



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 1977/KB/2024

And

I.A. (IB) No. 1212/KB/2025

In

Company Petition (IB) No. 37/KB/2024

*Applications under Section 60 (5) read with Section 65 of the
Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the
National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

CANARA BANK & ORS.

... Financial Creditors.

Versus

GUPTA POWER INFRASTRUCTURE LIMITED

... Corporate Debtor.

And

IN THE MATTER OF:

Gupta Power Infrastructure Limited

... Applicant.

Versus

Canara Bank & Ors.

... Respondents.

Date of Pronouncement: September 26, 2025.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

**For the Financial Creditor: Mr. Ratnanko Banerji, Sr. Adv.
Mr. Supriyo Mahapatra, Adv.
Mr. Kaushik Dey, Adv.
Ms. K. Rahman, Adv.
Mr. N. Pandey, Adv.**

**For the Corporate Debtor: Mr. Joy Saha, Sr. Adv.
Mr. Shaunak Mitra, Adv.
Mr. Rishav Banerjee, Adv.
Mr. Supriyo Banerjee, Adv.
Mr. Tanay Agarwal, Adv.**

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Heard Ld. Sr. Counsels for the parties.
2. Both the applications being I.A. (IB) No. 1977/KB/2024 and I.A. (IB) No. 1212/KB/2025 have been preferred by the Gupta Powers, the corporate debtor herein, against the Consortium of Banks led by the Canara Bank, the Financial Creditors herein, seeking the dismissal of the Section 7 petition of the financial creditors.
3. The primary arguments have been advanced by the Learned Senior Counsel Mr. Joy Saha appearing for the Corporate Debtor, the applicant herein is that the classification of the corporate debtor's account has Non-Performing Assets, hereinafter referred to as "NPA" is erroneous and in the present Case of the financial creditors, there is no date of default and thus, the instant Section 7 petition deserves dismissal.
4. Mr. Saha would submit that from Part IV, Form-1 of the company petition, it is apparent that the financial creditors have mentioned the date of default as 30.09.2023 for the Canara Bank, PNB and UCO Bank. Further, for the Union Bank of India, the date of default is 28.09.2023; for Bank of India, it is 25.09.2023; for Bank of Maharashtra, it is 29.08.2023; and for Indian Bank, it is 24.09.2023; and consequently, the same are being alleged as a date of NPA with the respective financial creditors.

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5. It is further submitted that the financial creditors have included the respective dates of a loan recall notices and the respective dates of notices issued under Section 13(2) of the SARFAESI Act, 2002, by each financial creditor as the date of defaults and as such, the financial creditors have submitted multiple dates of default in their Section 7 petition. Thus, it is submitted that on this ground only, the said Section 7 petition is liable to be dismissed as it is a settled position that in a single Section 7 petition, multiple dates of default cannot be applicable.

6. Mr. Saha would assert that the classification of the accounts of the corporate debtor as NPA by different banking entities, who are the petitioners in the section 7 petition, is completely de hors and is contrary to the RBI's guidelines and circulars. It is submitted that for the purpose of classifying the accounts of the debtor as NPA, the banking entities who are the financial creditors herein are statutorily obligated to scrupulously adhere to and comply with the Masters Circulars issued by the Reserve Bank of India and the RBI's Guidelines Prudential Norms on Income Recognition and Asset Classification, an account has to be clearly overdrawn for a continuous period of 90 days for classifying it as NPA.

7. It is further asserted that the financial creditors herein, through the lead banker, Canara Bank, have alleged in their section 7 petition that the overdue fell for clearance on and from 30.09.2023 for Canara Bank, 30.09.2023 for PNB and 30.09.2023 for UCO

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Bank. In order to classify the account as NPA as well as to allege the default, it is submitted that it was imperative in terms of the master circulars issued by the RBI that the overdue amount as alleged remained outstanding against the advances or floating ledger balance for a continuous period of 90 days.

8. Mr. Saha would submit that the total fund-based exposure of the cash credit limit with the Canara Bank is Rs. 145.20 Crore, and the sanction limit for UCO Bank is to the tune of Rs. 21.72 Crore, and for the PNB, it is Rs. 100 Crore. The purported advance cash credit sanction limit of Rs. 145.20 crore with the Canara Bank, to classify the accounts as NPA as purportedly made on 30.09.2023, the account was to remain overdrawn for a continuous period of more than 90 days, that is, the account being overdrawn sometimes on and from the beginning of the Month of July 2023. It is submitted that on 07.08.2023, the corporate debtor's account contained an available balance of Rs. 7.75 crore concerning the cash credit account and the current balance in the said account as on 07.08.2023 was Rs. 137.44 Crore and thus, the said account was not clearly overdrawn as on 07.08.2023. On perusal of the account statement pertaining to the cash credit exposure in respect of the corporate debtor's said account which has been classified as NPA on 30.09.2023, it is clear that as on 22.08.2023, the account reflected a balance of Rs. 145.15 crore that was below the sanctioned cash credit exposure of Rs. 145.20 crore and, thus, the account was not overdrawn as on 22.08.2023.

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9. With regard to UCO Bank, Mr. Saha would submit that the sanctioned limit granted by the UCO Bank is amounting to Rs. 21.72 crore, and it is apparent from the accounts statement maintained with the UCO Bank that the available balance as on 18.09.2023 was Rs. 20.62 crore. As such, the account was not overdrawn as of 18.09.2023, and by no stretch of imagination, the NPA date of 30.09.2023, which is also one of the dates of default, is correct since there was no overdue for a continuous period of 90 days.

10. Concerning PNB Bank, Ld. Sr. Counsel for the corporate debtor would submit that the sanctioned limit granted by the PNB is to the tune of Rs. 100 crore and as on 02.09.2023, the available balance in the account maintained with the PNB, it is Rs. 98 crore and, thus, the said account was also not overdrawn as on 02.09.2023 and, thus, the classification of NPA by PNB as on 30.09.2023 is contrary to the RBI's Master Circulars and Guidelines as there was no overdue for continuous period of 90 days.

11. In view of such Mr. Saha would allege that the NPA classification of the corporate debtors' accounts declared by all the banking entities who are the petitioners in the section 7 petition is absolutely erroneous and as such there is no date of default on part of the corporate debtor and accordingly the date which have been declared as date of default in part IV form I of the section 7 petition is bad in law and accordingly the said section 7 petition is not maintainable at all.

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12. Mr. Saha would further argue that there is a clear breach on the part of the financial creditors in the invocation of section 13 (4) of the SARFAESI Act, 2002, and thus the corporate debtor, as an applicant, was constrained to prefer an application bearing S.A. No. 390 of 2024 under section 17 of the SARFAESI Act before the Ld. DRT, Kolkata Court No – III. On 27.06.2024, in a connected I.A. being No. 1843 of 2024, the Ld. DRT passed an interim order and, on prima facie, noted that the cash credit exposure of the borrower company was not overdrawn for a continuous period of more than 90 days, subject to the finality of the decision in the matter. Further, the Ld. DRT has directed the Canara Bank to keep in abeyance the further report and maintain the status quo as on the date till the next date of hearing. On 01.10.2024, the interim order was not extended as the issue of NPA is also the principal relief in the said S.A. Thus, it is submitted that the issue of NPA declaration is pending consideration and the same is to be decided at the final hearing of the said application.

13. Accordingly, Mr. Saha would contend that the present section 7 proceeding has been initiated solely for the purpose of arm-twisting and brow-beating the corporate debtor or making payment of such alleged dues. Since there is no case made in terms of Section 3 (12) of the I&B Code, 2016, the instant Section 7 proceeding is not maintainable.

14. Mr. Saha would refer to section 7 (2) of the I&B Code, read with Rule 4 (1) of the IBBI (Application to Adjudicating Authority) Rules, 2016, to submit that there is a specific column to

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mention the amount claimed to be in default, and the date on which the default occurred is mandatorily required to be mentioned. In this regard, he has referred to a decision of the coordinate bench NCLT, Bangaluru, in the matter of ***M/s Assets Reconstruction Company (India) Ltd. vs. M/s Manyata Developers Pvt. Ltd.*** in C.P. (IB) No. 125/BB/2022 order dated 27.09.2023.

15. By way of preferring an application being IA (IB) NO. 1212/KB/2025, Mr. Saha would submit that on the grounds that the treatment of the NPA date as the date of default for the purpose of initiating Section 7 proceedings is bad in law and mentioning the date of default is mandatory, as mentioning a cause of action in a suit. Sans mentioning the same, the section 7 proceeding is infructuous. To that effect, he has relied on the decision rendered by the Hon'ble Apex Court in ***Laxmi Pat Surana vs. Union Bank of India*** reported in (2021) 8 SCC 481. Further, he has referred to the judgment of the Hon'ble NCLAT in ***Edelweiss Asset Reconstruction Company Limited vs. Perfect Engine Components Pvt. Ltd.*** in Company Appeal (AT) (Ins.) No. 840 of 2021 judgment dated 22.12.2022, Paras 7 & 8.

16. In conclusion, Mr. Saha would state that the present section 7 petition has failed to disclose the date of default, and the same has been instituted without due regard to the mandatory statutory requirements and in a manner that is not only procedurally defective but also substantively misleading; thus, the same would deserve dismissal.

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17. *Per contra*, Mr. Ratnanko Banerji, Ld. Sr. Counsel appearing on behalf of the financial creditors would vehemently oppose the prayer of these applications and would submit that as per law for the purpose of admission of a section 7 petition, it is necessary to ascertain the date of default and the date of NPA has no nexus with the same which has been upheld by the Hon'ble Apex Court in **Laxmi Pat Surana** (supra), the Hon'ble NCLAT in **Perfect Engine Components** (supra), and the Hon'ble NCLT, Principal Bench, in **State Bank of India vs. Raebareilly Allahabad Highway Private Limited** in C.P. (IB) NO. 130/PB/2023 Para 25 – 28. In these aforesaid decisions, it has also been laid down that the date of NPA can be considered as a date of default, and the date of default is only for the purpose of computing the limitation.

18. He further submits that the allegation raised by the corporate debtor pertaining to the NPA being declared illegally by the financial creditors in deviation from the RBI Master Circulars on Prudential Norms dated 1st July 2015 has no nexus to the adjudication of the present section 7 petition. It is submitted that the interim order dated 27.06.2024 was passed by the Ld. DRT, Kolkata, based on which the corporate debtor is making his case, has already been vacated and has not been extended by the same forum on 01.10.2024.

19. It is contended that, as there was an inherent risk of the corporate debtor as observed in the statutory audit of the empaneled auditor of the RBI, the NPA was declared by the Banks in exception from the 90 days of default as mandated in the RBI Master Circulars.

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The NPA was declared based on a Memorandum of Changed Certificates (MOC) issued by the statutory auditors of the RBI. Further to submit that the RBI Master Circulars also permit the banks to declare NPA based on the inherent risk noted in the borrowers' accounts.

20. We have noted the rival contentions and perused the documents very carefully.

Analysis and Findings:

21. The primary issue that has cropped up for determination for us is whether the date of classification of the debtor's account as NPA is wrongly considered as a date of default in the present case. We would note that in ***Laxmi Pat Surana (supra)*** the Hon'ble Apex Court at Para 37 has categorically observed that upon declaration of the loan account or debt as NPA, that date can be reckoned as a date of default to enable the financial creditor to initiate an action under Section 7 of the I&B Code. It has been further observed that Section 7 of the Code comes into play when the corporate debtor commits "default" under Section 7, consciously uses the expression "Default", not the date of notifying the loan account of the corporate person as NPA. The extract of the judgment is reproduced hereunder:

37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate

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action Under Section 7 of the Code.
*However, **Section 7 comes into play when the corporate debtor commits "default".** **Section 7, consciously uses the expression "default" -- not the date of notifying the loan account of the corporate person as NPA.** Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process Under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the*

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prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings Under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action Under Section 7 of the Code.”

(Emphasis Added)

The corporate debtor has not denied the fact that it has failed to repay the debt. In fact, it has sought the shelter of the **Vidarbha** judgment to evade the commencement of insolvency proceedings.

22. The debt and default being established, nothing much needs to be done about the allegation of faulty classification of NPA of the corporate debtor's account. Thus, the answer to the first issue is in the **negative**.

23. Coming to the second issue, whether the classification of NPA of the debtor's account as NPA is proper and in accordance with the existing laws, we find that the issue has already been agitated before Ld. DRT Kolkata, Court III, by way of preferring an application under the provisions of the SARFAESI Act. Now, the question really to be answered is whether this Adjudicating Authority should wait for the outcome of the DRT Proceedings or proceed in accordance with law. We would note that the Hon'ble NCLAT, Chennai in the matter of **Mr. G. Sundaravadivelu vs. Indian Overseas Bank**, reported in (2023) ibclaw.in 404 NCLAT, has categorically held that the pendency of the proceedings before

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the DRT is not a bar for the financial creditor to initiate CIRP against the corporate debtor, the NCLT need not wait for the decision of the DRT while rendering its findings. What is essential is to consider that there is a debt existing, and a default on the part of the corporate debtor. If the petition is complete in all respect, amount claimed to be in default is in excess to the threshold limit in terms of Section 4 of the I&B Code, and the petition is not barred by limitation, the Adjudicating Authority has no scope to reject the same, as held in ***Innoventive Industries Limited v. ICICI Bank & Anr.***, reported in (2018) 1 SCC 407 by the Hon'ble Apex Court. The extract of the judgment of ***Mr. G. Sundaravadivelu (Supra)*** is reproduced hereunder:

“94. Under the I & B Code, 2016, the shift is from ‘inability to pay’, to an ‘existence of Default’. The circumstances under which a ‘Corporate Debtor’, could not repay the ‘Financial Debt’, need not be taken as a defence in a proceeding, under the I & B Code, 2016.

95. What is essential is to exhibit that the ‘Debtor’, had committed a ‘Default’, after the ‘Debt’, had become ‘Due’ and ‘Payable’, by a ‘Debtor’ and no more.

96. It is pointed out that the pendency of proceedings before the ‘Debt Recovery Tribunal’, is not a bar, for the ‘Financial Creditor’, to initiate an action against the ‘Corporate Debtor’. That apart, an ‘Adjudicating Authority’, need not wait for the decision of ‘Debt Recovery Tribunal’, while rendering its findings.”

(Emphasis Added)



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24. In view of the above, on the second issue, i.e., whether the NCLT should wait for the finality of the DRT proceedings, we answer in the **negative**.

25. Hence, we find no merit in both the applications herein, and accordingly, the applications stand **dismissed**.

26. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Cmde. Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 26th Day of September 2025.

Bose, R. K. [LRA]
V. Tiwari [LRA]
SA [Steno]