

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal(AT)(Insolvency) No. 439 of 2018**

**IN THE MATTER OF:**

**Ashutosh Singhania**

**...Appellant**

**Vs**

**Liquidator, Vindhiya Vasini  
Industries Ltd. & Anr.**

**....Respondents**

**Present:**

**For Appellant: Ms. Purti Marwaha and Ms. Henna George  
Advocates.**

**For Respondents: Mr. Shashwat Anand and Syed Sarfaraz Karim  
Advocates**

**ORDER**

**25.09.2018** Appellant, legal heir of the personal guarantor (the then Director of the 'Corporate Debtor'), has challenged the order dated 20<sup>th</sup> March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in C.P.(IB)-1170(MB)/2017 whereby the property of the personal guarantor has been included for liquidation.

Learned Counsel appearing on behalf of the Respondent referred to the decision of the Hon'ble Supreme Court dated 14<sup>th</sup> August, 2018 passed in Civil Appeal No. 3595 of 2018 titled "State Bank of India Vrs. V. Ramakrishnan & Anr.". Hon'ble Supreme Court in paragraph -21 of the aforesaid judgement held:

....

“21. The scheme of Section 60(2) and (3) is thus clear – the moment there is a proceeding against the corporate debtor pending under the 216 Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the corporate debtor, be transferred to the National Company Law Tribunal or, if initiated after such proceedings had been commenced against the corporate debtor, be filed only in the National Company Law Tribunal. However, the Tribunal is to decide such proceedings only in accordance with the Presidency-Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be. It is clear that sub-section (4), which states that the Tribunal shall be vested with all the powers of the Debt Recovery Tribunal, as contemplated under Part III of this Code, for the purposes of sub-section (2), would not be effect, as the Debt Recovery Tribunal has not yet been empowered to hear bankruptcy proceedings against individuals under Section 179 of the Code, as the said Section has not yet been brought into force. Also, we have seen that Section 249, dealing with the consequential amendment of the Recovery of Debts Act to empower Debt Recovery Tribunals to try such proceedings, has also not been brought into force. It is thus clear that Section 2(e), which brought into force on 23.11.2017 would, when it refers to the application of the Code to a personal guarantor of a corporate debtor, apply only for the limited purpose contain in Section 60(2) and (3), as stated hereinabove. This is what is meant by strengthening the Corporate Insolvency Resolution Process in the Statement of Objects of the Amendment Act, 2018.”

Learned Counsel appearing on behalf of Respondent on the other hand relied on same very judgment of the Hon’ble Supreme Court (paragraph-

21) and submits that the case can be decided in an application under Section 60 of (2) of Insolvency and Bankruptcy Code, 2016.

Having heard learned Counsel for the parties, and in view of the decision of the Hon'ble Supreme Court in State Bank of India (supra) while we hold that the impugned order directing to include the property of the personal guarantor for liquidation as illegal, also observe that in absence of separate application under Section 60(2) no action can be taken against the moveable and immovable assets of the personal guarantor. Impugned order to the extent above is set aside. The appeal is allowed. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*Akc/Sk*