



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. C.P. (IB)/682(MB)2023

IN THE MATTER OF

Saraswat Co-Op. Bank Limited

... Petitioner

Vs

Aaacorp Exim India Private Limited

... Respondent

U/s 7 of the Insolvency & Bankruptcy Code, 2016

Order Delivered on 29.07.2026

CORAM:

MS. LAKSHMI GURUNG
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Appeared but not marked appearance

For the Respondent: Abhishek Adke and Deepali Joshi (VC)
 Adv. Alice Parakkott (PH)

ORDER

C.P. (IB)/682(MB)2023- The above CP is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member(Technical)

Sd/-
LAKSHMI GURUNG
Member(Judicial)

/Ziyaul/



**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V**

CP (IB) NO. 682 OF 2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule of the insolvency and bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF

**Asset Reconstruction Company (India)
Limited**

Having its registered office at:

The Ruby, 10th Floor, 29, Senapati Bapat
Marg, Dadar (W), Mumbai 400028

**... Petitioner/Financial
Creditor**

Versus

AAACORP EXIM India Private Limited
*(formerly known as M/s. Aishwarya Plast
Exports Pvt. Ltd)*

Having its registered office at:

C-206, Ghatkopar Industrial Estate, L.B.S.
Marg, Near Anacin Company, Ghatkopar
(West), Mumbai – 400086

**... Respondent/Corporate
Debtor**

Order Delivered on: 29.07.2026



Coram:

Ms. Lakshmi Gurung
Member (Judicial)

Sh. Charanjeet Singh Gulati
Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: - Adv. Aayush Kothari a/w. Adv. Nikhil Rajani &
Ms. Mrunalini Deshpande i/b. M/s. V. Deshpande & Co.
(PH)

For the Respondent: - Adv. Pulkit Sharma, Abhishek Adke, Alice Parakkott
and Deepali Joshi (VC)

ORDER

CP (IB) NO. 682 OF 2023

1. The Present Company Petition is filed on 03.07.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**'IBC'/'the Code'**) by Saraswat Co-operative Bank Limited for initiating Corporate Insolvency Resolution Process (**'CIRP'**) against AAACORP EXIM India Private Limited (**'Corporate Debtor'/'Respondent'**) for an amount of **Rs. 25,93,67,117.90/-** (Rupees Twenty-Five Crore Ninety-Three Lakh Sixty-Seven Thousand One Hundred Seventeen and Ninety Paise Only) as on 31.12.2022. The amended date of default is 05.11.2018 (i.e., 3 months prior to date of Classification as NPA i.e., 01.03.2019).
2. Vide order dated 25.07.2024 passed in IA No. 3671/2024, this Tribunal allowed the substitution of the original Petitioner, Saraswat Co-operative Bank Limited, with Asset Reconstruction Company Ltd. (hereinafter referred to as the **"Petitioner"/'Financial Creditor'**), pursuant to the Assignment Agreement dated 21.03.2024, whereby the entire debt arising from the various financial facilities granted by Saraswat Co-operative Bank Limited was assigned to Asset Reconstruction Company Ltd.



Brief Facts as per the Petition and the documents annexed thereto:

3. The Corporate Debtor in or about July, 2008 approached the Petitioner for financial facilities. The Petitioner granted /sanctioned and disbursed the credit facilities of Rs. 1.85 Crores upon the terms and conditions under Sanction letter dated 28.07.2008 bearing *Ref No. SCB: Z-II:27: SYN:679*. *Copy of Sanction letter dated 28.07.2008 is annexed as Exhibit 'H-1'.*
4. It is submitted that, the Petitioner granted/sanctioned and disbursed additional credit facility from Rs. 1.85 Crores to Rs. 3.55 Crores under Sanction Letter Dated 31.08.2010 bearing Ref No. SCB: VSME:2:AVP:912. Further, under Sanction Letter dated 11.03.2011 bearing Ref No. SCB: VSME:2: TMD:2408 of the Petitioner, the Corporate Debtor was allowed Utilization of Packing credit / post shipment limit by restricting Letter of Credit cum buyers credit upto Rs. 47.50 lakhs upon the terms and condition therein mentioned. *Copy of Sanction letters dated 31.08.2010 and 11.03.2011 are annexed as Exhibit 'I-1' and 'J-1', respectively.*
5. In addition to the existing credit facilities, the Corporate Debtor availed One-Time Bank Guarantee for Rs. 2.5 Lakhs under Sanction Letter dated 28.02.2012 bearing Ref No. SCB: VSME:3: TMD:2095. Furthermore, Corporate Debtor sought further credit facilities of Rs. 6.17 Crores from the Petitioner which was sanctioned/granted and disbursed by Sanction letter dated 31.01.2013 bearing Ref No. SCB: VSME:4: TMD:2169. *Copy of Sanction Letters dated 28.02.2012 and 31.01.2013 is annexed as Exhibit 'K-1' and 'L-1', respectively.*
6. The Corporate Debtor sought renewal/review of the existing credit facilities. The existing facilities (funds based and non-funds based) were enhanced to Rs. 25.9349 Crores by Sanction Letter dated 15.02.2014 bearing Ref No. SCB: VSME:5:TMD:2539. Furthermore, the existing credit facilities were



renewed/reviewed upon Corporate Debtors' request by Sanction Letter dated 14.12.2015 bearing Ref No. SCB: VSME:7: TMD:1131. The existing facilities stood at Rs. 18.3401 Crores. *Copy of Sanction Letters dated 15.02.2014 and 14.12.2015 is annexed as Exhibit 'M-1' and 'N-1', respectively.*

7. It is submitted that by Sanction letter dated 14.03.2017 bearing Ref No. SCB:VSME:8:TMD:1397, the Corporate Debtor was being granted and sanctioned renewal / review of existing credit facilities with additional facilities of Rs. 23.2590 Crores. Additionally, by Sanction letter dated 20.03.2019 bearing Ref No. SCB:VSME:10:VGT:1692, the existing facilities enhanced to Rs. 25.5569 Crores. *Copy of Sanction Letters dated 14.03.2017 and 20.03.2019 is annexed as Exhibit 'O-1' and 'P-1', respectively.*
8. It is submitted that the total amount in default with respect to the aforesaid financial facilities was Rs. 21,24,58,850.46 as on 30.10.2019 with a contingent liability under the Bank Guarantee limits is of Rs. 22,00,000/- as of 30.10.2019 when the Financial Creditor in view of the persistent default in repayment and as the accounts become irregular have proceeded to classify the account as Non-Performing Assets w.e.f. 30.09.2019.
9. Thereafter, the notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 31.10.2019 where the Petitioner has called upon Corporate Debtor and its Guarantors to pay the then outstanding amount of Rs.21,24,58,450.48 due and payable as on 30.10.2019 with further interest at the contractual rate along with cost, charges and expenses till payment and or realization. By the said notice, the Financial Creditor has also reserved its rights to call back the amount under the Bank Guarantee limits in the event the same is invoked by



its beneficiary. *Copy of notice dated 31.10.2019 under Section 13(2) of the SARFAESI Act, 2002 is annexed as Exhibit 'Q'.*

10. It is submitted by the Petitioner that the Corporate Debtor by its Advocate's letter dated 03.01.2020, addressed on their behalf reiterated that its account is facing induced overdues in the non-funded portion constituting LC of approx. Rs. 800 Lakhs and assured to regularized the said position and also reiterate their offer negotiation of settlement in the account maintained by this Financial Creditor in their other related Suit account of the Corporate Debtor. *Copy of reply dated 03.01.2020 by the Corporate Debtor is annexed as Exhibit 'R'.*
11. Subsequently, the Petitioner issued Recall Notice dated 19.01.2022, whereby, proceeded to recall the entire loan facility from the Corporate Debtor being a Principal Borrower and its Guarantors to pay to the Applicant the then outstanding amount of Rs. 23,84,45,444.00 due and payable as on 17.01.2022. In reply to the aforesaid Recall Notice, the Corporate Debtor through its Advocate letter dated 10.02.2022 reiterated that as the portion of industrial land admeasuring at about 260012.08sq.mtrs is landlocked and hence they are facing major impediment and they are expecting to get the same resolved by increasing their liability towards the Financial Creditor which their other bankers is proposed to take over the said additional liability and thus submitted the said proposal for the consideration of the Financial Creditor. *Copy of recall notice dated 19.01.2022 by the Petitioner and letter dated 10.02.2022 is annexed as Exhibit 'T' and 'U', respectively.*
12. Further, vide email dated 12.08.2022, the Corporate Debtor offered their proposal for restructuring of their total outstanding whereby they have admitted and acknowledged and offered that the total outstanding as on 30.09.2021 is to be restructured at Rs. 22.50 Crores and proposes to pay in



36 EMI in the restructuring by making bullet payment of Rs. 62.50 Lakhs by 1st week of every month commencing from October, 2022 and Rs. 52,13,125/- was proposed to release in PC operation towards transaction under deemed export and suggested that an amount of Rs. 10,36,875/- to be adjusted towards cutback which is equivalent to 6.6%. By the said restructuring offer, the Corporate Debtor has offered that at the end of 36 months, total loan can be restructured for the principal outstanding of. Rs. 18.76 Crores, the monthly disbursal of Rs.52,13,125/- was sought as packing credit finance under PCFC with prescribed monthly cost and thus requested to kindly consider the restructuring proposal for an amicable restructuring of the outstanding debts. Subsequently, the Corporate Debtor by its letter dated 17.10.2022 once again suggested that the total outstanding balance amounting to Rs. 18.76 Crores to be converted into Term Loan Facility as OTS settlement amount at 6% in reducing balance method and agrees to pay the same by November, 2029. *Copy of the email dated 12.08.2022 and letter dated 17.10.2022 is annexed as Exhibit 'V' and 'W', respectively.*

13. It is submitted that vide its email dated 12.08.2022 and subsequent letter dated 17.10.2022, the Corporate Debtor not only admits and acknowledges their liability but have suggested to restructure the same and expressed their intention to make the payment. By virtue of such expressed admission, the limitation, if any, stand extended.
14. The Petitioner states that vide its letter dated 31.10.2022 it was conveyed that the proposal for restructuring of the credit facilities as detailed by the Corporate Debtor in its letter dated 17.10.2022 is not acceptable to the Financial Creditor and hence the same stand rejected and the Corporate Debtor was called upon to pay forthwith the outstanding amount of Rs. 23.84 Crores as called for in the Recall Notice dated 19.01.2022 with up-to date



interest and other charge payable there under. *Copy of letter dated 31.10.2022 is annexed as Exhibit 'X'.*

15. It is stated that as on 31.12.2022, the total amount in default with respect to the aforesaid financial facilities is Rs. 25,93,67,117.90 with interest at the contractual rate from 01.01.2023 till the date of filing of the Application on 03.07.2023 and thereafter till payment and or realization. The computation of the Amount in default and interest calculation is annexed as Exhibit 'B'.
16. As the outstanding debt remained unpaid, the present application under Section 7 of the Code has been filed.

Reply of the Corporate Debtor:

17. The Corporate Debtor is a registered, multi-locational MSME engaged in the business of manufacturing recycled plastic crums/agglomerates/granules/refuse bags/extrudes and moulded goods of virgin materials. The Corporate Debtor is a 100% export-oriented unit operating under Letter of Permission issued by the Office of the Development Commissioner, Kandla Special Economic Zone bearing no. KFrZ/IA/1697/97/10471 and Letter of Permission issued by the Office of the Development Commissioner, SEEPZ, Special Economic Zone bearing no. PER/SEEPZ-SEZ/EOU/04/06/2011-12/16487 with an obligation to achieve Positive Net Foreign Exchange Earnings ("NFFE").
18. Saraswat Co-operative Bank Limited provided fund-based and non-fund-based facilities to the Corporate Debtor and is governed by the Saraswat Bank Code of Bank's Commitment to Micro and Small Enterprises ('MSE Code').
19. The Corporate Debtor submits that in order to meet its business requirements and fulfil its export obligations, the Corporate Debtor had



established multiple banking arrangements with the Saraswat Co-operative Bank Limited as well as other banks, including State Bank of India, Union Bank of India and Standard Chartered Bank. Pursuant to sanction letters issued by these banks, the Corporate Debtor was granted both fund-based (term loans, cash credit and overdraft) and non-fund-based facilities (letters of credit and bank guarantees).

20. It is submitted that, considering the Corporate Debtor's performance during FY 2018–19 and its net worth of Rs. 4,348.80 lakhs, multiple Banks, namely, State Bank of India, Union Bank of India, Standard Chartered Bank, and Saraswat Co-operative Bank Limited, sanctioned Rs. 118,27,69,000/- in favour of the Corporate Debtor for FY 2019–20.
21. It is submitted that the Corporate Debtor had been availing fund-based and non-fund-based credit facilities from Saraswat Co-operative Bank Limited since 2004. By sanction letter on 20.03.2019, The sanctioned limits were periodically renewed and were enhanced by Rs. 5 crores, resulting in total fund-based and non-fund-based facilities of Rs. 2,555.69 lakhs, including non-fund facilities for Letters of Credit with interchangeability with cash credit.
22. It is submitted that, relying on the Sanction Letter and the MSE Code, the Corporate Debtor utilised the sanctioned non-fund facilities for import Letters of Credit in accordance with its established business model. As on 30.06.2019, approximately 75% of the sanctioned non-fund facilities had been utilised, and, at the request of Saraswat Co-operative Bank Limited, the Corporate Debtor furnished a payment plan vide email dated 18.06.2019 for repayment of the utilised Letter of Credit facilities from the expected remittance of USD 279,000.



23. It is submitted that the Corporate Debtor applied to Saraswat Co-operative Bank Limited on 26.06.2019 and 01.07.2019 for opening two import Letters of Credit in favour of AAA Poly Arabia FZC. However, the Bank neither opened the Letters of Credit nor intimated the Corporate Debtor of its decision not to do so. Thereafter, owing to the Bank's failure to issue the committed Letters of Credit and the inability to secure alternate banking facilities at short notice, the Corporate Debtor was compelled to utilise its customer receivables to make payment at sight for the release of live cargoes instead of availing the intended credit facilities.
24. It is submitted that the Corporate Debtor repeatedly requested Saraswat Co-operative Bank Limited to open the pending import Letters of Credit, remove the alleged arbitrary hold on approximately 25% of the sanctioned non-fund facilities, which was stated to be contrary to the Bank's obligations, and communicate the reasons for its refusal to issue the said Letters of Credit.
25. It is submitted that Saraswat Co-operative Bank Limited, while enhancing the credit facilities by Rs. 5 crore, appropriated Rs. 1.5 crore towards the liabilities of M/s J.J. Poly Impex Pvt. Ltd., is a separate legal entity (Sister concern of the Corporate Debtor). The Corporate Debtor further submitted that, after it declined to avail further enhanced facilities, the Bank withheld the sanctioned non-fund facilities and disrupted its banking operations. By letter dated 08.08.2019, the Corporate Debtor sought clarification for the Bank's refusal to issue the import Letters of Credit despite the applications being within the sanctioned limits and highlighted the adverse impact on its business operations.
26. It is submitted that, by letters dated 30.08.2019 and 21.09.2019, Saraswat Co-operative Bank Limited acknowledged the Corporate Debtor's



communications and agreed to hold a "without prejudice" meeting but did not provide any reasons for its refusal to open the requested import Letters of Credit. In response, by letter dated 11.09.2019, the Corporate Debtor reiterated its grievance, offered to furnish its balance sheet to establish its creditworthiness, and proposed a meeting on 24.09.2019.

27. The Corporate Debtor further submitted that the Bank insisted on reduction of the alleged dues of M/s J.J. Poly Impex Private Limited as a pre-condition for opening the Letters of Credit, which the Corporate Debtor objected to on the ground that M/s J.J. Poly Impex Private Limited was a separate legal entity and its liabilities could not be fastened upon the Corporate Debtor.
28. The Corporate Debtor submits that it voluntarily deposited an amount of Rs.45,00,000/- on 30.09.2019 in the Corporate Debtor's account with Saraswat Co-operative Bank Limited towards settling its servicing costs against funded facilities. Vide a letter dated 30.09.2019, the Corporate Debtor once again requested the Saraswat Co-operative Bank Limited to reinstate its sanctioned yet blocked non-fund facilities.
29. It is submitted that, Saraswat Co-operative Bank Limited wrongly classified the Corporate Debtor's account as an NPA with effect from 30.09.2019 and issued a notice dated 31.10.2019 under Section 13(2) of the SARFAESI Act.
30. It is submitted that Saraswat Co-operative Bank Limited communicated the reasons for withholding the sanctioned non-fund facilities only on 01.11.2019, nearly four months after blocking the facilities. The Corporate Debtor contended that the reasons were an afterthought, as there was no default or overdue when the requests for the Letters of Credit were made. The Corporate Debtor thereafter replied to the Bank's communications and the notice issued under Section 13(2) of the SARFAESI Act and also lodged



a complaint before the RBI Ombudsman on 26.12.2019 alleging wrongful classification of its account as an NPA.

31. It is submitted that the Corporate Debtor challenged the classification of its account as NPA dated 30.09.2019 by filing Commercial Suit No. 151 of 2023 before the Hon'ble High Court of Bombay, seeking, inter alia, damages of Rs. 45 crores. During the proceedings, Saraswat Co-operative Bank Limited produced the purported RBI Inspection Report in a sealed cover; however, a copy thereof was not furnished to the Corporate Debtor. It is contended that the denial of access to the said report deprived the Corporate Debtor of an opportunity to rebut its contents and violated the principles of natural justice.
32. It is further submitted that Saraswat Co-operative Bank Limited filed the present petition on 17.04.2023. Thereafter, by way of IA No. 3713/2024, the Applicant sought amendment of the alleged date of NPA from 30.09.2019 to 01.03.2019, the date of default to 05.11.2018, and the outstanding dues as on the alleged NPA date (Rs. 15,58,96,700.04/-), solely on the basis of the RBI Inspection Report dated 01.01.2020. The Corporate Debtor contended that the Applicant had initially justified the NPA classification on the basis of RBI guidelines but subsequently relied upon the alleged RBI Inspection Report, thereby taking inconsistent stands.
33. It is further submitted that this Tribunal, vide order dated 05.02.2026, allowed the amendment application. Aggrieved thereby, the Corporate Debtor preferred an appeal before the Hon'ble NCLAT and thereafter before the Hon'ble Supreme Court. Vide order dated 27.05.2026 passed in Civil Appeal No. 8028 of 2026, the Hon'ble Supreme Court, while declining to interfere with the order permitting the amendment, clarified that allowing the amendment did not amount to acceptance of the Applicant's contention



regarding the dates of NPA or default and that all contentions on those issues remained open for adjudication.

34. The Corporate Debtor further submitted that the amended Company Petition fundamentally alters the basis of the proceedings by retrospectively changing the alleged date of default, the date of NPA and the outstanding dues, thereby introducing a new cause of action. It is contended that, if the alleged date of default is taken as 05.11.2018, the present petition, having been filed on 17.04.2023, nearly five years thereafter, is barred by limitation and is, therefore, not maintainable.
35. The Corporate Debtor further submitted that the actions of Saraswat Co-operative Bank Limited adversely affected its business operations despite it being financially sound, with a net worth of Rs. 4,348.80 lakhs as on 31.03.2019.
36. It is submitted that the alleged debt is not due and payable and there is no default by the Corporate Debtor. It is therefore just and necessary to dismiss the Company Petition.
37. The Corporate Debtor relies upon the following judgments of the Hon'ble Supreme Court and the Hon'ble NCLAT to contend that the proposed amendment withdraws the earlier pleadings and admissions and sets up an entirely new case and that, while the law permits amendments in aid of the existing cause of action, it does not permit a Financial Creditor to alter the fundamental particulars of a petition under Section 7 of the Code:
 - i. *Dena Bank v. C. Shivakumar Reddy* [(2021) 10 SCC 330]
 - ii. *Vasavi Power Services Pvt. Ltd. v. Canara Bank Ltd.*, [2025 SCC OnLine NCLAT 840]



Analysis and Findings

38. Heard Ld. Counsel for the parties and perused the record.
39. As matter of facts, the Saraswat Co-operative Bank Limited sanctioned and disbursed various credit facilities to the Corporate Debtor from time to time, which were subsequently enhanced and renewed. The aggregate sanctioned credit facilities were ultimately enhanced to Rs. 25.55 Crores under the Sanction Letter dated 20.03.2019.
40. The Petitioner's case is that it sanctioned and disbursed various financial facilities to the Corporate Debtor, which were subsequently enhanced, renewed, and reviewed, with the aggregate sanctioned credit facilities ultimately standing at Rs. 25.5569 Crores. Upon persistent defaults, the loan account was classified as NPA with effect from 01.03.2019 (revised from 30.09.2019 pursuant to the RBI Inspection Report dated 01.01.2020), followed by issuance of a notice under Section 13(2) of the SARFAESI Act on 31.10.2019 and a recall notice on 19.01.2022. The Petitioner further contends that the Corporate Debtor acknowledged its liability through various communications in year 2022, proposing restructuring/settlement, thereby extending the period of limitation.
41. *Per contra*, the Corporate Debtor contends that the Financial Creditor arbitrarily withheld the sanctioned facilities, particularly the import Letters of Credit, despite the same being within the sanctioned limits, thereby severely affecting its business operations and export obligations. It is further contended that the Applicant wrongfully classified the loan account as NPA and subsequently sought to alter the date of NPA from 30.09.2019 to 01.03.2019 on the basis of the alleged RBI Inspection Report dated 01.01.2020, a copy of which was not furnished to the Corporate Debtor. It is further contended that the amendment changing the dates of default and



NPA fundamentally alters the basis of the present proceedings and renders the Petition barred by limitation.

Determination of the Debt

42. From the submissions of the parties, it is an admitted position that the Petitioner sanctioned and disbursed various financial facilities to the Corporate Debtor, which were ultimately enhanced to an aggregate sum of Rs. 25.5569 Crores under the Sanction Letter dated 20.03.2019. It is further the Petitioner's case that an amount of Rs. 25,93,67,117.90/- was outstanding as on 31.12.2022. The Petitioner has placed on record the sanction letters and statement of accounts to establish the existence of the financial debt. Neither the Corporate Debtor has disputed the execution of the sanction letters nor the statement of accounts.
43. Additionally, the Corporate Debtor, vide email dated 12.08.2022, acknowledged its outstanding liability and proposed restructuring of the total outstanding dues as on 30.09.2021, offering to repay the same in 36 monthly instalments commencing from 01.10.2022. Further, vide letter dated 17.10.2022, the Corporate Debtor proposed that the outstanding balance of Rs. 18.76 Crores be converted into a Term Loan Facility under a One-Time Settlement (OTS) at 6% on a reducing balance basis, with repayment by November 2029. The said proposal was, however, rejected by the Petitioner vide letter dated 31.10.2022.
44. In the facts of the case it is clear that the Petitioner has disbursed Financial facilities and the Corporate Debtor has admitted the same through their offer of One Time Settlement dated 17.10.2022. In the view of the above facts, 'Debt' within the meaning of Section 5(8) of the Code is established.



Date of Default and Determination of Default

45. Having determined that a debt is established, we now proceed to discuss the date of default in order to examine whether the Corporate Debtor had committed a 'Default' within the meaning of Section 3(12) of the Code on the said date.
46. As regards to the date of default, initially the account of the Corporate Debtor was classified as NPA on 30.09.2019 and therefore, the date of default was stated as 30.09.2019. Subsequently, on the basis of the RBI Inspection Report dated 01.01.2020, the Petitioner sought to revise the date of NPA to 01.03.2019 and the date of default to 05.11.2018 by IA No. 3713/2024, which was allowed vide order dated 05.02.2026.
47. The order in IA No. 3713/2024 was affirmed by the Hon'ble NCLAT in Comp. App. (AT) (Ins.) No. 528 of 2026, vide order dated 27.03.2026. Subsequently, the Hon'ble Supreme Court also affirmed the said order vide order dated 27.05.2026 in Civil Appeal No. 8028 of 2026, however, observed that *"It will be open for the appellant to raise all contentions when the matter is taken up before the National Company Law Tribunal as also before the High court in the Commercial Suit"*.
48. During the course of arguments, Ld. Counsel Shri Pulkit Sharma for the Corporate Debtor contended that the amendment to the date of default is based on the RBI Inspection Report, which has not been placed on record. It was further contended that, in the absence of the said report, the Corporate Debtor was deprived of an opportunity to make submissions with respect to its contents and findings. In this regard, it is pertinent to note that, the amendment of the date of default has been sought by the Petitioner upon the RBI Inspection Report dated 01.01.2020. Further, the validity or correctness of the RBI Inspection Report cannot be assailed before this Adjudicating



Authority. It is also an admitted fact that the inspection of the Corporate Debtor's account by the RBI was undertaken pursuant to a complaint lodged by the Corporate Debtor itself. Furthermore, the Corporate Debtor has been granted fullest opportunity to make their submission with respect to the amendment of Date of Default. Accordingly, the Respondent contention regarding change in Date of Default does not confers any merit.

49. The Corporate Debtor has contended that the amendment of the date of default amounts to introducing a new cause of action. In support of the said contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Dena Bank v. C. Shivakumar Reddy*** (2021) 10 SCC 330 and on the judgment of the Hon'ble NCLAT in ***Vasavi Power Services Pvt. Ltd. v. Canara Bank Ltd.*** 2025 SCC OnLine NCLAT 840.
50. In respect of such contention and reliance, it is stated that, pursuant to the amendment allowed in IA No. 3713/2024, the amended petition was duly served upon the Corporate Debtor. The Corporate Debtor was afforded adequate opportunity to file an amended reply, which it did on 25.06.2026. Also, it is not the case of the Corporate Debtor that the amended date of default is factually incorrect. Therefore, in the aforesaid circumstances, the amendment of the date of default and the NPA date, resulting in the consequential amendment of the Petition, cannot be said to have caused any prejudice to the Corporate Debtor.
51. Therefore, for the purposes of this Company Petition, the date of default is taken as 05.11.2018 and NPA on 01.03.2019, and therefore, it is imperative to examine whether the default under Section 3(12) of the Code, had occurred on this date of default or not.
52. It is an undisputed fact that, vide Sanction Letter dated 20.03.2019 bearing Ref. No. SCB: VSME:10: VGT:1692, the Petitioner renewed/reviewed the



existing credit facilities and sanctioned aggregate credit facilities of Rs. 25.5569 Crores in favour of the Corporate Debtor. Upon perusal of the Sanction Letter dated 20.03.2019, it is relevant to extract relevant portion of the said letter which is as under:

“With reference to your application for credit facilities and subsequent discussions with your representatives, we are pleased to inform you that your application has been sanctioned by the BOARD OF DIRECTORS of our Bank at its meeting held on 19.03.2019.

...

Review: *Review/Renewal of the existing credit facilities limit has been recorded on the basis of audited accounts for the year ended 31.03.2018.*

Subject to: *Next renewal by 31.12.2019 on the basis of Audited accounts for the year ending 31.03.2019. You should submit the Audited Financial Accounts of 31.03.2019 to the Bank on or before 31.10.2019. Non-submission of the same will attract 2% penal interest over prescribed rate of interest, which will not be revoked.*

Requests: *Your following requests are considered.*

- 1. To allow to continue Packing Credit to Cash Credit interchangeability upto Rs.300 lacs and Letter of Credit to Cash Credit interchangeability to the extent of 50% of limits making total Cash Credit limits of Rs.1137.50 lacs.*
- 2. To allow to consider the margin on stocks and debtors at 30% and debtors upto 180 days for calculation of drawing power*
- 3. To allow to consider stock in transit and advance paid to supplier for calculation of drawing power at 30% margin*
- 4. To note devolvment of letter of credit since 05.11.2018.*
- 5. To sanction New Term Loan of Rs.500 lacs at Nil margin*
- 6. To charge rate of interest at PLR - 6.40% p. a. i. e. 8.00% p. a. for Cash Credit and New Term Loan.*
- 7. To continue the existing concessional rates of forex transactions*
- 8. To refund excess charges recovered by way of penal*



interest.

9. *To continue –*

- a. The collateral security at existing 27.74% as against required 50%*
- b. To allow extending entire export finance against the documents dispatched directly to the overseas buyers including associate concerns*
- c. To waive the condition of buyer-wise ECGC cover.*
- d. The sanction of not insisting for booking forward cover against Buyer's Credit and Import Letter of Credit as and when availed*

10. *To waive processing fees for the current proposal.*

53. It is noted that, as recorded in the Sanction Letter dated 20.03.2019, the requests made by the Corporate Debtor at Serial Nos. 1 to 7 and 9 to 10 were either noted or granted by the Financial Creditor, while the request at Serial No. 8 was declined.

54. Further, it is apposite to extract the relevant portion of the Term Loan and Common terms and conditions for all facilities, forming part of Annexure I(A) and Annexure II(A) to the Sanction Letter dated 20.03.2019, respectively, which is as under:

Term Loan

“4. Period & Repayment: New Term Loan of Rs.500.00 lacs to be repaid in 96 months with a moratorium period of 6 months from the date of first disbursement as under:

Rs.5,50,000/- x 88 monthly instalments

Rs.8,00,000/- x 2 monthly instalments

5. Period & Repayment: Interest to be paid separately within 7 days of debit to the account. No moratorium for payment of interest. The Term Loan facility will be reviewed by the Bank every year

...

Common Terms and Conditions for all Facilities

2. General Terms & Conditions:



2.2 Exchange of information to be shared with Banks as per RBI Guidelines

...

2.5 Validity period of Sanction: The sanction of the advance will be valid for three months from the date of its sanction i. e. upto 18.06.2019.

...

***2.21 Disclosure of Default:** In case the borrower fails to pay the Bank's dues within the stipulated time and/or the account of the borrower becomes Non-Performing Asset as per the Reserve Bank of India norms, the Bank will be at liberty to publish the name and address of the borrower along with details of outstanding dues payable by such borrower to the Bank and also other relevant details in newspapers and other publicity media. Bank is also at liberty to share the data of suit filed defaulters with Credit Information Bureau (India) Ltd (CIBIL)."*

55. Upon perusal of the aforesaid Sanction Letter, it is evident that the existing credit facilities of the Corporate Debtor were reviewed and renewed on the basis of the audited financial statements for the year ended 31.03.2018. The Petitioner also considered the requests made by the Corporate Debtor and sanctioned a fresh Term Loan of Rs. 500 lakhs, thereby enhancing the aggregate credit facilities to Rs. 25.55 crores. Additionally, the Sanction Letter does not record that the prior existing facilities had become overdue, irregular, or had been recalled prior to such renewal. Also, Clause 2.21 of the Common Terms and Conditions contemplates that, in the event of a future default resulting in classification of the account as an NPA in accordance with RBI norms, the Bank would be at liberty to take the measures specified therein.

56. In view of above facts, it only could be concluded that the classification of Corporate Debtor's account as an NPA 01.03.2019, was subsequently regularised vide the Sanction Letter dated 20.03.2019 which reviewed/renewed the existing credit facilities and sanctioned fresh credit facilities to



the Corporate Debtor. Therefore, as on 20.03.2019, there was no default which could be said to be existing on the part of the Corporate Debtor. The renewal/review of the existing credit facilities and the fresh sanction of credit facilities clearly indicate that the account of the Corporate Debtor was standard account and no default could be said to exist prior to such sanction.

57. In the aforesaid circumstances, the material on record would lead to the conclusion that no default could be said to be existing as on 05.11.2018 which is date of default as per the Petition., and accordingly, the Petitioner has failed to establish that the Corporate Debtor was in default as on 05.11.2018.

58. In similar set of facts, the Co-ordinate bench (NCLT, Mumbai - I) in ***IIFL Home Finance Limited v. Bombay ISLE Developers Private Limited***, CP (IB) No. 352/(MB)/2024 dated 03.06.2026, 1held that a petition under Section 7 of IBC based on an old NPA/default is not maintainable after account regularisation unless a fresh default is expressly pleaded. The relevant observations are reproduced below:

“11) The material available on record demonstrates that there was no Default or NPA as on 03.02.2018 as alleged. Letter dt. 03.04.2018 confirms that the accounts were standard and regularised. There was fresh disbursal of Loan on 03.04.2018 and thereafter. Therefore, the Petitioner cannot contend that the account was NPA and there was default.

...

17) A Letter dt. 03.04.2018, confirming that the Account is standard and regularised, therefore, once the Account is regularised, the default committed on 3.2.2018 as claimed by way of amendment by the application does not survive.

18) If the Corporate Debtor commits another default after the account has been regularised, a fresh Default occurs, and an application may lie basis such default, but such date of



default has to be expressly pleaded by the applicant in the application. The Financial Creditor must file the Section 7 Petition using this new date of default, not the historical one. A Financial Creditor cannot base its Section 7 Petition on a historical Default date that no longer exists. Doing so makes the Petition technically flawed and subject to dismissal by this Adjudicating Authority.

[Bold for Emphasis]

59. Therefore, once a loan account has been regularised, the earlier default ceases to survive and any subsequent default constitutes a fresh cause of action. In such a situation, the Financial Creditor is required to specifically plead the fresh date of default in the application and cannot maintain a petition solely on the basis of a historical default that has ceased to exist. Accordingly, once the credit facilities were renewed/reviewed and fresh facilities were sanctioned on 20.03.2019, the earlier alleged default dated 05.11.2018 cannot constitute the basis for maintaining the present Petition, as there is no existence of a default as on the 05.11.2018, in terms of Section 3(12) of the Code.

60. We are conscious of the judgements of Hon'ble NCLAT including in the case of ***Rajendra Narayan Panda V. Shri Mangesh Vittal Kekre (IRP) and Anr.***, (2026) ibclaw.in 181 NCLAT dated 13.02.2026, where the Hon'ble NCLAT at Para 54 have observed as under:

“54. We also observe that at the time of admission of a Section 7 petition Adjudicating Authority is only required to ascertain the existence of a debt and default. Debt and default are sine qua non and only condition for admitting an application under Section 7 of the Code...”

[Bold Emphasis]

61. However, as elaborated in paragraph 46,47,50 and 51 above, the Financial Creditor itself has amended the Date of Default. Therefore, the Adjudicating



Authority has to examine the default on the date as provided by the Petitioner. Further, in the Sanction Letter dated 20.03.2019, the Financial creditor granted and noted the requests made by the Corporate Debtor at Serial Nos. 1 to 7 and 9 to 10, while only declining the request at Serial No. 8. Also, as per Clause 2.5 of the General Terms and Conditions of the Sanction Letter dated 20.03.2019, the sanction remained valid for a period of three months, i.e., upto 18.06.2019. Accordingly, the account of the Corporate Debtor was regularized on 20.03.2019. In other words, no default existed even on 18.06.2019.

62. Therefore, in view of the facts and circumstances of the present case and the discussions hereinabove, since default remains unestablished as on the date of default, i.e., 05.11.2018, the present petition under Section 7 of the Code is not maintainable. However, this will not preclude the Financial Creditor from taking any proceeding in accordance with law for any default that may arise as on any other Date of Default. Accordingly, the Company Petition No. 682 of 2023 is **rejected**.

Sd/-

Charanjeet Singh Gulati

Member (Technical)

Saumya, LRA

Sd/-

Lakshmi Gurung

Member (Judicial)