefore, submission of learned counsel for the Appellant cannot be accepted.

18. Now, we come to the second submission of the learned counsel for the Appellant that no notice was issued to the Appellant by the Adjudicating Authority. Application under Section 95(1) was filed by serving advance notice to the Appellant in Form-B and the Adjudicating Authority issued notice by order dated 03.02.2022 to the Personal

Guarantor. The Personal Guarantor also appeared on 29.03.2022 on which date the Adjudicating Authority passed following order:-

***"ORDER***

*Learned Counsel for the Respondent Mr. Amit Jain Advocate appeared and stated that he wants to file a reply. Let the same be filed within 14 days.*

*List the matter for 20.04.2022."*

19. In so far as interim moratorium under Section 96 is concerned, the same shall automatically commence on the date of application filed under Section 95. The purpose of limited notice as has been laid down by this Tribunal in *"Ravi Ajit Kulkarni" (Supra)* is to give opportunity to the Personal Guarantor to participate in the proceedings under Section 95 to object the application filed under Section 95(1) including report of the Resolution Professional. Personal Guarantor is entitled to raise all his pleas for opposing admission of Section 95 application at the time the Adjudicating Authority passes order under Section 100. In the present case, stage of Section 100 has not yet arisen. We by our order dated 31.03.2022 has directed that *"the Adjudicating Authority may proceed with the proceedings, however, no orders as contemplated under Section 100 be passed till the next date"*. The Appellant still have opportunity to file his reply opposing the Section 95 application as well as of filing objection to the report filed by the Resolution Professional, if not already filed.

20. In view of the foregoing discussion, we do not find any ground to interfere with the order dated 03.02.2022. The Appeal is dismissed subject to the observations as made above.

**[Justice Ashok Bhushan]**
**Chairperson**

**[Justice M. Satyanarayana Murthy]**
**Member (Judicial)**

**[Barun Mitra]**
**Member (Technical)**

**NEW DELHI**

**23rd August, 2022**

*Archana*