

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

Company Appeal (AT) (Insolvency) No. 396 of 2024

&

I.A. No. 1822, 1977, 6619 of 2024

(Arising out of Order dated 30.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in IB-614/ND/2023)

IN THE MATTER OF:

Apresh Garg ...Appellant

Versus

Indian Bank (erstwhile Allahabad Bank) & Ors. ...Respondents

Present:

For Appellant : Dr. Abhishek Manu Singhvi, Sr. Advocate, Mr. Abhijeet Sinha, Sr. Advocate with Mr. Sumit K. Batra, Mr. Avishkar Singhvi, Mr. Manish Khurana and Ms. Priyanka Jindal, Mr. Yash Johri, Advocates

For Respondents : Mr. Gopal Jain, Sr. Advocate with Mr. Rajesh Kumar Gautam and Mr. Deepanjali Choudhary, Advocates for Indian Bank/ NARCL.

Mr. Sumesh Dhawan, Ms. Vatsala Kak and Ms. Ankita Bajpai, Advocates for IRP.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging order dated 30.01.2024 passed by the National Company Law Appellate Tribunal, New Delhi Bench (Court - II) admitting Section 7 Application filed by Indian Bank (Respondent No.1 herein). Aggrieved by order dated 30.01.2024 admitting Section 7 Application and

appointing Respondent No.2 as Resolution Professional (“**RP**”) this Appeal has been filed.

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

- (i) The Corporate Debtor (“**CD**”) – M/s Agson Global Private Limited obtained various Financial Facilities through a Joint Consortium of Lenders. The Joint Consortium Agreement was executed on 25.10.2017. The Indian Bank has sanctioned Term Loan of working capitals limit in Import and Processing and Distributions Division of Rs.29.40 crores (Fund based Rs.15.40 crores and non-fund based Rs.14 crores). Under the Consortium, the IOB was the lead Bank. The CD has executed various security documents to ensure the repayment of the loan. Additional loans were also sanctioned.
- (ii) On failure to abide by the terms of sanction by the CD, the Indian Bank issued a Legal Notice dated 09.01.2023 to the CD. Demand Notice under Section 13(2) was also issued on 25.04.2023 and an OA was filed before the Debt Recovery Tribunal.
- (iii) The Indian Bank filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) claiming total amount due as

on 10.08.2023 is Rs.51,07,40,896/-. Notice was issued to the CD on Section 7 Application. The Application was resisted by the CD contending that in the Meeting held on 23.01.2024, it was in-principle agreed and resolved by all the Members of the Consortium that National Asset Reconstruction Company Limited (“**NARCL**”) will conduct the financial due diligence of the accounts to be transferred to it for further steps. It was pleaded that proposal for restructuring of the loan having already been agreed and 90% of the Lenders have agreed for restructuring of the loan, it was not open for Indian Bank to file an Application under Section 7. It was pleaded that once Consortium, to which the Indian Bank is also a member, was considering transfer of Loan account to NARCL, Application under Section 7 need not be entertained.

- (iv) The Adjudicating Authority after hearing the parties held that account having not been transferred and default in payment is not disputed, it is left with no option but to admit Section 7 Application and accordingly an order admitting Section 7 Application was passed appointing Shailesh Verma as RP.

3. This Appeal was filed by the Appellant on 14.02.2024, challenging the order dated 30.01.2024. Argument commenced in the Appeal on

23.02.2024 and an interim order was passed not to constitute the Committee of Creditors (“CoC”). In the order dated 05.03.2024 passed in this Appeal, this Tribunal noticed the submission of respective parties and continued the interim order. The Appeal was heard on several occasions, thereafter it was informed that steps are being taken to transfer the debt to NARCL. By an order dated 02.09.2024, Indian Overseas Bank as well as NARCL were impleaded as Respondents in the Appeal. Subsequently, an IA No.6892 of 2024 was filed by NARCL seeking deletion of its name from the array of parties, which was allowed on 27.09.2024. On 21.01.2025, when the Appeal was taken, learned Counsel for the Appellant stated that debt has been assigned to NARCL and sought liberty to implead NARCL as Respondent. Order dated 21.01.2025 is as follows:

“21.01.2025 Learned Counsel for the Appellant submits that debt has been assigned to NARCL, he seeks liberty to file an application to bring NARCL on the record. Two weeks time is allowed to file an application.

Adjourned to **14.02.2025.**

Interim Order to continue.”

4. The Appellant filed IA No.1713 of 2025 dated 17.02.2025 seeking impleadment of NARCL as necessary party in the Appeal. IA No.1713 of 2025 is allowed and NARCL is added to the Memo of Parties as Respondent No.4. Memo of Appeal is accordingly amended.

5. During the course of the hearing of the Appeal, various affidavits were filed by the Appellant for bringing on record details of various JLM
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Meetings held and the other steps. An affidavit dated 19.03.2025 was filed by the Appellant, bringing on record the debt resolution proposal dated 19.02.2025. The affidavit pleaded that NARCL has been assigned the debt for settlement of dues, which proposal was not accepted and communication dated 15.03.2025 was issued, refusing to accept the proposal. An Application has been filed by the Appellant seeking leave to place on record additional documents, which also included revised debt resolution proposal dated 05.04.2025. The Appeal was heard on 17.03.2025, when learned Counsel for Indian Bank informed that settlement proposal submitted by the Appellant has not been accepted by NARCL, who is assignee of the debt and the Appeal needs to be heard on merits. Order dated 17.03.2025 is as follows:

“17.03.2025: Shri Rajesh Kr. Gautam, learned counsel appearing on behalf of the Respondent submits that settlement proposal submitted by the Appellant has already been not accepted by NARCL, who is assignee. He submits that the Appellant has to address the appeal on merits as interim order is continuing from last more than one year.

Shri Abhijeet Sinha, learned counsel for the Appellant prays to list the appeal on 20.03.2025 to address on merits.

List this Appeal on **20.03.2025**. Interim order to continue till next date.

6. After noticing the aforesaid, we proceeded to hear learned Counsel for the parties in Appeal. Hearing was completed on 23.04.2025.

7. We have heard Dr. Abhishek Manu Singhvi, learned Senior Counsel and Shri Abhijeet Sinha, learned Senior Counsel appearing for the

Appellant; and Shri Gopal Jain, learned Senior Counsel with Shri Rajesh Kumar Gautam, learned Counsel appearing for Indian Bank/ NARCL.

8. Learned Counsel for the Appellant challenging the impugned order submits that financial loss suffered by the CD was purely temporary arising out of external system shock and reasons beyond the control of the CD. The Indian Bank who has filed Section 7 Application held only minor share of 2.47% in the Consortium of Lenders and when 90% of the Lenders were considering debt restructuring of the CD, there was no justification for Indian Bank to file Section 7 Application. In the Meeting of Consortium held on 29.01.2024, it has been unanimously decided for in-principle transferring the account to NARCL for recovery. Even the Indian Bank has also agreeable to the decision. Section 7 Application has been filed with the intent of recovering its dues and not for resolution of the CD, which is impermissible. It is submitted that when Joint Lenders decided on 29.01.2024 for transferring the account to NARCL, the Adjudicating Authority ought not to have proceeded and passed the order on 30.01.2024, admitting Section 7 Application. Majority of Lenders having not adopted the course, which has been adopted by the Indian Bank, admission of Section 7 Application was uncalled for. Learned Counsel for the Appellant submits that this Tribunal in its detailed order dated 05.03.2024 has noticed the judgment and submissions advanced by the Appellant and by taking the prima-facie view, continued the interim order, which observation are still relevant. It is submitted that the Appellant is a running Company, where Promoters have infused funds

for carrying out its business and assignment of debt in favour of NARCL, which was completed on 30.12.2024 and various offers submitted by the Appellant, have not been accepted. It is submitted that on 19.02.2025, the Appellant has given offer of Rs.490 crores, which offer, without any discussion, rejected by NARCL and further another revised offer was given on 05.04.2025 for Rs.530 crores, which without any valid reasons, is not being considered by the NARCL. The spirit of the IBC is resolution and not the corporate death of the CD. This Tribunal may direct the Respondents to consider the Appellant's offer of Rs.530 crores for settlement of dues and direct that no CoC be constituted till further orders.

9. Shri Gopal Jain, learned Counsel appearing for the NARCL refuting the submissions of learned Counsel for the Appellant submits that the Indian Bank was one of the Member of the Consortium and was fully entitled to initiate proceedings under Section 7 for default committed by the Appellant. The restructuring proposal submitted by the Appellant, could not be accepted on account of credit rating of the CD. The credit rating of the CD being RP-5, the CD was not eligible for restructuring under the provisions of the RBI Circular. In-principle decision to assign debt to NARCL, cannot be ground to prevent initiation of CIRP against the CD. The CD has continually defaulted in honouring its payment obligations under the facility. The assignment of debt happened to NARCL on 30.12.2024, who has submitted before this Tribunal on 17.03.2025 that settlement proposal submitted by the Appellant is not

acceptable. Learned Counsel for the Respondent submitted that proposal submitted by the Appellant contained an offer of upfront payment of Rs.5 crores by Promoter and certain insurance claim, which is long pending and an unidentified Investor, which did not inspire any confidence. The NARCL has considered the proposal and not accepted the same. Debt and default in the present case is admitted and has never been questioned by the Appellant. The submission of settlement proposal by the Appellant during the pendency of the Appeal itself indicates that the Appellant accepted and acknowledged the debt. The suit which was filed by the Appellant, being CS (OS) No.818 of 2023 in the Delhi High Court regarding the credit rating of the CD has already been withdrawn on 07.02.2025. Section 7 Application was filed much before the Meeting of JLM, which took place on 29.01.2024, where Indian Bank has stated that it shall be prosecuting Section 7 Application. It is submitted that in event the Appellant is still desirous for settlement proposal, it shall be open for the Appellant to follow the law laid down by the Hon'ble Supreme Court in ***Glas Trust Company LLC Vs. Byju Raveendran and Ors. – (2024) SCC OnLine SC 3032.***

10. We have considered the submissions of the learned Counsel for the parties and have perused the records.

11. The Adjudicating Authority in the impugned order itself has noted Part-IV of the Application filed under Section 7 by the Indian Bank in paragraph-1 of the order, which is as follows:

“Stating in terse, the corporate debtor incorporated in the year 1994 approached a joint consortium of 11 Banks for extending the credit/loan facility (in cash) the Applicant herein before us i.e. Indian Bank (formerly known as Allahabad Bank) was also one of the members of the consortium. The total credit facility extended to the corporate debtor by the Applicant herein before us, being member of consortium was Rs. 29.40 Cr. (Fund based Rs. 15.40 Cr. and Non-Fund based Rs.14 Cr.). Additionally, the Applicant also extended the credit facility by issuing LC. In brief the cash credit facility extended by the Applicant to the corporate debtor was Rs. 24.60 Cr. and the LC facility was Rs. 24.50 Cr. The details of debt and default have been mentioned in Part-IV of the application which reads thus:-

| S. NO | PARTICULARS OF FINANCIAL DEBT | |
|--------------|--|--|
| 1. | TOTAT AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT | 1. Facilities sanctioned vide Sanction Letter Dated 01.02.2018 - Term Loan of Rs.29.40 cr. 2. Enhancement of Limits dated 24.06.2019. - Facility: Term Loan of Rs.33.60 Cr as to the existing limit of Rs.27.00 Cr. 3. Review cum Enhancement of existing working Capital Limit datcd29.10.2019. - Facility: Term Loan of Rs. 48.60 Cr as to the existing limit of Rs. 33.60 Cr |
| 2. | AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS | Total amount due as on 10.08.2023: Rs.51,07,40,896 [44,90,10,960 (Principal) + 6,17,29,936 (interest) as on 10.08.2023] N.P.A.: 16.05.2022 (Loan |

| | | |
|--|--------------------------------|--|
| | OF DEFAULT IN TABULAR FORM) | Classified as N.P.A.) Copies of Statement of Account from 16.05.2022 to 10.08.2023& the Calculation Sheet of Calculation of interest and penal Interest are annexed herein and marked as Annexure A- 2 (a) & Annexure A-2(b) Copy of Recall notice dated 09.01.2023 issued to the Corporate Debtor as well to the personal guarantors namely Mr. Apresh Garg, Mrs. Monika Garg is annexed herewith as Annexure A-3(a). Copy of Demand Notice dated 25.04.2023 issued by the Applicant Bank to the Corporate Debtor as well as to the Personal Guarantor under Sec 13(2) of the SARFAESI Act,2002 is annexed herewith and marked as Annexurc A-3(b). |
|--|--------------------------------|--|

12. The extending of Financial Facilities by the Consortium Lenders, including Indian Bank is not even disputed. The present is a case where the Appellant has not disputed that it has defaulted in making repayment of its obligation. The submission which has been pressed by the Appellant is that Indian Bank had only 2.47% share in the lending and when 90% of the Lenders were in favour of assignment of the debt, the Indian Bank ought not to have been permitted to prosecute its Application under Section 7. The Appellant has referred to JLM Meeting dated 29.01.2024, which has been brought on record in the Appeal as Annexure A-11. In paragraph 2 of the Meeting with regard to '*In-principle Mandate on Transfer of Account to NARCL for Recovery*', following has been captured:

“2) In-principle Mandate on Transfer of Account to NARCL for Recovery:

Shri Rajiv Ranjan Mallick AGM, IOB Defence Colony Branch informed that DFS is closely monitoring all the accounts above Rs. 500 crores and there have been several review meetings conducted by DFS to monitor the progress on this issue. He further informed that IOB has in principle agreed to transfer M/s Agson Global Pvt. Ltd. to NARCL and Subsequently SBI being the leader of NARCL had been enquiring on the progress on this matter during NARCL Review meeting. Therefore, this meeting has been called specifically to obtain the approval of mandates from all the member banks to take a call on In- Principle transferring this account to NARCL

IOB CRM reiterated that in the last JIM meeting It was requested that all the member banks will clear Their stand in next JLM meeting on transferring this account to NARCL. Further Shri Rajiv Ranjan Mallick requested all the Member banks to confirm Their stand on providing the mandate in favour of transferring the account to NARCL or non-approval as the case may be.

All the Banks then one by one conveyed their stand on transferring the account to NARCL. The details of which is as annexed below:

| Bank | Views on In-principle Transfer of Account to NARCL |
|-----------------------|---|
| IOB | <ul style="list-style-type: none">• Agreeable |
| PNB | <ul style="list-style-type: none">• Agreeable |
| Union Bank of India | <ul style="list-style-type: none">• Agreeable to go with majority• There should be Swiss Challenge |
| BOI | <ul style="list-style-type: none">• Agreeable to go with the lead bank |
| UCO Bank | <ul style="list-style-type: none">• Agreeable and recommended to HO, awaiting final approval |
| Canara Bank | <ul style="list-style-type: none">• Agreeable |
| SBI | <ul style="list-style-type: none">• Agreeable |
| Central Bank of India | <ul style="list-style-type: none">• Agreeable |
| BOB | <ul style="list-style-type: none">• Agreeable to go with the majority |
| Indian Bank | <ul style="list-style-type: none">• Agreeable• Alternate recovery process by the bank |

| | |
|-----------|---------------|
| | shall proceed |
| IDBI Bank | • Agreeable |

All the member banks unanimously give their mandate to lead bank for in-principle transferring the account to NARCL.

13. It is relevant to notice the following part of the above JLM Meeting:

“Indian Bank, DGM informed that they had a crucial hearing on the next day in NCLT to which it was replied that all the banks are independent to follow recovery measure as per their own Bank's recovery policy.”

14. From the above, it is clear that JLM was very much conscious that all Members are independent to follow recovery measures as per their own Bank's recovery policy. Thus, all Lenders have their independent rights to take such measures as per their Bank's policy regarding realisation of their debt and the fact that Consortium Members in-principle has decided to transfer the account to NARCL, in no manner can hamper the proceedings under Section 7 initiated by the Indian Bank, even much before 29.01.2024. We, thus, are of the view that the fact that Indian Bank has 2.47% proportion in the lending, in no manner preclude the Indian Bank to take its measures as per facility document. Part-IV of the Application has already been extracted above, which indicate that amount due as on 10.08.2023 was Rs.51,07,40,896/-.

15. The present is a case where the fact that CD has failed to discharge its debt liability is not even disputed. The Adjudicating Authority has returned a finding that default in payment is not even disputed, which finding has been returned in paragraph-9 of the order. We also are of the

view that present is a case where there are sufficient materials to indicate that debt and default is an admitted fact. Furthermore, the fact is that the Appellant during the pendency of the Appeal has been relying on several debt resolution proposals, including the debt resolution proposal dated 19.02.2025 and 05.04.2025, which have been brought on record by the Appellant by additional affidavits. The debt resolution proposal has been given to NARCL, who has now been assigned the debt of all Members of the Consortium, including the Indian Bank. We have noticed above that this Tribunal has noticed in its order dated 17.03.2025 that settlement proposal submitted by the Appellant was not accepted by NARCL, which is recorded in the order dated 17.03.2025. learned Counsel for the Appellant has given much emphasis to the fact that NARCL has taken the debt of all Members of the Consortium for an amount of Rs.360 crores and the Appellant has offered vide its proposal dated 19.02.2025 an amount of Rs.490 crores, which has not been accepted and unreasoned communication has been sent dated 15.03.2025. In the affidavit filed on 19.03.2025, the proposal dated 19.02.2025 as well as the communication dated 15.03.2025 have been brought on record. It is relevant to notice the proposal, which has been given by the Appellant and the communication sent by the Bank refusing to accept, to find out as to whether the Bank is acting arbitrarily or against the interest of the CD, in not accepting the reasonable proposal. The proposal dated 19.02.2025 itself indicate that payable debt is Rs.2,319 crores. The Appellant itself has carried out a bifurcation to the

effect that Rs.490 crores is sustainable debt. The total repayment schedule as proposed in the proposal dated 19.02.2025 is as follows:

“Based on the above repayment schedule is proposed as under for the sustainable debt:

| Rs Cr | | | | | | |
|-----------------------------|--------------|-------------|--------------|-------------|-------------|--------------|
| Tranche/ FY | 2026 | 2027 | 2028 | 2029 | 2030 | Total |
| Upfront - Promoter | 5.0 | | | | | 5.0 |
| Tranche I - Insurance Claim | 175.0 | | | | | 175.0 |
| Tranche II - Business CF | | 20.0 | 20.0 | 35.0 | 35.0 | 110.0 |
| Tranche III - Investor | | | 200.0 | | | 200.0 |
| Total Debt Repayment | 180.0 | 20.0 | 220.0 | 35.0 | 35.0 | 490.0 |

16. Now, we come to the communication which was issued to the Appellant on 15.03.2025, which was sent by the India Debt Resolution Company Ltd. on behalf of the NARCL. The letter dated 15.03.2025 is as follows:

“On Sat, Mar 15, 2025 at 2:24 PM Sarvadnya Lad sarvadnya.lad@idrcl.co.in wrote:

Dear Sir,

We have reviewed your proposal dated 19-Feb-2025 and note the following:

1. It lacks tied-up funding sources.
2. It is contingent on the receipt of insurance claim (long pending), funds from unidentified investor, etc.

In view of the above, we are unable to consider the proposal favourably.

Regards,
Sarvadnya
9773340214
IDRCL
India Debt Resolution Company Limited”

17. The communication dated 15.03.2025 indicate that reasons have been given in the communication why the settlement proposal could not be considered favourably. The first reason given is that it lacks tied-up funding sources; and secondly, it is contingent on the receipt of insurance

claim, which is long pending and funds from unidentified investor. The Promoters' upfront payment offer is of Rs.5 crores. We have looked into the aforesaid proposal and communication, just to satisfy ourselves as to whether NARCL has not adequately considered the settlement proposal submitted by the Appellant, and looking from the aforesaid fact, we are satisfied that NARCL has adequately considered the proposal and the communication on behalf of the NARCL dated 15.03.2025, does not suffer from any infirmity, so as to issue any further directions with regard to settlement.

18. The revised settlement proposal as noted above has been submitted by the Appellant on 05.04.2025, which has also been brought on record along with the Application for additional affidavit dated 22.04.2025, under which proposal, now the Appellant has enhanced the upfront payment by Promoter from Rs.5 crores to Rs.25 crores. Total repayment schedule in the revised settlement proposal is as follows:

“Based on the above total repayment schedule is proposed as under for the sustainable debt:

| Tranche/FY | 2026 | 2027 | 2028 | 2029 | 2030 | Total |
|-----------------------------|-------|------|-------|------|------|-------|
| Upfront – Promoter | 25.0 | | | | | 25.0 |
| Tranche I – Insurance Claim | 215.0 | | | | | 215.0 |
| Tranche II – Business CF | | 20.0 | 20.0 | 25.0 | 25.0 | 90.0 |
| Tranche III – Investor | | | 200.0 | | | 200.0 |
| Total Debt Repayment | 240.0 | 20.0 | 220.0 | 25.0 | 25.0 | 530.0 |

19. The above revised proposal is also on the same lines, which was earlier given on 19.02.2025 and based on the insurance claim and certain amount from unidentified investor. The said proposal does not inspire any confidence.

20. The NARCL, who is now assignee of the entire debt of all the Consortium Members, including the Indian Bank, having not accepted the settlement proposal submitted by the Appellant, we are of the view that in the facts of the present case, the resolution of the CD has to take place in accordance with the IBC. We do not find any error in the order of the Adjudicating Authority admitting Section 7 Application. In result, the Appeal is dismissed. The interim order stands vacated. All other IAs stand disposed of. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

15th May, 2025

Ashwani