

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT V**



**RCP(IB)/26(MB)2024
(Old CP(IB)/615(MB)2021)**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

Canara Bank, (erstwhile Syndicate Bank)

Having its Head Office at:

112, J C Road, Banglore – 560002 And Stressed Assets Management Branch 2nd Floor, Maker Tower “F”, Cuffe Parade, Mumbai - 400005.
Through its Authorised Officer,
Mr. Raj Kumar Singh, (AGM)

....Financial Creditor/Petitioner

Vs

Gannon Dunkerley & Co. Ltd.,

Having Registered Office at:

New Excelsior, Building (3rd Floor), A. K. Nayak Marg, Fort, Mumbai – 400001.

.... Respondent

Order Pronounced on: 02.07.2025

Coram:

Hon’ble Shri Sushil Mahadeorao Kochey, Member (Judicial)

Hon’ble Shri Charanjeet Singh Gulati, Member (Technical)

Appearances:



For the Financial Creditor:

Adv. Ronita Bictor a/w Adv. Roshan Gaud
i/b Orbit Law Services (PH)

For the Respondent:

Adv. Amir Arsiwala a/w Adv. Manoj Mishra
(PH).

Per: Coram

1. The Present Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**'IBC'/'the Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Canara Bank (erstwhile Syndicate Bank) (**'the Financial Creditor'/'Petitioner'**) for initiating Corporate Insolvency Resolution Process (**'CIRP'**) against Gannon Dunkerley & Co. Ltd (**'the Respondent'**) for a default amount of **Rs.43,26,68,864.58/-** (Rupees Forty-Three Crores Twenty Six Lakhs Sixty Eight Thousand Eight Hundred Sixty Four and Paise Fifty Right Only).

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

2. It is submitted by the Petitioner that a Working Capital Facility of Rs. 100 Crores was availed by the Respondent from the erstwhile Syndicate Bank as part of a total amount of Rs. 1365 Crores sanctioned under a Consortium/Multiple Banking Arrangement led by the State Bank of India. The facility was sanctioned by the Financial Creditor via sanction letter dated 10.05.2016 and accepted by the Respondent in its Board Meeting dated 20.06.2016. The copy of sanction letter and board resolution have been annexed as exhibit G1 and G2 to the Petition.
3. The erstwhile Syndicate Bank vide letter dated 30.07.2019 informed the Respondent that its account had been classified as a Non-Performing Asset (NPA) and vide letter dated 03.09.2019, the erstwhile Syndicate Bank called upon the Respondent to repay the total outstanding dues.
4. On the basis of continued default by the Respondent, the Financial Creditor filed Company Petition No. 615 of 2021 on 18.03.2021. During pendency of the said petition, the Respondent made a proposal for the Restructuring of



Loan Facilities from the Financial Creditor. On the basis of the restructuring proposal and submissions made by the Petitioner, the Tribunal vide order dated 01.11.2022 disposed of the said Company Petition No. 615 of 2021 and granted liberty to the Petitioner to file Restoration Application in case restructuring of loan did not materialise.

5. In February 2024, the Respondent failed to obtain the required RBI credit rating which led to failure of Restructuring Proposal and therefore Financial Creditor sought restoration of company petition. This tribunal vide order dated 02.09.2024 restored the Company Petition with a fresh number viz. Restored Company Petition No. 26 of 2024 and, the petitioner has filed Affidavit of Service upon the Respondent dated 18.11.2024
6. During the pendency of Restored Company Petition No. 26 of 2024, the Respondent has proposed One Time Settlement (OTS) and the same was sanctioned by the Financial Creditor on 20.12.2024, wherein amount of Rs. 22 Crores was agreed upon by the parties as one-time settlement amount which shall be paid within 90 days of sanction. In the sanction letter issued by the Financial Creditor, return of original bank guarantee or providing 100% cash margin was stipulated as one of the conditions.
7. The Petitioner has submitted that, the Respondent failed to comply with the OTS condition regarding the return of Bank Guarantees or creation of 100% cash margin against them and hence in the view of said default, the OTS was automatically withdrawn and the Financial Creditor informed the same to the Respondent vide letter dated 06.06.2025.
8. It is the submission of the Financial Creditor that, in view of withdrawal of the OTS terms, the Respondent has committed default of Rs. 43,26,68,864.58/-
9. The Petitioner has argued that in view of above facts, the petition should be admitted and order should be passed initiating CIRP against the Respondent under section 7(5)(a).

**Reply of the Respondent:**

10. The Respondent has submitted that, the Petitioner filed Old Company Petition No. 615 of 2021, stating Rs. 43,26,68,864.58/- to be outstanding loan as on 28.02.2021 and the petition was withdrawn due to pending settlement process with the Respondent. Thereafter, the Petitioner filed restoration application and has been allotted Restored Company Petition No. 26 of 2024.
11. The Respondent filed additional affidavit dated 12.12.2024, and prayed the matter be adjourned *sine die* or be kept after 21.03.2025 in view of the pending settlement talks between the parties.
12. The Respondent submitted that, during the pendency of Restored Company Petition No. 26 of 2024, the Petitioner accepted the One Time Settlement proposal of the Respondent and issued OTS sanction letter dated 20.12.2024 for payment of Rs. 22 Crores. It is further submitted that, the Respondent has made payment of the entire OTS amount of Rs. 22 Crores in accordance with the prescribed timelines. Respondent submits that, the continuance of the present petition is nothing but an abuse of the process by the Petitioner and it is barred by section 65 of the IBC.
13. The petitioner had given 2 Bank Guarantees on behalf of the Respondent, which permitted to be continued during OTS period and out of the 2 Bank Guarantees amounting to Rs. 12.98 Crores, one original bank guarantee ("1st BG") was duly returned to the Petitioner, while the remaining Bank Guarantee of Rs. 10.42 Crores ("2nd BG"), as given to the Project Director, Kolkata Environmental Improvement Investment Program, was renewed up to 31.05.2025 and the 2nd BG was neither invoked before its expiry on 31.05.2025 nor renewed after its expiry on 31.05.2025. Thus, no liability was fastened upon the petition and only pending step is to return of the Original Bank Guarantee from the beneficiary i.e., the Project Director, Kolkata Environmental Improvement Investment Program, back to the Petitioner.
14. It is the case of the Respondent that, as on date, no debt remains payable and the loan accounts have already been settled. With respect to the Bank



Guarantees, the remaining bank guarantee expired and thus the Petitioner has not had to bear any liability on that account. Hence, the petition deserves to be dismissed with exemplary costs.

Analysis & Findings

15. Heard Ld. Counsel for the parties and perused the record.
16. In this case, an amount of Rs. 43,26,68,864.58/- was outstanding and payable by the Respondent to the Financial Creditor and this petition under section 7 of the IBC has been filed for default in payment of this amount. However, during the pendency of this petition, both the parties have agreed to a One Time Settlement and the same is sanctioned by the Financial Creditor on 20.12.2024 with terms and conditions duly accepted by the Respondent.
17. The Case put forth by the Financial Creditor is that, the Respondent has paid the OTS amount Of Rs. 22 Crores but failed to adhere to the condition of OTS in respect of return of Bank Guarantee or creation of 100% margin on the Bank Guarantee with the Financial Creditor and made a default of condition of the OTS, due to which OTS letter stands withdrawn. Hence, the Respondent is liable for the original default amount of Rs. 43,26,68,864.58 and in the view of the said facts, the Petition under section 7 should be admitted.
18. Per contra, it is the case of the Respondent that, the payment of the entire sum of Rs. 22 Crores in terms of the OTS sanction letter has been duly made and only pending step is to return of the Original Bank Guarantee and Petitioner cannot hold the Respondent accountable for inaction of the beneficiary of the 2nd BG, which is a government department, in returning of the original bank guarantee, which was never invoked and has already expired and cannot be encashed whatsoever. Hence, nothing is due and payable by the Respondent to the Petitioner and the petition deserves to be dismissed.



19. Based on the submissions of the parties, the following question arise for determination:

I. Whether there is financial debt covered under section 5(8) of the Code?

I. Existence of Financial Debt

20. From the submissions of the parties, it is the admitted position that the Petitioner had sanctioned working capital facility of Rs. 100 Crores in favour of the Respondent vide sanction letter dated 10.05.2016 and accepted by the Respondent in its Board Meeting on 20.06.2016 and letter dated 27.06.2016.

21. The Petitioner vide letter dated 30.07.2019 informed the Respondent that its account had been classified as a Non-Performing Asset (NPA) and on 18.03.2021, due to continued default by the Respondent, the Petitioner had filed the Company Petition No. 615 of 2021, thereby claiming the default amount to be Rs. 43,26,68,864.58/- as on 28.02.2021.

22. On the basis of the restructuring proposal and submissions made by the Petitioner, the Tribunal vide order dated 01.11.2022 disposed of the said Company Petition No. 615 of 2021 and granted liberty to the Petitioner to file Restoration Application in case restructuring of loan did not materialise. In February 2024, as the Respondent failed to obtain the required RBI credit rating which led to failure of Restructuring Proposal, Financial Creditor sought restoration of company petition. This tribunal vide order dated 02.09.2024 restored the Company Petition with a fresh number viz. Restored Company Petition No. 26 of 2024.

23. During the pendency of Restored Company Petition No. 26 of 2024, the Respondent proposed One Time Settlement (OTS) and the same was sanctioned by the Financial Creditor on 20.12.2024.

24. In the said sanction letter, the amount of Rs. 22 Crores was agreed upon by the parties as one-time settlement amount which was to be paid within 90 days of sanction. In the sanction letter issued by the Financial Creditor,



return of original bank guarantee or providing 100% cash margin was stipulated as one of the additional conditions.

25. Accordingly, the debt and default have to be seen in light of the OTS. The said OTS has the effect of modifying the debt and default, the debt amount of Rs. 43,26,68,864.58/- during the pendency of this petition gets modified into OTS amount of Rs. 22 Crores and to the extent of time allowed in OTS, the default also gets cured.
26. The Respondent has made payment of the entire OTS amount of Rs. 22 Crores within the stipulated timeline in the following manner:

Sr. No.	Date of Payment	Amount (In Rs.)
1.	30.11.2024	2,20,00,000/-
2.	30.12.2024	4,80,00,000/-
3.	18.01.2025	5,00,00,000/-
4.	28.02.2025	5,00,00,000/-
5.	12.03.2025	5,00,00,000/-
	Total	22,00,00,000/-

Hence, there is no default in payment of agreed OTS amount of Rs. 22 Crores whatsoever.

27. Though the amount of one-time settlement and subsequent repayment in timely manner is not under dispute in this case, what is disputed is default of conditions of the OTS in respect of a return of Bank Guarantee. The petitioner had given 2 Bank Guarantees on behalf of the Respondent, which was permitted to be continued during OTS period and from the 2 Bank Guarantees amounting to Rs. 12.98 Crores, one original bank guarantee ("1st BG") was duly returned to the Petitioner, while the remaining Bank Guarantee of Rs. 10.42 Crores ("2nd BG"), given to the Project Director, Kolkata Environmental Improvement Investment Program, was renewed up to 31.05.2025 and this 2nd BG was neither invoked before its expiry on 31.05.2025 nor renewed after its expiry.



28. In the facts and circumstances as aforementioned, it is clear that though this petition has been filed for default in the debt amount of Rs. 43,26,68,864.58/- but as during the pendency of the petition the parties agreed for one-time settlement of amount of Rs. 22 crores to be paid within 90 days. The settlement so arrived effectively changes the amount of debt and cures the default as on the date of sanction of the OTS by the Financial Creditor i.e., 22.12.2024. Subsequently, also there has been no default in the payment as the entire payment of Rs. 22 crores have been made on the scheduled dates and last of such payment was made on 12.03.2025. It is also noted that one of the Bank guarantees which in original was to be returned back to the Financial creditor, with the consent of the Financial creditor was continued till 31.05.2025 and during its currency, neither such bank guarantee has been revoked nor renewed after its expiry on 31.05.2025. Under such circumstances there cannot be any cause of grievances on the part of the Financial Creditor as regards the terms of settlement sanctioned on 20.12.2024 are concerned.
29. It is seen that despite such OTS and the payments being made, the petition continued before the Bench and on the board of this Tribunal, which ideally should have been disposed of as during the entire time right from 20.12.2024 till 31.05.2025 and even thereafter there has been no default in respect of repayment. Further, the bank guarantee which was supposed to be returned back to the Financial Creditor was valid till 31.05.2025 and it is an admitted position that prior to 31.05.2025 the bank guarantee has neither been invoked and nor has been renewed after its expiry on 31.05.2025. Accordingly, and under such circumstances the bank guarantee is reduced to a mere piece of document and not an instrument which could cause any harm/damage to the Financial Creditor. Under the facts and circumstances of the case it can also be said that condition attached with the one-time settlement regarding the payment of an amount of Rs. 22 Crores in timely manner has been complied *in-toto* and as regards the return of two bank guarantees, one has been returned and second expired without being invoked and has not subsequently been renewed. As such the terms of



settlement have been substantially complied with and it cannot be said that there is any case of default on the part of the respondent herein.

30. It is also mentioned here that continuation of pendency of the petition, once the settlement had arrived should not have been allowed but looking at the history of the case of a default earlier, the time as asked by the parties to the petition was granted by the Bench. It is pertinent to note that, had this petition been disposed of in view of the settlement arrived between the parties on 20.12.2024, merely on the issue of non-return of an expired bank guarantee, revival of the petition could not have been argued or allowed by the Bench.
31. Under the facts and circumstances of the case and discussion herein above it cannot be said that there is any debt established in this case or any consequent default warranting admission of this petition.
32. Ld. Counsel for the Petitioner has relied upon certain decisions, which for the sake of completeness, are being dealt. The Petitioner has placed reliance on judgment of the NCLAT in **Suresh Kumar Reddy Vs. Canara Bank and Ors. 2022**, in this case, there was a default by the Corporate Debtor and subsequently beneficiary has invoked the bank guarantee and it was observed that bank guarantees extended by the Financial Creditor formed part of the debt of the Corporate Debtor and a failure to pay back or return such Bank Guarantees would result in default by the Corporate Debtor. Wherein in the present case there is no default of the agreed OTS terms by the Respondent, further the only bank guarantee pending to be returned has expired on 31.05.2025 and has not been invoked by the beneficiary, Hence, the facts of the said case are different from the case at hand.
33. The Petitioner has also relied on the judgment of the NCLAT in the matter of **Rajesh Kedia Vs. Phoenix ARC (P) Ltd. 2022**, wherein it was held that once the 'threshold' is crossed, it is not for the adjudicating authority to decide the exact 'Quantum of Debt', but what has to be examined is whether there is a 'Debt' and 'Default'. On perusal of the One Time Settlement letter dated 20.12.2024, which is sanctioned by the Financial Creditor, it is clear that the



said OTS amount of Rs. 22 Crores was to be paid within 90 days of the sanction and the same is paid by the Respondent as on 12.03.2025, which is within the stipulated time limit. Accordingly, there is no outstanding debt that falls within the scope of Section 3(11) of the Insolvency and Bankruptcy Code, 2016.

34. It is also mentioned that, Petitions filed under section 7, 9 and 10 of the IBC are for resolution of the Corporate Debtor and not for recovery of dues. In the matter of **Prowess International Pvt. Ltd.**, the Hon'ble NCLAT held:

“It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. I & B Code, 2016 is an Act relating to reorganisation and Insolvency Resolution of corporate persons...”

Hence, if the company has made no default in its obligations and continuing to operate as a going concern, it is against the intent and purpose of the IBC to admit such company into the CIRP. In the present case, intent behind revocation of the OTS by the Petitioner is not resolution of the Corporate Debtor/Respondent but to bring the company into CIRP merely due to non-returning of the Original Bank Guarantee which is never revoked nor renewed

35. In view of the facts and circumstances of the case, the Restored Company Petition No. 26/2024 is **dismissed**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

/Omkar, LRA/

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)