

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**Company Appeal (AT) (Ins) No. 1284 of 2022**

[Arising out of the Order dated 11.10.2022, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench, Court-II), in I.A. 4750/ND/2021 in Company Petition No. (IB)-395(ND)/2021]

**IN THE MATTER OF:**

**MOHIT ARORA**

C 1/10, SECTOR 36, NOIDA  
GAUTAM BUDH NAGAR 201303  
UTTAR PRADESH

**...Appellant**

**Versus**

**1. PNB HOUSING FINANCE LIMITED**

9<sup>th</sup> FLOOR, ANTRIKSH BHAWAN  
22, KASTURBA GANDHI MARG  
CONNAUGHTPLACE  
NEW DELHI 11000

**..Respondent No.1**

**2. RAKESH PRASAD KHANDELWAL**

RESOLUTION PROFESSIONAL  
E-504, ISPATIKA APARTMENTS, PLOT NO.  
29, SECTOR 4, DWARKA  
NEW DELHI 11007

**..Respondent No.2**

**Present:**

**For Appellant** : Mr. V. Siddharth, Mr. Mudit Sharma, Ms. Nandini Sharma, Mr. Ritesh Dhyani, Mr. Sachin Sharma & Mr. Shashank Shekhar Pandey, Advocates.  
**For Respondent** : Mr. V.D' Costa, Ms. Gauri Goel & Mr. Sarthak Jain, for R-1.  
Mr. Rakesh Prasad Khandelwal, for R-2/RP.

**J U D G M E N T**  
**(Hybrid Mode)**

**[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]**

The instant appeal has been preferred by Mohit Arora –Appellant Guarantor against the impugned order dated 11.10.2022, passed by the Ld.

National Company Law Tribunal, New Delhi, Bench Court-II (Adjudicating Authority) in IA No. 4750/ND/2021 in CP No. (IB) 395(ND)/2021 whereby the Ld. Adjudicating Authority has admitted the petition filed by the Respondent No. 1 under Section 95 of the Insolvency and Bankruptcy Code, 2016 (Code).

### **Factual Matrix**

2. Facts of this appeal in brief are that Respondent-PNB Housing Finance Ltd. has sanctioned loan facilities totalling Rs. 275 Crores vide sanction letter dated 04.01.2017 in favour of Supertech Ltd. (Corporate Debtor) and the terms and condition of the sanction letter was stated to be modified vide sanction letter dated 08.03.2017 and the loan agreement was executed on 10.03.2017 between the CD along with its co-borrowers namely Sarv Realtors Pvt. Ltd. and ASP Sarin Realty Pvt. Ltd. and Mr. Mohit Arora along with Mr. RK Arora and Ms. Sangita Arora who had provided their personal guarantees in favour of the creditor to secure these credit facilities availed by the CD.

3. It is further reflected that the CD has defaulted in payment of the monthly instalment due and payable to the creditor on various dates and the creditor served a demand notice under Section 13 (2) of the SARFAESI Act, 2002 on the CD and the personal guarantors demanding repayment of complete outstanding amount of Rs. 279.20 Crore along with future interest.

4. The creditor has also issued demand notice dated 09.07.2021, in requisite Form-B as required under Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution

Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (PG to CD Rules, 2019), demanding the total outstanding debt of Rs. 358.91 Crore and it is stated that no reply to this notice was given by the guarantor and consequently petition under Section 95 of the Code was presented before the Ld. Adjudicating Authority who after appointment of the RP and after considering its report as well as after hearing the submission of Ld. Counsel for the parties admitted the application by passing impugned order which has been assailed by the appellant by filing the instant appeal.

### **Submissions of parties**

5. Ld. Counsel for the appellant submits that the Ld. Adjudicating Authority has committed an legality in admitting the petition filed by the financial creditor on the ground that the petition filed by the PNB under Section 95 of the IBC was filed during the commencement of the interim moratorium initiated on the filing of a petition under Section 95 IBC by the another creditor IFCI being CP (IB) No. 428(ND)/2021 on 02.06.2021 while the petition by the PNB (Respondent No. 1) was filed on 24.07.2021 therefore the petition filed by the PNBHFL resulting in the impugned order was a non-est and the impugned order passed thereon is also a nullity.

6. It is further submitted that the entire controversy in the present matter arises on account of the fact that the PNBHFL petition while file subsequently was numbered prior to the IFCI Petition and was also listed prior to the IFCI petition.

7. The PNB petition was listed on 03.08.2021, for the first time and on the same day the order was reserved and the IFCI petition was first listed on 12.08.2021 before a different Bench of Ld. Adjudicating Authority and

thereafter vide order dated 27.08.2021, Ld. Adjudicating authority permitted the appellant to file the preliminary objection with regard to the maintainability of the IFCI petition.

8. It is further submitted that on 29.09.2021, the Resolution Professional was appointed and the said order was challenged by the appellant before this Appellate Tribunal by filing CA (AT) (Ins) No. 851 of 2021 and during the pendency of this appeal both the petitions i.e. the PNB petition and IFCI Petition were proceeding before the Ld. Adjudicating Authority, however before different Benches.

9. It is further submitted that in the impugned judgment it has been acknowledged that the PNB petition has been filed during the commencement of the interim moratorium by filing IFCI petition and even then the application has been accepted which in the light of the law propounded in ***Krishna Kumar Basia vs. SBI, CA (AT) (Ins) No. 721 of 2022, decided on 14.07.2022 and the Dilip B. Jiwarajka vs. Union of India & Ors., (2023) SCC Online SC 1530*** could not be passed. Reliance is also being placed on ***E.S. Krishnamurthy vs. Bharat Hi-Tecch Builders Pvt. Ltd., (2022) 3 SCC 161 and Arun Kumar Jagatramka vs. Jindal Steel and Power Ltd. (2021) 7 SCC 474.***

10. It is further submitted that there was no occasion for the Ld. Adjudicating Authority to have invoked the inherent powers and the usage of inherent powers cannot be used contrary to the statute or by-passing the prescribed procedure. Reliance in this regard has been placed on the following judgments:

(i) Lokhandwala Kataria Construction Pvt. Ltd. vs. Nisus Finance & Investment Manager LLP, 2017 SCC Online NCLAT 406.

(ii) Lokhandwala Kataria Construction Pvt. Ltd. vs. Nisus Finance & Investment Managers LLP, (2018) 15 SCC 589.

11. It is further submitted that the Ld. Adjudicating Authority has recorded a finding of fraud on the basis of the material found in the IFCI's petition i.e. CP (IB) No. 428/2021 which was pending before another Bench and this material was never put to the appellant and was considered when the judgment was reserved resulted in the violation of Principles of Natural Justice and illegality has also been committed by taking judicial notice of certain facts under Section 56 of the Indian Evidence Act contrary to the established law. Reliance in this regard has been placed on ***Atma S. Berar vs. Mukhtiar Singh (2003) Vol 2 SCC 3 and SBI & Ors. vs. Rajesh Agarwal and Ors., (2023) 6 SCC 1.***

12. It is further submitted that presumption has been made by the Ld. Adjudicating Authority with regard to the knowledge of the appellant with regard to the proceedings and orders passed in the petition of IFCI and it is only the appellant Counsel, while preparing the appeal filed by the appellant before this Appellate Tribunal, has found the pendency of the IFCI petition and it was not known to the appellant earlier.

13. It is further submitted that the fullest possible opportunity was granted by Ld. Adjudicating Authority to advance submission to the appellant and this fact has been side lined by the Ld. Adjudicating Authority that prior to the appointment of the RP the appellant has no role in any petition filed under Section 95 of the Code and therefore he may not be

responsible for bringing into the cognizance of the Ld. Adjudicating Authority the fact of pendency of any petition.

14. It is further submitted that Respondent No. 1 has sought to introduce some new facts which were never argued or pleaded before Ld. Adjudicating Authority and have also not been dealt with in impugned judgment. Reliance in this regard has been laid on ***Modern Insulators Ltd. vs. Oriental Insurance Company Ltd. (2000) 2 SCC 734 and Karpagathachi and Ors. vs. Nagarathinathachi, AIR 1965 SC 1752.***

15. It is next submitted that the Respondent No. 1 –PNBHFL has not challenged any finding of the impugned judgment especially the finding that the IFCI petition was filed prior in time to the petition of the PNB and therefore cannot dispute the said finding as Respondent. It is a settled Principle that Appellate Court may not travel beyond the impugned order.

16. It is further submitted that the second petition [CP (IB) No. 395 of 2021] filed by the PNB on 24.07.2021 would relate back to the first petition [CP (IB) No. 203 of 2021] filed by it and the same was withdrawn with the liberty to file afresh vide order dated 08.07.2021 and both these petitions would be treated as separate and independent and in any case the IFCI petition was filed prior to the PNB's second petition and during the commencement of the interim moratorium triggered by filing the IFCI petition.

17. It is further submitted that the Ld. Adjudicating Authority has stepped out of its jurisdiction in looking into the record of the another case which was not the subject matter of dispute before it and have completely given go by to the Principle that interim moratorium triggered by the institution of

the petition under Section 95 of the Code shall remain in operation till final culmination of the petition.

18. It is also submitted that Ld. Adjudicating Authority has also committed a mistake in relying on email dated 28.07.2021 in order to return a finding against the appellant while no service was affected on appellant on 28.07.2021 with regard to the IFCI Petition as the said email was not send on the correct email of the appellant.

19. It is further submitted that the liability of the personal guarantor has been discharged upon the change of the borrower as vide order dated 19.11.2019 passed by the Haryana Real Estate Authority (HREA) the liability originally extended to Supertech Ltd. has been transferred to Sarv Realtors Pvt. Ltd. and thus the impugned judgment is reliable to be set aside.

20. Ld. Counsel for the Respondent No. 1-PNB Housing Finance Ltd. submits that conduct of the Appellant guarantor is very important in the instant matter and IFCI petition. So far as the instant petition CP (IB) No. 395 of 2021 and CP (IB) No. 428 of 2021, it is highlighted that the appellant appeared in the IFCI Petition namely 428 of 2021 and has made complete disclosure of the existence and pendency of PNB Petitions proceeding pending before Ld. Adjudicating Authority and has also disclosed the existence and pendency of PNB Petition.

21. It is further submitted that in the IFCI Petition the RP informed the Ld. Adjudicating Authority about its appointment in PNB Petition No. 395 of 2021 and the requirement of filing another report is obviated and the report filed in PNB Petition- 395 of 2021 was requested to be relied on and this was

never objected by the appellant, while the appellant was duty bound to disclose the other proceedings pending against him.

22. It is also highlighted that appellant has deliberately did not disclose the existence of the two proceedings before the NCLT and has concealed material information from the court and has utilised the same as dilatory tactic.

23. It is also submitted that the conduct of the appellant is derogatory in intimating the Ld. Adjudicating Authority about the report of the RP filed in PNB petition 395 of 2021 only on 15.07.2022 while the appeal against the appointment of the RP in IFCI petition was already filed by the appellant being CA (AT) (Ins) No. 851 of 2021.

24. It is further submitted that Respondent PNBHFL has initially filed a Company Petition bearing CP (IB) No. 203 of 2021 on 26.03.2021 wherein the appellant appeared through Counsel and thus the petition filed by the IFCI subsequently on 02.06.2021 is itself hit by the interim moratorium commenced by filing the petition by the PNB on 26.03.2021 and therefore the petition filed by the IFCI on 02.06.2021 was a non-est petition and may not cause any interim moratorium thereafter.

25. Ld. Counsel for the Respondent Bank while drawing the attention towards the report of the Insolvency Law Committee (February, 2020) submits that the discretion granted to the Ld. Adjudicating Authority for interim moratorium has been devised as a safeguard from abuse and the inherent power of the Tribunal would also include the power to modify or withdraw the order of interim moratorium in preventing an unjustifiable harm to a creditor. Reliance in this regard has been laid on ***NUI Pulp and***

***Papers Industries Pvt. Ltd. vs. M/s Roxcel Trading GMBH, CA (AT) (Ins) No. 664 of 2019.***

26. It is further submitted that reliance of the appellant on the judgment of Krishna Kumar Basia (supra) is of no use as the same has been passed on 14.07.2022 whereas the RP in the above proceeding was appointed on 29.09.2021.

27. Ld. Counsel for the Respondent Bank also relied on the law laid down by the Hon'ble Supreme Court in ***Goan Real Estate and Construction Ltd. & Ors. vs. Union of Indian (2010) 5 SCC 388 and Managing Director ECIL Hyderabad and Ors. vs. B Karunakar & Ors. (1993) 4 SCC 727.***

Ld. Counsel for Respondent No.2/RP submits that he does not want to make any submission.

28. We have heard Ld. Counsel for the parties and have perused the record.

29. Section 95 and 96 of the Code are relevant and are reproduced as under:

***Section 95: Application by creditor to initiate insolvency resolution process.***

*“(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.*

*(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—*

*(a) any one or more partners of the firm; or*

*(b) the firm.*

*(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or*

*transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.*

*(4) An application under sub-section (1) shall be accompanied with details and documents relating to—*

*(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;*

*(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and*

*(c) relevant evidence of such default or non-repayment of debt.*

*(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.*

*(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.*

*(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified”.*

### **Section 96: Interim Moratorium.**

*(1) When an application is filed under section 94 or section 95—*

*(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and*

*(b) during the interim-moratorium period—*

*(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and*

*(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.*

*(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.*

*(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

30. At this juncture, we recall celebrated Judgment of Hon'ble Supreme Court passed in ***Dilip B. Jiwrajka vs. Union of India, (2024) 5 SCC 435*** wherein in para no. 10,11,19, 20, 30.4 and 57 the Hon'ble Supreme Court has highlighted the scheme of Section 96 of the Code in the following words:

*“10. Chapter III provides for the insolvency resolution process. Under Chapter III, the insolvency resolution process can be initiated by a debtor or a creditor. Section 94(1) enables a debtor who commits a default to apply, either personally or through a resolution professional to the adjudicating authority for initiating the insolvency resolution process.*

*11. Section 95 enables the creditor to apply for the initiation of the insolvency resolution process either by himself, or jointly with other creditors or through a resolution professional. Under sub-section (2), a creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating a resolution process against any one or more partners of the firm; or the firm. Section 95 (4) stipulates the requirements of an application made by a creditor for the initiation of the insolvency resolution process. The application is governed by the form and manner as prescribed by Rules framed by the Central Government under Section 239. A copy of the application has to be furnished to the debtor. Immediately on the filing of an application under Section 94 or Section 95, an interim moratorium operates by virtue of the statutory provisions of Section 96 and the adjudicating authority is required to appoint a resolution professional.*

*19. The interim moratorium under Section 96 commences from the application filed under Sections 94 or 95, and ceases to have effect on the date of the admission of the application. Consequently, Section 101 contains provisions for a statutory moratorium with effect from the admission of an application under Section 100.*

*20. The moratorium remains in force for a period of 180 days or when an order approving the repayment plan is passed, whichever is earlier. The effect of the statutory moratorium is that any pending legal action in respect of the debt is stayed; no new action may be initiated by the creditors in respect of the debt; and the debtor shall not transfer or alienate his assets or legal rights or beneficial interest therein.*

*30.4. The moratorium under Section 96, unlike Section 14, is for the benefit of the guarantor or, as the case may be, the debtor. At the stage of an application under Section 94 or Section 95, no adjudication takes place. The interim moratorium under Section 96 does not impose an embargo on alienation of assets, legal rights or beneficial interest of the debtor. Hence, the moratorium under Part II under Section 14 is markedly different in its nature and character from the interim moratorium under Section 96 in Part III;*

*57. Section 96, as its marginal note indicates, deals with an “interim moratorium”. In terms of Section 96, the interim moratorium takes effect on the date of the application. In other words, the very submission of an application under Section 94 or Section 95 triggers the interim moratorium which then ceases to have effect on the date of the admission of the application (under Section 100). The consequences which flow from an interim moratorium are specified in clause (b) of sub-section (1) of Section 96. The impact of the interim moratorium under Section 96 is that a legal action or proceeding pending in respect of any debt is deemed to have been stayed and the creditors or the debtors shall not initiate any legal action or proceedings in respect of any debt. The crucial words which are used both in clause (b) (i) and clause (b) (ii) of sub-section (1) of Section 96 are “in respect of any debt”. These words indicate that the interim moratorium which is intended to operate by the legislature is primarily in respect of a debt as opposed to a debtor. Clause (b) of sub-section (1) indicates that the purpose of the interim moratorium is to restrain the initiation or the continuation of legal action or proceedings against the debt”.*

31. It is reflected that there is contradiction between the parties with regard to the date of filing of the CP (IB) -203 (ND) 2021 by the Respondent-PNB Housing Finance Ltd. (PNBHFL) on 26.03.2021. However, we notice that the Respondent in written submissions filed by it on 06.07.2023 at page no. 19 has placed case details obtained from the e-portal of the NCLT wherein the date of filing of CP (IB) No. 203 of 2021 has been shown as 26.03.2021 and nothing has been placed by the appellant along with his written submissions which may show that the date of filing of the CP (IB)

No. 203 of 2021 was other than 26.03.2021 and in his written submissions dated 14.04.2026, in para no. 9 of the same it has been stated that the PNB Housing Finance Ltd. contends for the very first time, the date of filing of CP IB No. 203 of 2021 against the appellant under Section 95 of the Code as 26.03.2021. In the written submissions filed by the appellant neither the date of filing of the CP IB No. 203 of 2021 has been specifically denied nor any documentary evidence has been placed in order to show that the CP IB No. 203 of 2021 was not filed by the Respondent on 26.03.2021. So we can safely take the date of filing of CP IB No. 203 of 2021 as 26.03.2021.

32. It is further reflected from the record that on 08.07.2021, the aforesaid CP IB No. 203 of 2021 was withdrawn by the Respondent and the following order was passed by the Ld. Adjudicating Authority:

*“IA No. 2828/ND/2021:  
Learned Counsel for the applicant PNB Housing Finance Ltd. on instructions seeks to withdraw the application. Learned Counsel for the applicant also seeks liberty to file afresh on receiving the documents. Liberty is granted. Application is allowed to be withdrawn with the liberty to file afresh on receiving the documents”.*

Thus the prayer of the Respondent Bank was allowed so far as withdrawal of the petition is concerned with the liberty to file it afresh.

33. It is also reflected from the record and also appears to be an admitted fact that on 02.06.2021 the IFCI, (the other creditor of the CD to which the appellant had stood guarantor) has filed a petition under Section 95 of the Code against the appellant and it was on 20.12.2023, Mr. Ritesh Kumar Agarwal was appointed as the Resolution Professional (RP) therein to submit a report in terms of Section 99 of the IBC.

34. It is further reflected that an appeal being CA (AT) (Ins) No. 151 of 2024, was filed by the appellant-Mohit Arora against the order dated 20.12.2023 passed in CP (IB) No. 428/2021 and vide order dated 05.04.2024 on the submissions made by Ld. Counsel for the Appellant-Mohit Arora that the Resolution Professional has already been appointed in CP IB No. 395/ND/2021 filed against the personal guarantor Mohit Arora on 29.09.2021 allowed the appeal and the order dated 20.12.2023 was set aside and on the basis of the aforesaid order passed by this Appellate Tribunal, the Ld. Adjudicating Authority vide order dated 13.06.2024, closed the CP IB No. 428 of 2021.

35. It may be recalled that after withdrawing the CP IB No. 203 of 2021 on 08.07.2021 with the liberty to file afresh, the PNB filed second petition being CP IB No. 395 of 2021 on 24.07.2021 against the appellant –Mohit Arora under Section 95 of the Code and in this petition also the RP was appointed on 29.09.2021.

36. Thus, the submission of Ld. Counsel for the appellant is that the second petition under Section 95 of the Code was filed by the Respondent PNBHFL on 24.07.2021, during the interim moratorium effected with regard to IFCI petition (428 of 2021) vide Section 96 of the Code and thus the said petition is not maintainable as having been filed during the moratorium commenced due to the filing of the aforesaid petition being CP IB No. 428 of 2021 on 02.06.2021 under Section 95 of the Code by IFCI another creditor of the CD to whom the appellant-Mohit Arora had stood guarantor.

37. Therefore, the first issue which has been raised by Ld. Counsel for the Appellant is that the second petition being CP IB No. 395 of 2021 has been

filed by the Respondent PNBHFL on 24.07.2021 during the interim moratorium commenced by the filing of the petition CP IB No. 428 of 2021, on 02.06.2021 by the IFCI and therefore the same is not maintainable.

38. It appears that the first petition under Section 95 of the Code was filed by the PNB against the appellant bearing CP (IB) No. 203 of 2021 on 26.03.2021 and during the commencement of the interim moratorium under Section 96 of the Code by the institution of CP IB No. 203 of 2021 the IFCI has filed its petition being CP IB No. 428 of 2021 on 02.06.2021.

39. It is also reflected that the first petition CP (IB) No. 203 of 2021 filed by the PNBHFL was withdrawn on 08.07.2021, with the liberty to file the petition afresh and thereafter it could only be filed on 24.07.2021 and at that point of time the petition no. 428 of 2021 was filed by the IFCI and pending and submission is being made on behalf of the appellant that since the new petition being 395 of 2021 was filed by the PNB during the pendency of the IFCI petition no. 428 of 2021, allegedly during the interim moratorium commenced by the filing of IFCI petition, the same is not maintainable and thus the Ld. Adjudicating Authority has committed an illegality in admitting the same.

40. It appears to be an admitted fact to both the parties that in the IFCI petition no. 428 of 2021 the RP was appointed and the appointment of the RP was challenged by the appellant by filing an appeal before this Appellate Tribunal and the said appeal was allowed on 05.04.2024 and the order dated 20.12.2023 whereby the RP was appointed therein was set aside on the ground that Resolution Professional has already been appointed by the Tribunal vide order dated 29.09.2021 passed in CP IB No. 395 of

2021(second petition filed by the PNB) and in pursuance of the decision of this Appellate Tribunal dated 05.04.2024 Ld. Adjudicating Authority has closed the CP IB No. 428 of 2021 filed by the IFCI against the Appellant – Mohit Arora vide order dated 13.06.2024.

41. It appears to be an admitted situation that the petition no. 428 of 2021 was filed by the IFCI on 02.06.2021. Thus the same was filed during the pendency of the first petition filed by the PNB being CP IB No. 203 of 2021 which according to us was filed on 26.03.2021. Thus, the petition no. 428 of 2021 filed by the IFCI was filed during the interim moratorium commenced by the filing of the first petition by the PNB being CP IB No. 203 of 2021 on 26.03.2021. Therefore, in our considered opinion the petition filed by the IFCI i.e. 428 of 2021 on 02.06.2021 was barred by the interim moratorium commenced by the filing of the first PNBHFL petition being CP IB No. 203 of 2021 and thus was non-est in the eye of law and therefore the non-est petition being CPIB No. 428 of 2021 filed by the IFCI may not commence any interim moratorium under Section 96 of the Code.

42. The view which has been taken by us herein before is supported by the decision of a co-ordinate Bench of this Appellate Tribunal in ***Sushant Chhabra vs. Catalyst Trusteeship Ltd. and Anr., (2026) ibclaw.in NCLAT, CA (AT) (Ins) No. 443 of 2026 and 444 of 2026 decided on 27.03.2026*** wherein the Canara Bank has filed petitions, CP IB No. 122 of 2025 and 121 of 2025 under section 95 of the Code on 12.01.2025 against guarantors of the CD and in both these petitions the RP was appointed on 27.02.2025. During the interim moratorium commenced by filing the above petitions under Section 96 of the Code, another financial creditor of the CD

namely Catalyst Trusteeship Ltd. filed another petition under Section 95 of the Code against the same guarantors being CP IB No. 446 and 450 of 2025 on 05.08.2025 (during the moratorium commenced by the earlier petitions) and Ld. Adjudicating Authority also appointed RP in these petitions on 23.09.2025. The Canara Bank however withdrawn the two petitions filed by it against the same guarantors on 10.11.2025, while having considered the report of the RP Ld. Adjudicating Authority admitted the petitions filed by the Catalyst Trusteeship Ltd. on 17.02.2026 and this order was challenged by the guarantors by filing the appeal before this Appellate Tribunal, wherein the Respondent Bank has taken the plea that since the earlier petitions filed by the Canara Bank were withdrawn subsequently, the same will not create any bar for the admission of the subsequent petitions filed by Catalyst Trusteeship Ltd., during interim moratorium commenced by the petitions filed by the Canara Bank. The co-ordinate Bench of this Appellate Tribunal while allowing the appeal filed by the guarantors, repelled this argument of the Respondent in following words:

*“23. From the facts noted above, it is clear that although on the date when Section 95 application was filed by the Catalyst Trusteeship Ltd. against the Appellant herein on 05.08.2025, interim moratorium was already operating in Section 95 application filed Canara Bank against the Appellant. The judgment referred above, clearly prohibit any such institution. The distinguishing feature, which Respondent is contending herein is that even though application was filed by Canara Bank, prior in time and moratorium had triggered, but the application having been withdrawn on 10.11.2025, there was no inhibition in admitting Section 95 application filed by Financial Creditor against the Appellants herein. The real question to be considered and answered is whether due to withdrawal of Section 95 application by Canara Bank, the prohibition which triggered due to interim moratorium shall come to an end. When application under Section 95 filed by Canara Bank was withdrawn on 10.11.2025, admittedly*

*moratorium came to an end and there was no prohibition and the interim moratorium no longer existed, but what is the consequence of withdrawal of Section 95 application on 10.11.2025 on the moratorium, which was in operation on 05.08.2025, when Section 95 application filed by Catalyst Trusteeship Ltd. against the Appellants.*

*24. The statutory moratorium which has triggered on 12.01.2025, continued to operate till 10.11.2025 when application filed by Canara Bank was withdrawn. Section 101 of the IBC provides that when application under Section 100 is admitted, a moratorium shall commence, which shall cease to have effect at the end of period of 180 days. Thus, moratorium comes to an end on the day when application is admitted or rejected. The interim moratorium which commences on filing an application, is a statutory moratorium provided by enactment. During the interim moratorium various actions are prohibited as enumerated in Section 96, sub-section (1). The statutory interim moratorium which triggered in Section 96, shall come to an end only when application under Section 95 is either rejected or admitted. The interim moratorium in Section 96 has statutory consequences, which interim moratorium although shall come to an end when application is either dismissed or admitted or withdrawn, but during the period when interim moratorium is operating, any initiation of proceeding shall be non-est in law. The Hon'ble Supreme Court in Alchemist Asset Reconstruction Company Ltd. in Paragraph-6 has clearly held that after enforcement of moratorium under Section 14 of the IBC, any arbitration proceeding initiated is non-est in law. Thus, the proceeding, which was initiated by Financial Creditor during the currency of interim moratorium, were non-est from the very beginning, cannot become legal proceeding after interim moratorium is withdrawn on 10.11.2025. Personal Guarantors before the Adjudicating Authority has raised the issue that application is not maintainable. In the reply filed to Section 95 application, the Personal Guarantors has relied on Section 95 application filed by the Canara Bank. The Adjudicating Authority observed that Personal Guarantors has not filed reply to the report under Section 99, and they have only filed reply to Section 95 application. When the Personal Guarantors has raised objection to the application and has pointed out that earlier application under Section 95 by the Canara Bank has already been filed, which was noticed by Adjudicating Authority to be withdrawn on 10.11.2025, the Adjudicating Authority committed error in not considering the effect and consequences of triggering of interim moratorium on filing of the application by the Canara Bank*

*and the effect of the said moratorium on the application filed by Catalyst Trusteeship Ltd. on 05.08.2025. We, thus, are of the view that order of the Adjudicating Authority admitting Section 95 application cannot be sustained.*

*25. In result, both the Appeals are allowed. The impugned order dated 17.02.2026 is set aside. Section 95 applications filed by Catalyst Trusteeship Ltd. being CP(IB)450/ND/2025 and CP(IB)446/ND/2025 are dismissed. We, however, grant liberty to the Financial Creditor to file fresh applications under Section 95 in accordance with law, since interim moratorium, which was operating on the day when Section 95 application filed by Catalyst Trusteeship Ltd. is no longer existed after 10.11.2025. Parties shall bear their own costs.*

43. The facts of the aforesaid Sushant Chhabra's case are identical with the facts of the instant case and therefore in our considered opinion when the IFCI petition being CP IB No. 428 of 2021 was filed on 02.06.2021 during the interim moratorium commenced by the filing of the petition by the PNB being 203 of 2021 the petition filed by the IFCI on 02.06.2021 would be deemed to be non-est in the eye of law and therefore cannot commence any interim moratorium. Therefore, we do not find any force in the submissions of Ld. Counsel for the Appellant that the second petition filed by the PNB CP IB No. 395 of 2021 on 24.07.2021 is barred by the interim moratorium of CP IB No. 428 of 2021, for the reason that CP IB No. 428 of 2021 is/was non-est in the eye of law and could not commence any interim moratorium.

44. The other submissions which has been raised by the appellants is that the liability of the appellant –guarantors is discharged upon change of the borrower. It is submitted by Ld. Counsel for the Appellant that vide order dated 29.11.2019 passed by Haryana Real Estate Regulatory Authority (HRERA), the underlying liability originally extended to Supertech Ltd. has

been transferred to Sarv Realtors Pvt. Ltd., altering the identity of the borrower itself and Respondent Bank has also altered the borrowing entity from Supertech to M/s. Sarv Realtor Pvt. Ltd. and therefore having regard to Section 133 of the Contract Act, substitution of borrower has rendered the guarantee unenforceable against the appellants.

45. Ld. Counsel for the Respondent PNB Housing finance on the other hand submits that M/s Supertech Ltd. along with M/s Sarv Realtors Pvt. Ltd. and M/s ASP Sarin Realty Pvt. Ltd. had entered into a joint development agreement to develop the Project Supertech hues in Gurugram Haryana. M/s Supertech Ltd. was the promoter developer whereas Sarv Realtor was the land owner/licensee and was also responsible for development and marketing of the said project and these three companies are associate companies with Supertech having 49% shareholding in Sarv Realtors and these three companies had jointly approached PNB Housing Finance Ltd. for availing finance loan of Rs. 275 Crores for development of this project and three borrowers have signed the sanctioned letter and thereafter a loan agreement was executed on 10.03.2017 between the PNB and these three borrowers and all these three borrowers have been referred to in this loan agreement as borrower no. 1,2 and 3.

46. It is further submitted that appellant Mohit Arora executed a deed of guarantee on 10.03.2017 wherein the name of Sarv Realtors has been shown as co borrower along with M/s Supertech Ltd. and M/s ASP Sarin Pvt. Ltd. and recital no. 3 of this deed states that at the request of the guarantor the PNB has agreed to make disbursement to the borrowers and further states that the liability of the guarantor under this guarantee shall

not be affected by any change in the constitution of borrowers and the same shall be continuing one and shall remain in full force and affect till such time the borrower repays in full the loan.

47. Having considered the loan agreement as well as the guarantee deed executed by the Principal Borrowers and Guarantors it is crystal clear that Sarv Realtors Pvt. Ltd. whose name has been changed under the orders of the HRERA was a co-borrower of the loan and the appellant guarantor-Mohit Arora had stood guarantor to the loan jointly taken by all the borrowers namely Supertech, Sarv Realtors Pvt. Ltd. and ASP Sarin and since the liability of the Principal borrower and guarantor is co-extensive and the loan has not been paid by the Principal Borrowers the liability to pay that loan would always be of the guarantors.

48. Ld. Counsel for the Appellant has vehemently submitted that there was no occasion for the Tribunal to have looked into the record of the CP IB No. 428 of 2021 without providing any opportunity to the appellant to address on the same and moreover there was no jurisdiction vested in the adjudicating authority to have used the inherent powers vested in it and there was absolutely no material concealment made or fraud played by the appellant and the Ld. Adjudicating Authority has committed an illegality in returning the finding of fraud against the appellant without providing any opportunity to him to defend the said charge.

49. Ld. Counsel for the appellant in support of his submissions has relied on the following case laws:

(i) Mr. Ravi Ajit Kulkarni vs. State Bank of India, CA (AT) (Ins) No. 316 of 2021.

(ii) Krishna Kumar Basia vs. State Bank of India, CA (AT) (Ins) No. 721 of 2022.

(iii) Lokhandwala Kataria Construction Pvt. Ltd. vs. Nisus Finance & Investment Manager LLP, 2017 SCC Online NCLAT 406.

(iv) Lokhandwala Kataria Construction Pvt. Ltd. vs. Nisus Finance & Investment Managers LLP, (2018) 15 SCC 589.

(v) E.S. Krishnamurthy vs. Bharath Hi-Tecch Builders (P) Ltd., (2022) 3 SCC 161.

(vi) Arun Kumar Jagatramka v. Jindal Steel & Power Ltd., (2021) 7 SCC 474.

(vii) Dharani Sugar & Chemicals Ltd. vs. Union of India, (2019) 5 SCC 480.

(viii) Arjun Singh vs. Mohindra Kumar & Ors., (1964) 5 SCR 946.

(ix) Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527.

(x) Harish Raghavji Patel vs. Shapoorji Pallonji Finance Pvt. Ltd., CA (AT) (Ins) No. 391 of 2021.

50. Ld. Counsel for the Respondent on the other hand submits that on filing petition no. 428 of 2021 on 02.06.2021 the IFCI had served a copy of the said petition on Mr. Mohit Arora vide email dated 28.07.2021 subsequently the second petition filed by the PNBHFL No. 395 of 2021 was filed and listed on 03.08.2021 before the Bench No. -II of NCLT wherein the appellant had appeared and despite being aware of the IFCI petition he did not disclose the pendency of the same and even in the written submissions

filed by Appellant on 06.08.2021 in the PNBHFL petition this fact of filing petition by the IFCI was not taken and thereafter on 07.08.2021 an application was filed by the appellant to keep in abeyance the pronouncement of order by Ld. Adjudicating Authority.

51. It is further submitted that on 27.08.2021, Mr. Mohit Arora appears in IFCI matter before Bench No. -IV of the NCLT and at that point of time also did not disclose the pendency of PNBHFL petition while the Counsel appearing for the appellant in both the petitions i.e. IFCI and PNBHFL were one and same.

52. It is further highlighted that even on 08.10.2021, in the IFCI petition the Counsel appearing for RP submitted report in presence of the appellant against the same personal guarantor in PNBHFL petition which was pending before Bench No. II of the NCLT and therefore the requirement of filing another report was obviated therefore the appellant being aware of the pendency of the IFCI petition concealed it from the Ld. Adjudicating Authority and on one hand has get the petition filed by the IFCI dismissed by this Appellate Tribunal by submitting that the RP has already been appointed in petition no. 395 of 2021 (the second petition filed by the PNBHFL) and thereafter taken a defence before the Ld. Adjudicating Authority that petition no. 395 of 2021 is also not maintainable in view of the fact that the same has been filed during the interim moratorium commenced by the petition no. 428 of 2021 filed by IFCI, rendering the financial creditors without any remedy.

53. We have considered the rival submissions made by Ld. Counsel for the parties and have also perused the findings given by the Ld. Adjudicating

Authority pertaining to the concealment of fact and alleged fraud committed by the appellant and we find that the Ld. Adjudicating Authority has noted sequence of events in paragraph no. 10,11, 12 and 13 of the impugned judgment and found that the instant case is of the material concealment of facts by the Respondent/Personal Guarantor (appellant before us) regarding pendency of Section 95 proceedings against him by another creditor in another Bench of the Tribunal which has led to the appointment of RP in the petition which was filed subsequently and thereafter by looking into the record of petition no. 428 of 2021 find that the race between filing of two applications has given rise to this issue and it is in the light of these facts and circumstances, it was opined by Ld. Adjudicating Authority that misuse of the process of IBC, in registering of one application before another, cannot be allowed to be used as a ground by the Respondent/Personal Guarantor to avoid the insolvency proceedings and thereafter in paragraph no. 16,17 and 18 of the impugned judgment has opined as under:

*“16. Thus, it is a trite law that the fraud vitiates all the judicial acts and the 'interim moratorium' is no exception. The initiation of moratorium is an automatic effect of the provision in the statute which triggers instantly on mere filing of an application under Section 94 or 95, as the case may be. As per the scheme of the Code, there is no judicial order required for initiation of interim moratorium. Further, no express power has been given by the Legislature to monitor the interim moratorium before admission or on rejection of the Application. However, here it is a situation, where the interim moratorium is tainted with Fraud and is being utilized by the Personal Guarantor to dodge the Adjudicating Process.*

*17. It is to stop such abuse of process of law, this Adjudicating Authority has been empowered with "Inherent Powers" under Rule 11 of the NCLT Rules 2016. The contents of Rule 11 of NCLT Rules of 2016 are reproduced below –*

*“11. Inherent Powers. - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

*(Emphasis placed)*

*18. Hence, in order to prevent the effect of the abuse and for meeting the ends of justice, we consider it appropriate to exercise our inherent power under Rule 11 of NCLT Rules 2016 and treat the interim moratorium triggered by virtue of filing of IB 428 / 2021, which got vitiated by fraud by the Personal Guarantor, as nullity”.*

54. What is reflected from the perusal of the aforesaid paragraphs and discussion made by the Ld. Adjudicating Authority therein is that in order to prevent the effect of the abuse and for the purpose of meeting the ends of justice the power under Rule 11 of the NCLT Rules, 2016 has been used by the Ld. Adjudicating Authority and as a general rule it has been noticed that the fraud vitiates all the judicial acts and the interim moratorium is not an exception.

55. We are of the considered view that the finding returned by the Ld. Adjudicating authority against the appellant is pertaining to the abuse of the process and of material concealment of facts which in our opinion also is evident on record. So far as the act of the Ld. Adjudicating Authority in looking into the record of another petition is concerned we do not find any illegality therein as well.

56. No litigant could be permitted to play hide and seek with the Courts and who so ever is coming before the Court of law is duty bound to disclose all the material facts which are in his or her knowledge and the act of the appellant in not informing the Tribunal with regard to the pendency of the IFCI petition certainly amounts to the abuse of the process and material

concealment of fact, if not fraud. What the appellant has done is that he got the petition filed by the IFCI dismissed on the ground that RP has already been appointed in the second petition of PNBHFL pertaining to which impugned order has been passed and now coming up with the plea that second petition by PNBHFL has been filed during the interim moratorium commenced by filing the petition of IFCI and by this, his attempt is also to get the instant petition dismissed on the ground that PNBHFL second petition 395 of 2021 has been filed during the interim moratorium commenced by filing of petition no. 428 of 2021 by IFCI. Certainly both petitions could not be dismissed on the score that they have been filed during the interim moratorium created by each other. Thus it was a perfect case, where tribunal must have used inherent powers to correct the mischief committed by appellant.

57. Since we in this judgment had categorically held that the petition filed by the IFCI being 428 of 2021 was filed during the interim moratorium commenced by the filing of the first petition of the PNBHFL i.e. 203 of 2021 and have found the petition of the IFCI being 428 of 2021 as non-est and also that this may not cause any interim moratorium, so as to hold the second petition of the PNBHFL i.e. 395 of 2021 barred, the issue of using of inherent powers by the Ld. Adjudicating Authority is purely of academic importance as in our considered view the petition no. 428 of 2021 filed by the IFCI cannot commence any interim moratorium being non-est in the eye of law. We do not want to go in-depth of the other minor issues highlighted by the appellant as in our considered view in the facts and circumstances of this case apart from the grounds mentioned by the Ld. Adjudicating

Authority in the impugned order the second petition filed by the PNBHFL (395 of 2021) is/was maintainable for the reasons given by us herein before and is not barred by any interim moratorium.

58. Keeping in view all the facts and circumstances of the case and the reasons mentioned herein before we do not find any illegality in the impugned judgment dated 11.10.2022 so far as the admission of the second petition filed by the PNBHFL (395 of 2021) is concerned and there appears no good grounds to interfere therein.

59. Resultantly, the appeal is devoid of merits, and is **dismissed** as such.

60. There is no order as to costs.

61. Pending IA's if any are also closed.

**[Justice Mohd. Faiz Alam Khan]**  
**Member (Judicial)**

**[Naresh Salecha]**  
**Member (Technical)**

**New Delhi.**  
**29.04.2026.**

*sr*