

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

Company Appeal (AT) (Insolvency) No. 753 of 2025

IN THE MATTER OF:

Rahul Kumawat

...Appellant

Versus

Bank of India & Anr.

...Respondents

Present:

For Appellant: **Mr. Krishnendu Datta, Sr. Advocate with Mr. Sumesh Dhawan, Mr. Sanyat Lodha & Ms. Yashika Bhardwaj, Advocates for Appellant.**

For Respondents: **Mr. Ashish Rana & Mr. Anurag Kumar Singh, Advocates for Bank of India. Ms. Chhaya Gupta, Advocate for IRP.**

J U D G M E N T

Ashok Bhushan, J.

This Appeal by a Suspended Director of the Corporate Debtor- “MP Agro BRK Energy Foods Private Limited” has been filed challenging the order dated 02.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Indore Special Bench, Court No.1 admitting Section 7 application filed by the Bank of India.

2. There is chequered history of litigation undertaken by the Appellant herein challenging successive orders of the Adjudicating Authority admitting Section 7 application filed by the Bank of Baroda. We need to notice first background facts of the case necessary to be noted for deciding this Appeal.

2.1. The Bank of India sanctioned several financial facilities to the Corporate Debtor. Two credit facilities of Rs.700 Lakhs were sanctioned in the year 2014 with term loan facility of Rs.190 Cr. In the year 2014 after taking account of the Corporate Debtor from other financial creditors on request of Corporate Debtor for enhancement of credit facility, the credit facility given to the Corporate Debtor was reviewed and memorandum was prepared on 05.08.2017. Meeting of ZLCC was held on 13.09.2017 which recommended extension of credit facility with some modification. ZLCC meeting minutes dated 13.09.2017 also noticed certain outstanding dues on the part of the Corporate Debtor. The Bank of India declared the account of the Corporate Debtor as NPA on 30.09.2017. A notice dated 06.11.2017 was issued by the Bank of India under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor as well as the personal guarantors claiming outstanding amount of Rs.172.71 Lakhs towards term loan and Rs.793.51 and Rs.99.99 Lakhs towards two cash credit facilities. Outstanding amount demanded by the notice of Rs.1066.21 Lakhs with interest. After receipt of the notice under Section 13(2), the Corporate Debtor on 10.01.2018 wrote to the Bank requesting for restructuring of the credit facilities. The Bank vide letter dated 11.01.2018 informing the Corporate Debtor that SARFAESI action shall not be deferred unless the Corporate Debtor submit the proposal and minimum stipulated amount. There have been correspondences between the Corporate Debtor and the Bank but Bank did not accept the prayer for restructuring the facilities. The Corporate Debtor wrote to the Bank to suspend Section 13(2) action. On 17.04.2018 on request of the Corporate Debtor, certificate was

issued by the Bank that the account of the Corporate Debtor was operative. The Bank on 03.06.2019 wrote to the Additional District Magistrate to return the application filed under Section 14 of the SARFAESI Act for taking possession of the assets. The RBI issued a Circular dated 07.02.2018 regarding MSME borrowers' and their classification as NPA. The Bank filed an application under Section 7 on 22.10.2018 claiming total debt outstanding of Rs.11,57,89,697/-. The date of default was mentioned as 30.09.2017. The Corporate Debtor filed a reply to Section 7 application along with the reply-affidavit. Corporate Debtor brought on record letters issued by the Corporate Debtor praying for restructuring of the debt. During the pendency of the application under Section 7, letter of One Time Settlement (OTS) was given by the Corporate Debtor to the Bank. Bank vide letter dated 06.08.2019 sanctioned the OTS for total amount of Rs.8,41,00,000/-. The Corporate Debtor having failed to honour the OTS, the Bank vide letter dated 07.10.2019 revoked the OTS letter dated 06.08.2019. The Corporate Debtor further submitted OTS letter to the Bank on 08.01.2020. The Adjudicating Authority after hearing the parties by order dated 05.03.2020 admitted Section 7 application, aggrieved by which order, Appellant filed Company Appeal (AT) (Insolvency) No.477 of 2020. This Appellate Tribunal vide order dated 14.11.2022 allowed the Company Appeal and remanded the matter to the Adjudicating Authority to consider the objections of the Appellant. After remand, Financial Creditors filed additional-affidavit placing additional facts on record. Reply to additional affidavit was filed by the Corporate Debtor. Adjudicating Authority vide order dated 04.04.2024 after hearing the parties admitted Section 7 application against which order Company Appeal (AT)

(Insolvency) No.720 of 2024 was filed by the Appellant which Appeal came to be allowed by this Tribunal on 26.04.2024 remanding the matter back to the Adjudicating Authority to specifically consider the objections raised by the Appellant. After the remand, both the parties filed their written submissions and by impugned order dated 02.05.2025, Section 7 application has been admitted. Adjudicating Authority in order dated 02.05.2025 framed five issues for consideration in paragraph 14 and considered separately all the issues and after deciding the issues framed found existence of debt and default on the part of the Corporate Debtor. After returning finding of debt and default, Section 7 application has been admitted, aggrieved by which order this Appeal has been filed.

3. We have heard Learned Counsel for the Appellant as well as Learned Counsel appearing for the Bank of Baroda.

4. Counsel for the Appellant challenging the impugned order submits that basis of Section 7 application was declaration of NPA of the account of the Corporate Debtor on 30.09.2017. It is submitted that NPA declaration of the Corporate Debtor was not in accordance with law, hence, the very basis of Section 7 application being groundless, Section 7 application could not have been admitted. Counsel for the Appellant relied on the Circular dated 07.02.2018 issued by the Reserve Bank of India (RBI) with regard to declaration of NPA for MSME. It is submitted that the Corporate Debtor being not in default in August 2018 as per RBI Circular, Corporate Debtor could not have been declared NPA. It is submitted that the RBI Circular dated 07.02.2018 is retrospective in nature. Adjudicating Authority wrongly taken

the view that Circular is prospective. It is submitted that in the ZLCC meeting held on 13.09.2017, the account of the Corporate Debtor was categorised as standard and the ZLCC recommended for renewal of the financial facilities, thus, the Corporate Debtor was not in default on the day when ZLCC recommended for renewal of facilities. Thus, declaration of Corporate Debtor's account as NPA on 30.09.2017 was not in accordance with law. It is submitted that the Bank itself has issued Certificate dated 17.04.2018 where accounts of the Corporate Debtor were stated to be operative. It is submitted that the notice under Section 13(2) of the SARFAESI Act having been withdrawn which was directly linked with the NPA declaration. Withdrawal of Section 13(2) notice clearly signified the unsustainability of the NPA declaration. It is submitted that there is sufficient credit in cash credit accounts from which the term loan account could have been serviced. As per practice, it was Bank who used to service the term loan account from amount lying in cash credit. Had the Bank serviced the instalments payable under term loan account from cash credit accounts, there would have been no default. Declaration of the term loan account and two cash credit accounts as NPA did not exist in fact and is unsustainable in law. Bank could have very well appropriated the amount from cash credit accounts to serve the pending loan instalments and interest, if any. The observation of the Adjudicating Authority that NPA classification is immaterial has led to wrong answer being arrived by the Adjudicating Authority. Central question was as to whether the NPA declaration of the account of the Corporate Debtor was in accordance with law has not been correctly appreciated. The impugned order is non-speaking despite remanded by this Tribunal has not considered the objections of the

Corporate Debtor. The beneficial and retrospective nature of the RBI Circular dated 07.02.2018 has been ignored and it has been wrongly held to be prospective. The Corporate Debtor is a going concern which need not be pushed into insolvency.

5. Counsel for the Bank refuting the submissions of the Counsel for the Appellant submits that the Corporate Debtor having committed default, Bank has rightly mentioned date of default as 30.09.2017. There were over dues in loan account on 30.09.2017. Cash credit account was also irregular and not regularised. Corporate Debtor having not serviced the loan and being in default, Section 7 proceeding was rightly initiated by the Bank. It is submitted that the RBI Circular dated 07.02.2018 is not applicable with respect to declaration of NPA on 30.09.2017, the Circular being only prospective. It is submitted that the reliance on minutes of the ZLCC meeting dated 13.09.2017 is misplaced. In the said ZLCC meeting, it was noticed that there was overdue in the account of the Corporate Debtor and overdue amount need to be recovered. The mere fact that the Corporate Debtor has been recommended for extension of facilities cannot lead to conclusion that no default was committed by the Corporate Debtor. Adjudicating Authority has rightly admitted Section 7 application having found debt and default being established from the evidence Bank Statements, CIBIL Report and Corporate Debtor's own admission in OTS proposal. Corporate Debtor having submitted OTS proposal, the default is clearly acknowledged. The Adjudicating Authority after remand order dated 26.04.2024 has considered all objections of the Corporate Debtor and has rightly come to the conclusion that there is a debt

and default on the part of the Corporate Debtor. The default committed by the Corporate Debtor is still continuing. OTS proposal submitted by the Corporate Debtor has failed. The whole focus of the Corporate Debtor that NPA classification was incorrect cannot absolve the Corporate Debtor from having committed default in repayment of loan. Numerous acknowledgment of debt and default is writ large on the record. Submission of OTS proposal during pendency of Section 7 application itself makes it clear that the Corporate Debtor accepting default and has offered for One Time Settlement. Corporate Debtor was in default since 30.09.2017. Recall notice was 06.11.2017 by the Bank, there being default on the principal over dues and the interest over dues, default from 30.09.2017 is continuing for last five years with no regularisation of the account. Bank Statement confirmed consistent non-payment of term loan instalment and overdue cash credit account. Corporate Debtor is entering into vexatious litigation to delay the CIRP. NPA clarification is irrelevant for Section 7 proceeding. Corporate Debtor having committed default, Adjudicating Authority has rightly admitted Section 7 application. The submission of the Appellant that Corporate Debtor is a going concern is irrelevant. Corporate Debtor having committed substantial default, it deserves resolution under the IBC process. Account of the Corporate Debtor being in default from 30.09.2017, the order passed by the Adjudicating Authority need no interference in this Appeal.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. As noted above, the order admitting Section 7 application filed by the Bank of Baroda for the second time on 04.04.2024 was challenged by means of Company Appeal (AT) (Insolvency) No.720 of 2024 which has been allowed by this Tribunal vide its order and judgment dated 26.04.2024. In the judgment dated 26.04.2024, this Tribunal was of the view that the case requires re-look by the Adjudicating Authority on the evidence which has been brought on the record. In paragraphs 10 to 13, following has been held by this Tribunal:-

“10. Consequently, we are of the considered opinion that this case requires a relook by the Adjudicating Authority on the evidence which has been brought on record to judge about two basic issues i.e. debt and default having been committed by the Appellant for the purpose of attracting Section 7 of the Code.

11. As a result thereof, the appeal succeeds and the impugned order is set aside. The matter is remanded back to the Adjudicating Authority to redetermine the issue after taking into consideration the contentions of both the parties by recording categorical finding on the issue which has been raised so that it may facilitate a judicial review by the Appellate Tribunal if any.

12. The parties are directed to appear before the Adjudicating Authority on 06th May, 2024.

13. It is made clear that we have not touched any part of the merits of the case which are left open for the Adjudicating Authority to decide in accordance with law.”

8. Consequent to the order dated 26.04.2024, Adjudicating Authority heard the parties and by impugned order dated 02.05.2025 has admitted Section 7 application. Adjudicating Authority in light of the order of this Appellate Tribunal has re-examined the evidence and contentions of the parties which has been noticed in paragraphs 12 and 13 of the impugned order. Adjudicating Authority after noticing the respective submissions of the parties and objections raised by Corporate Debtor has framed five issues for consideration as contained in paragraph 14 of the judgment. Paragraph 14 of the judgment is as follows:-

“14. We have heard the counsels from both sides and have perused the records. On basis of the Pleadings and submissions of both sides, the issues for determination are as under: -

(A). Whether there exists a "financial debt" under Section 5(8) of the IBC owed by the Corporate Debtor to the Financial Creditor?

(B). Whether the Corporate Debtor has committed a "default" under Section 3(12) of the IBC, 2016, with respect to the financial debt in the Term Loan and Cash Credit Accounts as on the NPA date (30.09.2017), accepted as the date of default?

(C). Whether there was default on the date of classification of the Corporate Debtor's account as an NPA on 30.09.2017.

(D). Whether the application under Section 7 is maintainable, given that disputes about the NPA classification are immaterial?

(E). Whether the application under Section 7 of the IBC, 2016, is maintainable and within the period of limitation?”

9. Issue No. (A) was answered holding that existence of financial debt is established. Issue No. (B) & (C) i.e. existence of default on the date of NPA was examined in paragraph 16 of the judgment. Adjudicating Authority came to the conclusion that default exist in the term loan account as well as cash credit account. It was further held that the default was there on 30.09.2017. In paragraph 16.19 & 16.21, following has been held:

“16.19. Thus, a default exists in the Term Loan Account as well as in the Cash Credit Accounts, as the Corporate Debtor failed to repay instalments in the Term Loan Account and exceeded sanctioned limits of the Cash Credit Accounts, and failed to regularize repayments as evidenced by the account statement. Further, there was a default on the date of NPA on 30.09.2017. We are of the view that the law requires the occurrence of a default, and the same is established by the Applicant. The main defence of the Corporate Debtor questioning the NPA based on the RBI Circular or certificates issued does not support its case. It has not been proved that a default had not occurred.

16.21. Further, the Applicant has established a default exceeding Rs.1.00 Crore, satisfying the threshold under Section 7 of the IBC, 2016.”

10. Issue No. (D) & (E) regarding maintainability and limitation has also been answered in favour of the Financial Creditor. It was held that Applicant has established the existence of financial debt of Rs.11,57,89,697/- in paragraph 18. Paragraph 18 of the judgment is as follows:-

“18. The Applicant has established the existence of a financial debt of Rs. 11,57,89,697/- owed by the Corporate Debtor, supported by loan documents, bank statements, and a CIBIL report. The Corporate Debtor defaulted on its repayment obligations, as evidenced by the term loan account statement showing overdue instalments from 01.09.2017, leading to default on 30.09.2017.”

11. Adjudicating Authority has also held that the application is within limitation. The RBI Circular dated 07.02.2018 was also examined and it was held that the Circular does not apply retrospectively and the Corporate Debtor failed to meet its conditions. After answering the issues framed by the Adjudicating Authority and after considering the objection of the Corporate Debtor, the Adjudicating Authority directed for admission of Section 7 application and appointed the IRP. Counsel for the Appellant while challenging the order impugned has raised various submissions as noted above. We now proceed to notice submissions advanced by the Appellant one by one.

12. One of the submissions which has been raised by the Counsel for the Appellant is based on Memorandum dated 05.08.2017 and the ZLCC minutes dated 13.09.2017. The submission of the Appellant is that in the ZLCC meeting's minutes the category of the account was mentioned as standard and recommendation was made for review of cash credit limit at existing level of Rs.8 Crores and term loan at reduced level of Rs.1.55 Crore. Submission is that when recommendation was made for extension of facilities, the account was standard only then facilities were to be reviewed. The minutes of ZLCC meeting have been brought on the record which were forwarded by the Bank's letter dated 16.10.2020 which is brought on the record as Annexure A3 by the Appellant in the Appeal. Under the heading (F) "other matters", it is relevant to notice following part of the minutes:-

"F. Other Matters:-

- *The company was sanctioned Adhoc limit of Rs. 75.00 lacs for 56 days by ZLCC on 28.04.2017. The same got expired on 30.06.2017. The company has still not regularized the Adhoc limit. Presently the cash credit account is overdue by Rs. 79.22 lacs.*
- *The term loan account is overdue by Rs. 10.54 lacs on account of interest & installment from July 2017 onwards."*

13. The above recommendation was subject to certain conditions and Condition No.12 is relevant which is as follows:-

"12. Overdues in the account to be recovered immediately."

14. The minutes dated 13.09.2017 of ZLCC, thus, has clearly noted over dues of Rs.79.22 Lacs cash credit and the term loan account is overdue by Rs.10.54 Lacs from July 2017 onwards. It is true that recommendation was made for reviewing the account for the sake of good orders but when minutes are read as whole minutes clearly noticed over dues since July 2017 and further it was subject to over dues in the account to be recovered immediately. Thus, the submission of the Appellant that over dues is not substantiated from the minutes cannot be accepted. The fact that ZLCC meeting minutes recommended for review of credit limits cannot lead to conclusion that there was no over dues and Corporate Debtor was complying with all terms and conditions. Decision to review the account was in the interest of the Corporate Debtor but over dues as noted in the minutes specifically cannot be overlooked. At this stage, we need to notice the letter which has been brought on the record of the Corporate Debtor and were also part of the reply of the Corporate Debtor filed before the Adjudicating Authority under Section 7. As noted above, there being default on the part of the Corporate Debtor and the account having been declared as NPA on 30.09.2017. Notice under Section 13(2) of the SARFAESI Act, 2002 was issued by the Bank which is brought on the record as Annexure A-8 to the Appeal. The notice under Section 13(2) refers to dues of term loan and cash credit. Notice mentioned that the Corporate Debtor was called upon to discharge in full liabilities by paying to the Bank a sum of Rs.106.21 Lacs along with the interest. After notice under Section 13(2) was issued, the Corporate Debtor immediately on 10.01.2018 wrote to the Bank praying for restructuring of availed credit facilities. Letter

dated 10.01.2018 was filed along with the reply of the Corporate Debtor copy of which is annexed as Annexure A-10. It is useful to extract the letter dated 10.01.2018 of the Corporate Debtor which is as follows:-

"To,

Date: 10.01.2018

*The Chief Manager
Bank of India
Vijay Nagar Branch Indore*

Subject: Request for restructuring of availed credit facilities.

Reference: Our Financial Account of MP Agro BRK Energy Foods Ltd vide-

Cash Credit Limit: 881030110000033

Term Loan : 881070210000008

Dear Sir,

With reference to Over Dues of our account M/s. MP AGRO BRK ENERGY FOODS LIMITED vide Temporary Adhoc Limit, Instalments of. Term Loan and Pending Interest, up to a sum of Rs.180 Lacs, we hereby submit that presently we are undergoing financial difficulties due to purchase deal made of nearby industrial property and handsome amount has been paid in advance, for which our proposal of Term Loan is pending till now with your good sell. Demonetization and GST impact of 5% in our business is also a big reason of Financial Crunch in our Company.

But Sir, we have every intention of honoring our credit agreement and continue the business with a growth. We have taken advice on this matter and hope that following options can be applied to our account.

We would like to restructure our agreement by way of converting present entire overdue amounts of Cash Credit and Term Loan accounts into (Working) Capital Term Loan with

holding period and also allowing holding period on existing term loan.

Following are the requests to restructure the credit facilities:

- 1. To convert overdue amount of Rs.180 Lacs (CC Limit + Term Loan) into term loan of repayment in 8-10 Years. (Calculated up to February 2018)*
- 2. Allowing 6 months holding period for repayment of Principal of proposed term loan and existing term loan.*
- 3. Allowing us to serve interest part only for proposed holding period.*

The above requests, if considered positively, will definitely help our Company in regularizing our accounts. Please allow us for a time period of 10-12 days for submission of Restructure Proposal with Detailed Project Report.

We also request you to hold any or all further action to be taken against our Company for recovery of Bank Dues. As you are aware that we are dealing with Big Corporates and MNCs like Aditya Birla Retail Limited, Pillsbury, Max Hypermarket and Patanjali Ayurveda Limited, any negative publicity will impact the entire business and harm the existing long term supply agreements with immediate effect.

So kindly consider our request of suspending all corrosive action against our Company and allow our proposal of restructure proposal for repaying the bank over dues positively. We will be very grateful to you for the same, it considered in our favour.

Looking forward to our long term relationship and the future of an upcoming industry, we expect your kind cooperation in the matter, we remain.

Thanking you

Yours Sincerely,

Rahul Kumawat

Managing Director,

MP Agro BRK Energy Foods Limited”

15. The above letter clearly acknowledges the over dues in the account of the Corporate Debtor pertaining to adhoc limit, instalments of term loan and pending interest. The above clearly indicate that at the relevant time when there was no dispute and litigation between the parties, Corporate Debtor of its own has acknowledged the over dues and praying for restructuring the credit facilities. Although certain correspondences were entered between the parties but credit facilities were not restructured. We may also at this stage notices that during pendency of the application under Section 7, OTS was sanctioned by the Bank by order dated 06.08.2019 for Rs.841 Lacs which sanction was granted in pursuance of the request letter dated 30.07.2019 made by the Corporate Debtor for settlement. The Corporate Debtor failed to honour the terms of OTS and OTS letter was subsequently revoked on 07.10.2019. Again on 10.01.2020, Appellant has submitted OTS letter.

16. There being throughout acknowledgment which is reflected from above letters and OTS proposal. Submission of the Appellant that there was no default on the part of the Corporate Debtor is unacceptable. Counsel for the Appellant has placed much reliance on RBI Circular dated 07.02.2018. Submission is that by the said Circular, relief was given to MSME borrowers and declaration of NPA of Corporate Debtor is not in accordance with Circular

dated 07.02.2018. It is submitted that the said Circular had retrospective operation whereas Adjudicating Authority has treated the said Circular only prospective. To appreciate the above submission, we need to notice Circular dated 07.02.2018 which is as follows:-

*“RBI/2017-18/129
DBR.No.BP.BC.100/21.04.048/2017-18*

February 07, 2018

All banks and NBFCs regulated by the Reserve Bank of India

Madam / Dear Sir,

Relief for MSME Borrowers registered under Goods and Services Tax (GST)

Presently, banks and NBFCs in India generally classify a loan account as Non-Performing Asset (NPA) based on 90 day and 120 day delinquency norms, respectively. It has been represented to us that formalisation of business through registration under GST had adversely impacted the cash flows of the smaller entities during the transition phase with consequent difficulties in meeting their repayment obligations to banks and NBFCs. As a measure of support to these entities in their transition to a formalised business environment, it has been decided that the exposure of banks and NBFCs to a borrower classified as micro, small and medium enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, shall continue to be classified as a standard asset in the books of banks and NBFCs subject to the following conditions:

- (i) *The borrower is registered under the GST regime as on January 31, 2018.*
- (ii) *The aggregate exposure, including non-fund based facilities, of banks and NBFCs, to the borrower does not exceed 250 million as on January 31, 2018.*
- (iii) *The borrower's account was standard as on August 31, 2017.*
- (iv) *The amount from the borrower overdue as on September 1, 2017 and payments from the borrower due between September 1, 2017 and January 31, 2018 are paid not later than 180 days from their respective original due dates.*
- (v) *A provision of 5% shall be made by the banks/NBFCs against the exposures not classified as NPA in terms of this circular. The provision in respect of the account may be reversed as and when no amount is overdue beyond the 90/120' day norm, as the case may be.*
- (vi) *The additional time is being provided for the purpose of asset classification only and not for income recognition, i.e., if the interest from the borrower is overdue for more than 90/1202 days, the same shall not be recognised on accrual basis.*

Yours faithfully,

(S. K. Kar)
Chief General Manager”

17. The first paragraph of the Circular uses expression “*shall continue to be classified as a standard asset in the books of banks and NBFCs subject to the*

following conditions". A perusal of the Circular indicates that the said Circular was only for prospective operation. Adjudicating Authority has rightly considered the Circular and has come to the conclusion that Circular is only prospective and on the date i.e. 30.09.2017 when account of the Corporate Debtor was declared as NPA, the Circular was not in existence. NPA declaration of the Corporate Debtor's account was in accordance with default committed by the Corporate Debtor.

18. As noted above, Counsel for the Appellant has contended that NPA declaration on 30.09.2017 itself being not in accordance with law, entire basis of the application becomes baseless and no application could have been admitted when NPA declaration was the basis of Section 7 application. At this juncture, we need to notice the judgment of the Hon'ble Supreme Court in ***"Laxmi Pat Surana vs. Union Bank of India & Anr.-(2021) 8 SCC 481"*** where Hon'ble Supreme Court has held that Section 7 application requires only proof of debt and default and NPA classification is not the requirement of the IBC. In paragraph 43 of the judgment of the Hon'ble Supreme Court laid down following:-

"43. 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 action under Section 7 IBC. 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 IBC 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 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 IBC. Further, the acknowledgment must be of a liability in

respect of which the financial creditor can initiate action under Section 7 IBC.”

19. The basis of an application under Section 7 to be filed by the Financial Creditor is default committed by the Corporate Debtor in repayment of its loan/ facilities. Foundation of any application under Section 7 is only default by Corporate Debtor and the question of classification of NPA cannot be a foundation of challenge to admission of Section 7 application. In the present case, default has been clearly claimed in Part IV of Section 7 application. Date on which default occurred has been mentioned as 30.09.2017. Part-IV of the application is as follows:-

“PART-IV

PARTICULARS OF FINANCIAL DEBT			
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	WCFBL A/C CC A/c 890130110000135	100,000,00
		WCFBL A/C CC A/c 880130110000033	700.000,00
		TERM LOAN A/C No.881070210000008	192,680,00
		TOTAL AMOUNT OF DEBT GRANTED (AS PER ANNEXURE-C)	992,680,00
		REFER ANNEXURE-D FOR LOAN SANCTION DOCUMENTS	
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED (ATTACH THE WORKING FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	PRINCIPAL OUTSTANDING	104,309,697

	INTEREST OUTSTANDING	114,800,00
	TOTAL OUTSTANDING	115,789,697
	DATE ON WHICH DEFAULT OCCURRED (THE WORKING FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM SHOWN IN ANNEXURE-E)	30-09-2017

20. When the Corporate Debtor had committed default which is reflected from bank statements which were produced by Financial Creditor before the Adjudicating Authority and even noticed in the minutes of the ZLCC meeting dated 13.09.2017 as well as in the CIBIL Report which was filed by the Financial Creditor, Adjudicating Authority did not commit any error in holding that the debt and default is proved against the Corporate Debtor which is more than Rs.1 Crore which is the threshold for filing Section 7 application.

21. Further submission of the Appellant is that in the cash credit account, amount of Rs.33,72,643/- and Rs.3,33,18,262.12/- were deposited between 01.09.2017 to 30.11.2018 which was sufficient deposit into the cash credit account for servicing the term loan facilities. The above submission of the Appellant was also raised before the Adjudicating Authority and considered. The Adjudicating Authority has held that cash credit accounts have no unutilized limits sufficient to cover the term loan instalments. Adjudicating

Authority has returned following findings in paragraphs 16.10, 16.15 & 16.16:-

“16.10. The Corporate Debtor's reliance on Cash Credit deposits is misplaced. The primary obligation was to repay the Term Loan, and the Applicant's practice of debiting Cash Credit Accounts was contingent on available limits. The Corporate Debtor provides no evidence that the Cash Credit Accounts had unutilized limits sufficient to cover the Term Loan instalments.

16.15. The Corporate Debtor's obligation was to ensure repayment of the Term Loan and maintain Cash Credit Accounts within sanctioned limits. The Applicant's practice of debiting Cash Credit Accounts was not mandatory, and the Corporate Debtor provides no evidence of sufficient unutilized limits.

16.16. The deposits (Rs.33,72,643.04/- and Rs.3,33,18,262.12/-) were insufficient to regularize the Cash Credit Accounts or clear Term Loan dues, as evidenced by the Applicant's statements. The default persists regardless of the Applicant's appropriation decisions.”

22. Deposit in cash credit are made by the Corporate Debtor after utilising the cash credit. Adjudicating Authority after considering the said having returned a finding that no evidence has been placed that cash credit account had unutilised limits sufficient to cover the term loan instalments, the above submission cannot be a ground to accept that there was no default in servicing the term loan by the Corporate Debtor.

23. Coming to the Certificate dated 17.04.2018 which was relied by the Appellant that both the accounts are operational. The Adjudicating Authority has noticed the said Certificate. In paragraph 16.5 of the impugned order, following has been observed:-

“16.5. The Corporate Debtor's reliance on the certificate dated 17.04.2018, stating the account was "operational," is misplaced. The Applicant clarifies that the certificate was issued at the Corporate Debtor's request and did not alter the NPA status. RBI guidelines permit limited transactions in NPA accounts under specific conditions, and the certificate's reference to unlimited transactions appears to be a standard format rather than a reclassification of the account as standard.”

24. Any Certificate issued by the Bank cannot alter the statement of accounts which were brought on the record by the Bank. As noted by the Adjudicating Authority, Certificate was issued at the Corporate Debtor's request and said Certificate request cannot alter the default or NPA status.

25. One more submission has been advanced by Counsel for the Appellant that Bank has withdrawn notice issued under Section 13(2) of the SARFAESI Act, 2002 which was directly linked with the NPA declaration. It is submitted that withdrawal of Section 13(2) notice signify the unsustainability of the NPA declaration. From the facts brought on the record, it is clear that the Bank had not withdrawn notice under Section 13(2) dated 06.11.2017 rather Bank had made a request to the Additional District Magistrate for permitting the Bank to return the application filed before the Additional District Magistrate

for taking possession of the assets of the Corporate Debtor. The letter dated 03.06.2019 written by the Bank to Additional District Magistrate, District Dewas has been brought on the record as Annexure A-20. The letter mentioned that Bank does not want to pursue the application for taking possession under Section 14 of the SARFAESI Act. Letter dated 03.06.2019 addressed to Additional District Magistrate, Dewas mentioned as follows:-

“BOI
Bank of India
VIJAY NAGAR BRANCH: UG 2, 3, 4, Om Gurudev Complex,
Scheme No. 54,
Opposite Rajshree Apollo Hospital, Vijay Nagar,
Indore-452 010, Phone: 0731-
2558159, 2551235,
Email: indorevijayngr.indore@bankofindia.co.in

Dated: 03/06/2019

*Hon'ble Additional District Magistrate,
Court District Magistrate, Dewas
District Dewas (MP)*

Subject: To withdraw the case presented by our office in your court.

Creditor- M/s M.P. Agro BRK Energy Foods Ltd.

*Mortgaged Property- 1. House No. 26, Bajar Nagar Colony,
Ward No. 9, Dewas*

*2. Lease hold commercial land and factory building, plot no.
71-D2, Industrial Area No. 1, A. B. Road, Dewas*

*3. Lease hold commercial land and factory building, plot no.
71-B & C, Industrial Area No. 1, A.B. Road, Dewas*

Case no. 0071/other miscellaneous/2019

Sir, It is a humble request to you that an application was submitted by us in your court under Section 14 for recovery of the loan of the bank from the debtor- M/s M.P. Agro BRK Energy Foods Ltd. M.P. Agro BRK Energy Foods Ltd. The account was for taking possession of the mortgaged property bearing Case No. 0071/Other Miscellaneous/2019.

Sir, we request you that we do not want to pursue this matter now. Therefore, please return the application filed by US (Case No. 0071/Other Miscellaneous/2019). Looking forward to your cooperation...Thank you very much.

Yours truly

Sd/-

Bank of India

Illegible”

26. The above letter, thus, was not withdrawal of the notice under Section 13(2). Notice under Section 13(2) was not withdrawn rather Bank wrote to the Additional District Magistrate that Bank is not interested in pursuing application for taking possession of the assets of the Corporate Debtor. The letter written by the Corporate Debtor is on record where Corporate Debtor after notice under Section 13(2) has been consistently writing to the Bank not to take any coercive action and suspend the action against the company. The notice under Section 13(2), thus, was never withdrawn and the letter dated 03.06.2019 written by the Bank to the Additional District Magistrate does not come to any aid to the Appellant. Section 13(2) notice dated 06.11.2017 clearly mentions overdue amount totalling to Rs.1,10,19,003/-. It is also relevant to notice that even after revocation of the earlier approved OTS dated 06.08.2019, Corporate Debtor again gave an OTS to the Bank on 08.01.2020 offering to revising the OTS offer to the extent of Rs.525 Lacs which OTS also thus, clearly acknowledged the over dues amount and default on the part of the Corporate Debtor. Consistent OTS proposal and prayer for re-structuring

the debt is ample proof of the default by the Corporate Debtor. Adjudicating Authority after the order of this Tribunal elaborately considered all the objections raised by the Corporate Debtor and considering all relevant materials has correctly come to the finding that debt and default more than a threshold amount is proved. We, thus, do not find any error in the order of the Adjudicating Authority admitting Section 7 application. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

NEW DELHI

29th August, 2025

Anjali