

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1623 of 2025

IN THE MATTER OF:

Karan Bhatia

...Appellant

Versus

Tata Capital Financial Ltd. & Anr.

...Respondents

Present:

For Appellant : Mr. Prashant Katara, Ms. Soin Khan and Mr. Shivam Gupta, Advocates.

For Respondents : Ms. Ekta Bhasin, Ms. Aastha Trivedi and Mr. Kanishk Pandey, Advocates.

Mr. Rajesh Ramnani, Advocate for RP.

O R D E R
(Hybrid Mode)

27.10.2025: Heard learned counsel for the appellant.

2. This appeal has been filed against an order dated 11.09.2025 by which order, adjudicating authority admitted Section 7 application filed by the Tata Capital Limited.

3. The application was filed by Tata Capital Ltd. alleging default by the corporate debtor. The amount of debt granted to the corporate debtor was Rs. 25 crore. In Part IV of the application the amount disbursed and other details have been pleaded. Total amount claim was Rs.19,23,29,846/- as on 07.12.2024. The adjudicating authority after hearing the parties framed relevant issues and by impugned order admitting Section 7 application.

4. Challenging the order, counsel for the appellant contends that the date of default as mentioned in Part IV is 05.09.2024 and on 05.09.2024 the only instalment due was of Rs.41 lakhs which was below the threshold, hence the application could not have been admitted. It is submitted that financial creditor also did not file any application for amendment of the date of default hence on the date of the default as claimed in the application, application could not have been admitted.

5. We have heard learned counsel for the appellant as well as learned counsel for the respondent.

6. Part IV of the Section 7 application column 2 is as follows:

“Part IV

PARTICULARS OF FINANCIAL DEBT		
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<u>Total Amount Claimed to be in Default</u> The total amount claimed to be in default is Rs. 19,23,29,846/- (Rupees Nineteen Crores Twenty Three Lakhs Twenty Nine Thousand Eight Hundred Forty Six Only) as of 07.12.2024. <u>Date of Default</u> The default is considered to have occurred on 05.09.2024. The default occurred for the first time on 05.09.2024 and thereafter, the Corporate Debtor again defaulted for the instalments due in October

		and November and the default is still continuing. A true copy of the workings for computation of the amount and days of default in tabular format is annexed herewith as Annexure 30.”
--	--	---

7. When we look into aforesaid pleadings in Part IV, it is clear that default 05.09.2024 is a date when default occurred for the first time and in the Part IV itself it is pleaded that corporate debtor again defaulted for the instalment due to October & November and default is continuing.

8. Learned counsel for the appellant submits that default has to be treated only of default as on 05.09.2024. The adjudicating authority in the impugned order has also noticed the date of default and has also noticed the recall notice which was issued on 11.11.2024 before filing the petition on 31.12.2024 which observations have been made in paragraph 5 of the order which is as follows:

*“5. Indubitably, the instalment due as on 05.09.2024 was not paid. It is also clear from the definition of default given in IBC (ibid), once a default is committed in payment of any instalment, the same would be in respect of the entire amount of remaining debt. The definition of default given in IBC doesn't say that default can be perceived only after re-calling of the financial facility extended by the creditor to the debtor, even otherwise also recall notice could be issued on 11.11.2024, and the present petition was filed on 31.12.2024. Thus, apparently, on the date of filing present petition there was a default on the part of the Corporate Debtor. As far as the judgment relied upon the Ld. Counsel for the Corporate Debtor in **Deepak Mahadev Shirke Vs. Unity Small Finance Bank Limited and Ors (MANU/NL/0312/2025)**, is concerned the same is in distinct facts. In **Collector of***

Central Excise Calcutta vs. M/s Alnoori Tobacco Products and Anr., [Civil Appeal- 4502-4503 of 1998] passed on 21.07.2004 Hon'ble Supreme Court ruled that the judicial precedent sought to be relied upon by the party to buttress a plea can be relied upon with reference to the facts involved therein and only if it is applicable to the facts of the case before the court to be decided by it. Para 11-14 of the judgment reads thus: -

"11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (1951 AC 737: (1951) 2 All ER 1 (HL)) (AC at p. 761), Lord Mac Dermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge...."

12. In *Home Office v. Dorset Yacht Co.* ((1970) 2 All ER 294: 1970 AC 1004 (1970) 2 WLR 1140 (HL) Lord Reid said (All ER p. 297g-hj, "Lord Atkin's speech... is not to be treated as if it were a statutory definition It will require qualification in new circumstances", Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) ((1971) 1 WLR 1062-(1971) 2 All ER 1267] observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.

And, in British Railways Board v. Herrington (1972) 1 AC 877: (1972) 2 WLR 537: (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

13. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

14. *The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT JAIR 1962 SC 680), AIR p. 688, para 19)*

"19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

*

*

*

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

9. When we look into column 2 of Part IV, there is a clear pleading of default in instalment on 05.09.2024 which is instalment for September and thereafter the further instalment which were defaulted were of October & November. Default of one instalment is about Rs.41 lakh which is an admitted fact, hence pleading if taken for only three instalments, it will be

more than threshold and further recall notice issued on 11.11.2024 by which the entire loan was recalled hence the amount claim is Rs.19,23,29,846/-. We are not persuaded to accept the submission of the appellant that only default has to be treated as of one instalment which occurred on 05.09.2024. There is a specific pleading in Part IV column 2 of three instalments i.e., September, October & November. In the Part IV column 1, the pleadings have been made with regard to email sent after default committed by the appellant and the recall notice dated 11.11.2024 is pleaded in paragraph 17 of Part IV. Paragraph 17 of Part IV is as follows:

“Part IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	17. Despite numerous requests and reminders, the Corporate Debtors failed to clear the outstanding dues and/or update the DSRA. Or 13.11.2024, TCI through it advocate, issued a legal notice from recall of loan and invoking arbitration ("LRN") to the Corporate Debtor and the Guarantors wherein in was categorically stated that non-payment of the dues outstanding and payable to TCL and failure to top up the DSRA within 3 days of its adjustment for recovery of overdue instalments, constitutes an Event of Default under Clause 14 of the Master Conditions read with Clause 12 of the Loan Agreement. In view of the aforesaid Event

		of Defaults, as a Consequence of Event of Default, as per Clause 15 of the Master Conditions read with Loan Agreement, TCL is entitled to recall the Term Loan. Accordingly, the Corporate Debtor along with Guarantors were called upon to repay the entire due and outstanding amount Rs. 19,08,06,176/- (Rupees Nineteen Crore Eight Lakhs Six Thousand One Hundred Seventy-Six Only) as on 11.11.2024 along with accrued interest and default interest A True copy of the Loan Recall Notice dated 11.11.2024 is annexed herewith and marked as Annexure 28.”
--	--	---

10. Counsel for the appellant submits that the correct date of the recall notice is 13.11.2024. Notice dated 13.11.2024 is at Page 305 of the appeal paper book, where subject is mentioned as recall notice for recall of loan and invoking of arbitration. The above is thus clearly recall notice and notice for recalling the entire amount and the entire amount became due.

11. The submission of the appellant that threshold has not been computed cannot be accepted. Learned counsel for the appellant has also relied on the judgment of this Tribunal in the matter of **‘Deepak Mahadev Shirke’ Vs. ‘Unity Small Finance Bank Limited & Anr.’** in **Comp. App. (AT) (Ins.) No. 490/2025** decided on 16.04.2025. Learned counsel for the appellant has referred to paragraphs 12 & 22 of the judgment, which is as follows:

“12. *Perusal of the impugned order as reproduced above shows that the date of default in terms of the above order was 12.11.2018 and the date of NPA was 12.02.2019. The impugned order has also taken note that arbitration proceedings had been initiated against the Corporate Debtor in which arbitral award was passed in favour of the Respondent No.1-Financial Creditor on 28.04.2022. While holding the date of default to be 12.11.2018, the Adjudicating Authority has, however, worked out the period of limitation by taking into account the decision of the Hon’ble Supreme Court in the Suo Moto matter and the arbitral award to find the Section 7 application to be within limitation. It is therefore, clear that the Adjudicating Authority has on its own held that the arbitral award gave rise to a fresh cause of action and a fresh period of limitation even while the date of default remained unchanged from what was declared as 12.11.2018 in Part-IV of the Section 7 application by the Respondent No.1.*

22. *From a reading of the above-quoted paragraphs of the Bishal Jaiswal judgment supra, it is clear that the Hon’ble Supreme Court did not allow the date of default to be amended merely on the basis of oral arguments. For extending the period of limitation, the concerned parties were directed by the Hon’ble Apex Court to necessarily amend their pleadings. Once the Section 7 application is filed, the date of default in Part-IV becomes binding. We however notice that in the instant case, the Respondent No.1 failed to bring about change in the date of default through a formal amendment in the Section 7 petition. The date of default has been held to be the date of arbitral award by the Adjudicating Authority without the Respondent No.1 having made a formal pleading to that effect. The Respondent No.1 not having amended their petition or made pleadings to the effect that the date of default had changed, the Adjudicating Authority could not have held that the arbitral award of 28.04.2022 had reset the limitation period. In the given facts and circumstances, we are therefore inclined to agree with the Appellant that the Adjudicating Authority has erred in extending the period of limitation basis the arbitral award.”*

12. The above observations of this Tribunal were in context of the limitation for filing of Section 7 application hence the said judgment in no manner helps the appellant in the present case.

13. We thus are of the view that adjudicating authority after finding debt and default has rightly admitted Section 7 application. No grounds have been made out to interfere with the impugned order, appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

himanshu/nn