

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) 699/MB/2023**

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*In the matter of*

**Canara Bank**, having its Head Office at: -  
112, Jayachamarajendra Road, Bangalore-  
560002 and Having its Branch Office at  
Specialised Asset Recovery Management  
Branch, 1259, Renuka Complex, 01<sup>st</sup> Floor,  
Jungli Maharaj Road, Pune-411004.

**..... Applicant/ Financial  
Creditor**

**Versus**

**M/s. Daulat Agro (India) Pvt Ltd.**  
Mauni Complex, Vidyanagar,  
Ap Sangamner, Ahmednagar-422605.

**..... Corporate Debtor**

**Order Delivered on :- 15.02.2024.**

*Coram:*

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

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*Appearances (Hearing in Hybrid Mode):*

For the Financial Creditor: Counsel P Saurabh Mandit (appeared through  
Video Conferencing)

For the Corporate Debtor: Adv. Amit Tungare.

**ORDER**

*Per: - Kuldip Kumar Kareer, Member (Judicial)*

1. This Company Petition is filed by **Canara Bank** (hereinafter referred to as "Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. **Daulat Agro (India) Private Limited** (hereinafter referred to as "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as the Corporate Debtor has committed a **default of INR 87,18,77,667.07/-** (Rupees Eighty-Seven Crores, Eighteen Lakhs, Seventy-Seven Thousand, Six Hundred and Sixty-Seven Only) in repayment of outstanding debt. According to the Applicant, the default occurred in the month of October of the year 2014.

**Facts of the Case as pleaded by the Financial Creditor in its Application u/s 7 are briefly stated hereunder:**

2. The Sanction Letter dated 01.06.2011 bearing reference no. DAULAT/CR-1/SME/2011 sanctioned a term loan of Rs. 21.95

crores. Thereafter, the Term Loan Agreement dated 29.09.2011 was executed between the Financial Creditor and the Corporate Debtor and the sanctioned loan was fully disbursed vide Loan Account No. 3231773000001.

3. It is further submitted that vide Letter dated 06.12.2013 bearing Reference No. MS: Daulat:06:2013, term loan of Rs. 5 crores and Open Cash Credit of Rs. 4 crores were sanctioned. The amount of Term Loan disbursed vide Loan Account No. 3231773000008 is Rs. 3,43,48,938.00/-. The Term Loans have been secured by Hypothecation, Mortgage by Deposit of Title Deeds and Guarantees executed by the Corporate Debtor in favour of the Financial Creditor.
4. As the Corporate Debtor stopped repaying debts since October, 2014 and the loan account of the Corporate Debtor was classified as Non-Performing Asset on 27.01.2015, the Financial Creditor issued a Demand Notice dated 16.07.2015 u/s 13(2) of the SARFEASI Act, 2002 calling upon the Corporate Debtor to repay the loan liability outstanding as on 16.07.2015 of INR 30,75,79,156.87/- within 60 days from the date of receipt of the aforesaid notice. However, as the Corporate Debtor failed to comply with the aforesaid Demand Notice, the Financial Creditor filed an Original Application No. 133 of 2016 against the Corporate Debtor by the Applicant before the Hon'ble Debts Recovery Tribunal, Aurangabad which is pending as on the date of filing this petition.
5. Thereafter, the Corporate Debtor approached the Petitioner/Applicant/Financial Creditor for One Time Proposals on 05.01.2017,

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26.02.2018, 07.11.2019 and 15.03.2022 for different amounts. However, as there is no progress in settlement, the Petitioner has approached this Hon'ble Tribunal with the instant application u/s 7 of the Code.

6. The Petitioner also issued a Notice dated 20.01.2023 bearing Ref No. ARM/PUNE/DAULAT AGRO/2590/2023 stating that the following loan facilities have been availed by the Corporate Debtor in respect of which the defaults have been committed:

<b><u>Sr. No.</u></b>	<b><u>Nature of Credit Facilities</u></b>	<b><u>Amount/Limit Sanctioned</u></b>	<b><u>Date of Sanction</u></b>
1.	Term Loan (3231773000001)	21.95 crores	29.09.2011
2.	Term Loan (3231773000008)	5.00 crores	26.03.2014
3.	Open Cash Credit (3231261000016)	4.00 crores	02.12.2013

By way of the aforementioned Notice, the Corporate Debtor was called upon to discharge the amount under default as on 31.12.2022 of Rs. 85,13,58,224.07/-, failing which the Financial Creditor would proceed against the Corporate Debtor under the provisions of the IBC, 2016 without prejudice to any other rights available to a bank under any other law for the time being in force.

7. The Corporate Debtor filed its Reply dated 28.01.2023 to the aforesaid Notice dated 20.01.2023 contesting the notice as well as disputing the debt. In its reply, the Corporate Debtor, *inter-alia*, has submitted that the Financial Creditor had disbursed Rs. 16,74,24,180.20/- only as against the sanctioned loan amount of Rs. 21.95 crore. The Financial Creditor in rejoinder to the aforesaid reply, issued a Letter dated 09.03.2023 through its Advocate Ms. Vaishali Bhilare asserting its right

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that the debt disbursed to the Corporate Debtor is due and payable and further that the proceedings before the Hon'ble DRT are separate proceedings and the Financial Creditor has independent right to approach the Hon'ble NCLT with the petition u/s 7 of the Code.

8. Despite notices and reminders, since the Corporate Debtor has not made good the default in repayment of debt owed by it to the Financial Creditor with the result that the Applicant-Financial Creditor was constrained to approach this Hon'ble Tribunal with this petition.

**Reply on Behalf of the Corporate Debtor (in brief):**

9. The Corporate Debtor submits that present petition is barred by the period of limitation under Article 137 of the Limitation Act, 1963. The date of default stated by the Petitioner is October, 2014 and therefore, prescribed period of limitation expired in the month of October, 2017; whereas the present petition came to be filed only on 01.04.2023. The Hon'ble Supreme Court in the matter of B.K. Educational Services Pvt Ltd v/s. Parag Gupta & Associates [(2019) 11 SCC 633] has held that the Limitation Act, 1963 is applicable to the applications filed u/s 7 & 9 of the Code. Hence, the instant application u/s 7 of the Code must be dismissed on the ground of limitation. The Corporate Debtor further submits that as the present petition is filed beyond limitation, and therefore, there is no cause of action to file the present petition.

10. The Corporate Debtor alleges that the present application has been filed fraudulently by the Petitioner, knowing fully well that the Petitioner has not performed its part of obligation at the time of granting the loan to the Corporate Debtor. The present petition suffers

from procedural infirmities as the Petitioner has not annexed any document to show the acknowledgement of debt within the period of limitation. Even Form I annexed by the Petitioner does not properly state the details of default as required under the law. The Petitioner has simply mentioned the date of loan document without stating the background of transaction between the parties. Further, the Petitioner has failed to annex the information utility certificate which is otherwise mandatory. Therefore, the present petition is an arm-twisting tactic to admit the Corporate Debtor into insolvency on account of alleged default which has taken place much beyond the period of limitation.

**Rejoinder on behalf of the Financial Creditor**

11. In the rejoinder, the Petitioner has submitted that the Corporate Debtor had on numerous occasions sent proposals for one-time settlement ('OTS') of its loan accounts thereby admitting its liability. The OTS proposals were for amounts which were not acceptable to the Petitioner and hence, they were rejected.
12. The Hon'ble NCLAT in its judgment passed in Company Appeal (AT) (Insolvency) No. 371/2020 in the matter of Tejas Khandahar v/s. Bank of Baroda, has held that OTS proposals fall within the definition of "acknowledgment of debt" as envisaged u/s 18 of the Limitation Act, 1963. The Applicant says that the limitation period of 3 years as prescribed under Article 137 of the Limitation Act, counted from the date of NPA i.e. 27.01.2015 expires on 27.01.2018. However, the period of limitation stands extended till 05.01.2020 when the Corporate Debtor acknowledged the debt by submitting OTS proposal on

05.01.2017. The said period stood further extended till 26.02.2021 pursuant to the Corporate Debtor's OTS Letter dated 26.02.2018, till 07.11.2022 in view of OTS Letter dated 07.11.2019 and till 09.06.2025 in view of OTS offer of 09.06.2022. The above Company Petition was filed on 01.04.2023 which is within the stipulated 3-year period from the last acknowledgment of debt on 09.06.2022. In view of continuous acknowledgments of debts made by the Corporate Debtor before expiry of earlier limitation period, the limitation date was extended from time to time. As per section 18 of the Limitation Act, period of limitation commences afresh from the date of each acknowledgment and Article 137 of the said Act provided for three years as the period of limitation. Hence, the present Company Petition has been filed within limitation as prescribed under Article 137 read with Section 18 of the Limitation Act, 1963.

### **ANALYSIS AND FINDINGS**

13. We have heard the counsel for the parties and gone through the records.
14. Counsel for the Applicant submits that the Corporate Debtor has committed a default of over Rs. 87 crores in repayment of financial debt to the Financial Creditor/Applicant and hence, the Tribunal has to admit the Corporate Debtor into the Corporate Insolvency Resolution Process ('CIRP'). Counsel for the Applicant submits that the debt is within limitation as the Corporate Debtor had proposed and submitted One-Time Settlement ('OTS') proposals four times on 05.01.2017, 26.02.2018, 07.11.2019 and 09.06.2022. Counsel for the Applicant further submits that OTS proposals fall within the ambit of "acknowledgment of debt" as contemplated u/s 18 of the Limitation

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Act, 1963. In this regard, the Ld. Counsel for the Applicant has relied upon the judgment of Hon'ble NCLAT in Tejas Khandahar v/s. Bank of Baroda [vide Judgment dated 12.07.2022 in Company Appeal (AT)(Insolvency) No. 371/2020].

15. On the other hand, Counsel for the Corporate Debtor submits that the present petition has been filed beyond the period of limitation as prescribed under Article 137 of the Limitation Act, 1963. Counsel for the Corporate Debtor states that the date of default mentioned in the application is October, 2014 and therefore, the Applicant was required to file an application u/s 7 of the Code within 3 years from the date of default, the "right to sue" occurs when the default takes place. Since, in the instant case, the Petition has been filed in the year 2023, the application u/s 7 of the Code, which is under consideration, is hopelessly barred by the law of limitation. Counsel for the Applicant has relied upon the judgment of Hon'ble Supreme Court in B.K. Education Services Pvt Ltd v/s Parag Gupta & Ors., to contend that the provisions of the Limitation Act, 1963 are applicable to the Petitions filed u/s 7 & 9 of the Code since its inception. Therefore, on the ground of limitation alone, the Ld. Counsel for the Corporate Debtor prays for dismissal of the petition.
16. We have carefully scrutinized the aforesaid submissions and give our findings hereinbelow.
17. On perusal of records, we find that the Applicant-Financial Creditor has mentioned the date of default in Part IV of Form I as October, 2014 and the date of classification of the account of Corporate Debtor as 27.01.2015. We also find that the first OTS proposal was made by the

Corporate Debtor to Financial Creditor vide Letter dated 05.01.2017. In the said letter, the Corporate Debtor has admitted that the Corporate Debtor has brought in a fund of Rs. 1237.27 lakhs as venture capital and Rs. 2695 lakhs as Term Loan from Nationalized Bank. In the aforesaid Letter dated 05.01.2017, the Corporate Debtor further admitted that a loan of Rs. 317.63 lacs had been repaid by then as against the aggregate borrowing of Rs. 3183 lacs and a compromise proposal/offer of Rs. 1800 lacs were made by the Corporate Debtor in full and final settlement of the debts owed to the Financial Creditor herein. The OTS offer was revised to Rs. 8 crores vide Letter dated 23.02.2018 received by the Financial Creditor on 26.02.2018. Another OTS offer was made by and on behalf of the Corporate Debtor vide Letter dated 07.11.2019 proposing to settle the dues with the Financial Creditor for a sum of Rs. 14.50 crores in full and final settlement. Vide Letter dated 15.03.2022, the Corporate Debtor offered Rs. 3.00 crore to settle the dues. However, the Financial Creditor in its Reply dated 08.04.2022 to the OTS Offer Letter dated 15.03.2022 asked the Corporate Debtor to substantially improve the offer. The Corporate Debtor reiterated its offer of Rs. 3 crores vide Letter dated 07.06.2022 received by the Financial Creditor on 09.06.2022.

18.As the first OTS proposal was made vide Letter dated 05.01.2017 within three years from the date of default, we are of the opinion that it amounts of acknowledgement of liability u/s 18 of the Limitation Act, 1963 and therefore, a fresh period of limitation would be computed from 05.01.2017. Thereafter, OTS proposals were made on 26.02.2018, 07.11.2019, 15.03.2022 and 07.06.2022, which have not been rebutted by the Corporate Debtor, within a span of three years and

therefore, every OTS proposal made by the Corporate Debtor in the present matter would tantamount to acknowledgement of liability u/s 18 of the Limitation Act, 1963 and therefore, a fresh period of limitation would run every time an OTS was submitted. Accordingly, on the basis of the OTS proposals, the present petition can be said to have been filed within the period of limitation.

19. It is further noteworthy that the Financial Creditor had served a Notice dated 20.01.2023 calling upon the Corporate Debtor to repay the amount in default of Rs. 85,13,58,224.07/- failing which the Financial Creditor shall be proceeding under the provisions of the Insolvency and Bankruptcy Code, 2016. In Reply dated 28.01.2023 to the above notice, the Corporate Debtor admitted that the Financial Creditor had disbursed the term loan of Rs. 16,74,24,180.20 as against the sanctioned term loan of Rs. 21.95 crores. It is further stated in the aforesaid reply that the Power of Attorney Holder of the Corporate Debtor had submitted a compromise offer of Rs. 3 crores on 30.03.2022 enclosing a Banker's Cheque of Rs. 30 lakhs. As the OTS proposals were last made in the year 2022, the Reply dated 28.01.2023 too would amount to an acknowledgment of debt within the meaning of Section 18 of the Limitation Act, 1963 and hence, a fresh period of limitation would run from 28.01.2023. As the present application/petition u/s 7 of the Code has been filed on 01.04.2023, the same is held to be within the period of limitation and thus, the defense of the Corporate Debtor that the petition is time-barred is meritless.

20. On perusal of Books of Accounts maintained by the Financial Creditor accompanied with a Certificate under Bankers' Book Evidence Act, 1891 and the NeSL Report, the default in repayment of debt since the

year 2014 is evident as the last loan repayment was made on September 13, 2014 and thereafter, there has been no loan repayment by the Corporate Debtor. In all acknowledgements/OTS proposals referred-to-above, there is an admitted loan liability of well over Rs. 1 crore. Though the Corporate Debtor has disputes with the Financial Creditor for the reasons of shortfall and delay in loan disbursements and proceedings in respect thereof have been pending before the Hon'ble DRT, Aurangabad Bench, the same would have no bearing on the maintainability of this insolvency petition so long as the debt is due and payable in respect of which the default has been committed by the Corporate Debtor. Merely because there may have been a shortfall and delay in disbursement of sanctioned loan, the debt does not cease to be due and payable. As the existence of financial debt, its default by the Corporate Debtor and the requirements of minimum threshold u/s 4 of the Code to trigger the CIRP against the Corporate Debtor in the present case are satisfied, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process against the Corporate Debtor. It is ordered accordingly in the following terms:

**ORDER**

- (a) The petition bearing **CP(IB)-699/MB/2023** filed by **CANARA BANK**, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate

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Debtor M/s. **DAULAT AGRO (INDIA) PRIVATE LIMITED**  
[CIN: U45209PN2006PLC128874] is hereby **admitted**;

- (b) **Mr. S. Gopalakrishnan**, an Insolvency Professional having registration No. **IBBI/IPA-002/IP-N00151/2017-2018/10398**, (email: [gopi63.ip@gmail.com](mailto:gopi63.ip@gmail.com) ), having his address at: 203, The Ghatkopar Nilkanth CHS, Jethabhai Lane, Ghatkopar (E), Mumbai-400077; **is hereby appointed as Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (c) The Financial Creditor shall deposit a sum of **₹ 5,00,000/-** (Rupees Five Lakhs only) with the IRP towards the initial **CIRP costs** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (d) There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or

beneficial interest therein;

(iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(e) Notwithstanding the above, during the period of moratorium-

i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(f) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(g) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution

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Process for Corporate Persons) Regulations, 2016.

- (h) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

**Sd/-**

**ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**