

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

Company Appeal (AT) (Insolvency) No. 244 of 2023

[Arising out of Order dated 15.02.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-V in C.P. 1135/IB/MB/2021]

IN THE MATTER OF:

Rajratan Babulal Agarwal

...Appellant

Versus

State Bank of India & Anr.

...Respondents

Present:

For Appellant:

Mr. Abhijeet Sinha and Mr. Krishnendu Datta, Sr. Advocates with Mr. Anish Agarwal, Mr. Tejas Agarwal, Mr. Harshit Chaudhary, Mr. Harsh Gurbani, Mr. Pratik Chakma, Mr. Abhinav Maurya and Ms. Natasha Bagga, Advocates.

For Respondents:

Mr. Sanjiv Sen, Sr. Advocate with Ms. Anjali Singh, Mr. Prahalad Balaji and Ms. Ricky Sampat, Advocates for R-1.
Mr. Animesh Khandelwal, Advocate for R-2.

J U D G M E N T
(12th September, 2025)

Ashok Bhushan, J.

This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging the order dated 15.02.2023 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court-V admitting Section 7 application filed by the State Bank of India. By the impugned order, Adjudicating Authority finding that the Corporate Debtor has committed debt and default and dues of more than Rs.100 Crores are due on the Corporate Debtor, has admitted Section 7 application and appointed IRP, aggrieved by which order, this Appeal has been filed.

2. Brief background facts necessary to be noticed for deciding the Appeal are:-

2.1. The Corporate Debtor- 'Shri Tradco Deesan Private Limited' is engaged in manufacturing of Maize Based Food, Feed and Industrial Derivatives Products. The Corporate Debtor was sanctioned credit facilities by the State Bank of India by sanction letter dated 25.10.2012 for Rs.56.50 Crores which was renewed from time to time. On the request of the Corporate Debtor in the year 2019, facilities were increased with cash credit of Rs.55 Crore and two term loans totalling Rs.105.62 Crore. In the year 2019 onwards, Corporate Debtor was facing shortage of raw materials and there were many irregularities in the operation of the account. Default was committed by the Corporate Debtor and hence, the account was declared as NPA by the State Bank of India on 26.08.2019. Notice under Section 13(2) was issued on 03.06.2021. A loan recall notice was issued on 15.07.2021 by the State Bank of India to the Corporate Debtor and its personal guarantor claiming total dues of Rs.143,45,88,769/- as on 30.06.2021. The Corporate Debtor to secure the facility had hypothecated all the stocks, receivables and other current assets of the Corporate Debtor, hypothecation of plant and machineries and executed registered mortgage of factory land and building and mortgage of commercial and agriculture plots. On an application filed by an Operational Creditor by an order dated 16.07.2020, CIRP against the Corporate Debtor commenced by an order of the Adjudicating Authority, Mumbai Bench. The Corporate Debtor was under the CIRP till 15.03.2021 on which date Company Appeal (AT) (Insolvency) No.661 of 2020 filed by Suspended Director was allowed. During the period of earlier CIRP, Appellant claimed theft in the office and the factory premises. State Bank of India on 13.10.2021 has filed an OA No.638 of 2021 before the DRT against the Corporate Debtor. On 18.11.2021, State Bank of India filed C.P No.1135/IB/MB/2021 claiming debt and default of Rs.147,86,14,870

as on 31.08.2021 plus interest from 01.09.2021. Date of default was mentioned as 29.05.2019. Certificate of NeSL dated 04.10.2021 was also attached along with the Section 7 application. In Section 7 application, notices were issued. Corporate Debtor filed its reply. Corporate Debtor filed an IA No.1059 of 2022 and IA No.1078 of 2022 seeking a direction to State Bank of India to furnish the statement of account of the Corporate Debtor on which an order was passed by the Adjudicating Authority on 06.09.2022 directing the State Bank of India to bring on record statement of account from 01.01.2019. Statement of account was filed by the State Bank of India w.e.f. 01.01.2019. Adjudicating Authority heard the parties and by impugned order dated 15.02.2023 admitted Section 7 application. Challenging the order dated 15.02.2023, this Appeal has been filed. When the Appeal was taken up on 28.02.2023, it was stated by the Appellant that Appellant is in continuous dialogue with the Bank for submitting an OTS proposal. Noticing the aforesaid statement of the Appellant, following order was passed on 28.02.2023:

“Learned Counsel for the Appellant submits that after passing of the Impugned Order dated 15.02.2023, Appellant is in continuous dialogue with the Bank for submitting an OTS Proposal and certain correspondence has taken place between the Appellant and the Bank and Appellant is waiting for reply of the Bank for the expected amount and the manner of deposit. Learned Counsel for the Appellant submits that Appellant shall endeavor to enter into settlement and try to liquidate the debt as per decision of the Bank.

2. Issue Notice. Learned Counsel for the Bank accepts notice and allowed three weeks’ time to file Reply.

Appellant may also file Rejoinder within two weeks, thereafter.

List this Appeal “For Admission” on 11th April, 2023. In the meantime, in pursuance of the Impugned Order, IRP shall not constitute the Committee of Creditors and he shall not take further steps except collation and verification of the claim.”

2.2. Appellant further took adjournment in the Appeal. The Appeal was taken up on 01.09.2023 where this Tribunal noticed that an OTS submitted by the Appellant was rejected. Noticing the aforesaid, interim order was vacated. Following order was passed on 01.09.2023:-

“01.09.2023: This appeal has been filed against the order dated 15.02.2023 by which order Section 7 application filed by the State Bank of India has been admitted. When the appeal was taken the appellant made a submission on 28.02.2023 that appellant is in continuous dialogue with the Bank for submitting an OTS Proposal on which date following order was passed:

“28.02.2023: Learned Counsel for the Appellant submits that after passing of the Impugned Order dated 15.02.2023, Appellant is in continuous dialogue with the Bank for submitting an OTS Proposal and certain correspondence has taken place between the Appellant and the Bank and Appellant is waiting for reply of the Bank for the expected amount and the manner of deposit. Learned Counsel for the Appellant submits that

Appellant shall endeavor to enter into settlement and try to liquidate the debt as per decision of the Bank. 2. Issue Notice. Learned Counsel for the Bank accepts notice and allowed three weeks' time to file Reply. Appellant may also file Rejoinder within two weeks, thereafter.

List this Appeal "For Admission" on 11th April, 2023. In the meantime, in pursuance of the Impugned Order, IRP shall not constitute the Committee of Creditors and he shall not take further steps except collation and verification of the claim."

2. The appeal was taken thereafter on two or three occasions and on 27.07.2023 following order was noted:

"27.07.2023: Learned Counsel for Appellant prays for and is allowed a week's time to file the Rejoinder.

Learned Counsel for the Bank submits that Bank has not received any OTS proposal nor any settlement talks are going on.

List this Appeal on 17.08.2023.

Interim Order to continue."

3. On 17.08.2023 the matter was adjourned for today's date. Counsel for the appellant submits that they have received the rejection of their OTS on 17.08.2023 after order was passed by this Tribunal. Order dated 17.08.2023 is as follows:

"17.08.2023: As prayed, list the appeal on 1st September, 2023 at 2:00 P.M.

Appellant is at liberty to file hard copy of the Rejoinder.

Interim Order to continue.”

4. The interim order granted by this Tribunal on 28.02.2023 was on the basis that appellant was in continuous dialogue with the Bank for submitting an OTS Proposal.

5. Learned Counsel for the Bank submits that Bank has not accepted any proposal of the appellant for the OTS.

6. In view of the aforesaid, we see no reason to continue the interim order any further. The interim order dated 28.02.2023 is vacated.

7. Let the appeal be listed on 11.09.2023.”

2.3. After 01.09.2023, Appeal was listed on several occasions and was heard on 20.08.2025 on which date judgment was reserved.

3. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant, Shri Sanjiv Sen, Learned Senior Counsel for the State Bank of India and Shri Animesh Khandelwal, Learned Counsel for the Respondent No.2.

4. Counsel for the Appellant challenging the order submits that the State Bank of India has failed to prove debt and default. It is submitted that although Adjudicating Authority has held that the Corporate Debtor is in default of Rs.100 Crores but neither any evidence has been referred to nor any reasons have been given. NeSL Report which is relied is not conclusive proof of evidence. Statement of account which was filed by the State Bank of India before the Adjudicating Authority in pursuance of the direction issued by the Adjudicating Authority was incomplete and contained various discrepancies. The statement of account submitted by State Bank of India was wholly

unreliable and refers to various manual cutting in the opening and closing balance. Proper and complete statement of accounts were not produced, hence, the application under Section 7 could not have been admitted. It is submitted that the statement of accounts were sought since there was theft of the records of the Corporate Debtor during the earlier CIRP period. Right to receive correct statement of account is a right of Corporate Debtor. NeSL Report relied is not reliable which is only *prima facie* proof and is rebuttable. Default in intimation to the NeSL was during the period when earlier IRP was in the control of the affairs. The balance confirmation letter dated 30.04.2019 is unreliable which confirmation was issued only on the request made by Bank one day before i.e. on 29.04.2019. Reliance on balance sheet of F.Y. 2019-20 is also misplaced. It is submitted that huge receivables by the Corporate Debtor of about Rs.277 Crores which has not been accounted for in the statement.

5. Shri Sanjiv Sen, Learned Senior Counsel for the State Bank of India submits that admittedly, Corporate Debtor has been extended various credit facilities which were disbursed on request of the Corporate Debtor. In the year 2019, credit facilities were enhanced to Rs.105.62 Crores. The Corporate Debtor failed to regularise the account which was classified as NPA on 26.08.2019. Default having been committed on 29.05.2019, NeSL Report dated 04.10.2021 mentioned the date of default as 29.05.2019. Notice under Section 13(2) was issued on 03.06.2021. There was no positive response thereafter, recall notice was issued on 15.07.2021. On an application filed by one M/s. Agarwal Coal Corporation (India) Private Limited, an Operational Creditor, CIRP commenced against the Corporate Debtor on 16.07.2020. In the earlier CIRP, the State Bank of India has filed its claim and an IRP has been admitted the claim to the extent of Rs.120,17,10,548/-. In the earlier CIRP, the Suspended Director did not handed over the control to the IRP and due to non

payment of wages, the employees and security guards had left the premises. It is submitted that the State Bank of India has filed the statement of account before the Adjudicating Authority which clearly gives detail statement from 01.01.2019 of all credit facilities including the term loan and cash credit which proved default on the part of the Corporate Debtor. It is submitted that in the Appeal, Appellant came with a case that they have submitted OTS proposal to the Bank. OTS proposal submitted by the Corporate Debtor was never accepted and Appellant had been only buying time and did not argue the Appeal and obtained various adjournments. The claim of the receivables by the Corporate Debtor cannot be accepted. The Corporate Debtor was not eligible to receive various subsidies and receivables as claimed it having not fulfilled the necessary eligibilities. Default by the Corporate Debtor being of more than Rs.100 Crores as has been found by the Adjudicating Authority, there is no error in the order passed by the Adjudicating Authority admitting Section 7 application.

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

7. Part IV of Section 7 application gives the details of the facilities, total amount in default and the date of default. Serial No.2 of Part IV of Section 7 application is as follows:-

2.	<i>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</i>	<i>The total amount in default and payable by the Corporate Debtor to the Financial Creditor as on 31.08.2023 of Rs.147,86,14,876 [Indian Rupees One Hundred and Forty-Seven Crores, Eighty-Six Lakhs, Fourteen Thousand, Eight Hundred and Seventy Only]. Plus, further</i>
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	<p><i>interest thereon from 01.09.2021 onwards and other costs and expenses incurred and to be incurred. Date of Default is 29.05.2019 as reflected in NeSL Portal.</i></p> <p><i>The year 2019 onwards, the Corporate Debtor was facing shortage of raw materials and facing problem of realization of its receivables from its group companies. Due to this, there were many irregularities in the operation of the accounts. Even though, there was continuous follow up from the Financial Creditor, the Corporate Debtor has failed to regularize the accounts.</i></p> <p><i>Due to this, the account was classified as NPA w.e.f. 26.08.2019 in accordance with guidelines of Reserve Bank of India.</i></p> <p><i>Subsequently, Authorized Officer of the Financial Creditor issued Notice under Section 13(2) of SARFAESI Act, 2002 to the Corporate Debtor as well as the Guarantors on 03.06.2021.</i></p> <p><i>The Financial Creditor also issued a Recall Notice to the Corporate Debtor and the Guarantors recalling the entire credit facilities sanctioned to the Corporate Debtor on 15.07.2021.</i></p>
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	<p><i>There was no positive response from the Corporate Debtor to the Notice under Section 13(2) and the Recall Notice issued by the Financial Creditor. This constrained to issue Legal Notice [Recall Notice] on 15.07.2021 calling upon both Corporate Debtor and its Guarantors to pay the entire outstanding dues.</i></p> <p><i>As such, the total amount in default and payable by the Corporate Debtor to the Financial Creditor as on 31.08.2021 stood at INR 147,86,14,870 (Indian Rupees One Hundred and Forty-Seven Crores, Eighty-Six Lakhs, Fourteen Thousand, Eight Hundred and Seventy Only]. Plus, further interest from 01.09.2021 and other costs and expenses incurred and to be incurred.</i></p> <p><i>Date of Default 29.05.2019 as reflected in NeSL Portal.</i></p> <p><i>The workings for computation of amount in default is attached herewith along with Statement of Accounts and marked as "Annexure-3 Colly".</i></p>
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8. Along with Section 7 application, the Bank has filed the statement of account of the Corporate Debtor of the cash credit and other facilities as on 04.10.2021. Details of total dues as mentioned in Section 7 application are as follows:-

State Bank of India, SARGC - III BRANCH, Mumbai				
Borrowers Name- SHRI TRADCO DEESAN PVT LTD				
CLAIM STATEMENT				
Facility	Principal O/S	Unapplied interest upto 31.08.2021		Total Dues
Term Loan A/C 33547263623	126,570,272.00	61,194,863.72		187,765,135.72
Term Loan-II A/C 34828763601	227,460,215.00	109,861,195.86		337,321,410.86
SLC 32754528253	77,949,410.00	37,642,544.92		115,591,954.92
Cash Credit 32622172772	569,933,129.00	268,003,239.93		837,936,368.93
Total	1,001,913,026.00	476,701,844.43		1,478,614,870.43

9. Appellant in this Appeal has come up with the case that it has entered into a Product Purchase Agreement with CARGILL India Private Limited on 12.07.2019. It is further pleaded that however, the Bank did not give its no-objection. It is pleaded that CARGILL Group is ready and willing to invest goods and money in the Corporate Debtor. From the record, it appears that the Corporate Debtor was unable to run the factory and committed default in servicing its various credit facilities. On default committed by the Corporate Debtor, Section 13(2) notice was issued on 03.06.2021 which Section 13(2) notice itself mentioned the total outstanding of all facilities. The said notice further mentioned that the Corporate Debtor had been classified as NPA on 26.08.2019. Schedule A of Section 13(2) notice mentioned outstanding as on 26.08.2019 which is as follows:-

“SCHEDULE 'A'**Name of Borrower: M/s Shri Tradco Deesan Pvt Ltd**

S. No.	Nature of Facility	Outstanding inclusive of interest as on date of NPA I.e. as on 26.08.2019	Un applied Interest w.e.f. 01.09.2019 to 30.04.2021	Total
1	TL-I A/C 33547263623	126,570,272.00	45,418,748.76	171,989,020.76
2	TL-II A/C 34828763801	227,460,215.00	81,622,313.00	309,082,528.00
3	SLC- 32754528253	77,949,410.00	27,918,484.82	105,867,894.82
4	CC- 32622172772	569,933,129.00	200,303,745.93	770,236,874.93
	Total	1,001,913,026.00	355,263,292.51	1.357.176,318.51

10. Recall notice was issued on 15.07.2021 where total outstanding claimed was of Rs.143,45,88,792/- and thereafter Section 7 application was filed by the State Bank of India.

11. The present is not a case where it is pleaded on behalf of the Corporate Debtor/ Appellant that there was no default on the part of the Corporate Debtor in servicing the debt. Appellant's case is that since the theft committed in the factory and office premises of the Corporate Debtor during currency of the earlier CIRP records have been stolen, the Corporate Debtor is not aware of the statement of account. Default is claimed to be committed much prior to initiation of the earlier CIRP on an application of the Operational Creditor. Counsel for the Appellant has submitted that complete statement of account was not filed by State Bank of India before the Adjudicating Authority even after passing of the order dated 06.09.2022 by the Adjudicating Authority. Counsel for the Appellant submits that the statement of

accounts which were brought on the record are unreliable, full of discrepancies with physical tampering which renders the accounts unreliable.

12. We have noticed that along with Section 7 application, the statement of account of cash credit and other facilities were filed which were part of Section 7 application. Corporate Debtor sought a direction to provide statement from 01.01.2019 which was provided by the State Bank of India. It is not disputed that the statement of account as submitted by the State Bank of India which statement of account dated 22.09.2022 is brought on the record as Annexure A-32 to the Appeal. The said statement indicates that the statement has been provided from 01.01.2019 to 30.06.2019. The statement of account indicates that the statement of account captured all transactions. Counsel for the Appellant during submission submitted that the statement indicates that there is scoring out of entry against the column 'brought forward' which creates the doubt about the correctness of the statement. It is true that in some of the pages of the statement of account against the entry 'brought forward', there is scoring by hand but the said scoring is not on each and every statement rather some of the entries have been scored out by hand but other entries of the statement captures all transactions which shows outstanding balance on the part of the Corporate Debtor. Furthermore, as noted above, along with Section 7 application statement of account of all facilities were already mentioned giving their details of outstanding. It is not the case of the Appellant that there was no outstanding on the relevant date as claimed by the State Bank of India. It is also not the case of the Appellant that debt facilities were serviced regularly and there was no default on the part of the Corporate Debtor. Debt and default is not being questioned and the Appellant is trying to absolve itself on the ground that there was theft committed in the office/factory premises during earlier CIRP, hence, the Appellant is not in possession of the record. The statement of

account which was maintained by the bank of various facilities advanced to the Appellant having been brought on the record before the Adjudicating Authority, we do not see any reason to question the findings returned by the Adjudicating Authority of debt and default. It is not disputed that NeSL Certificate dated 04.10.2021 has also mentioned the default on the part of the Corporate Debtor. It is further relevant to notice that in IA No.1078 of 2022 which was filed by the Corporate Debtor seeking a direction to produce the statement of account, a reply was filed by the Bank where bank has relied on letter dated 30.04.2020 issued by the Corporate Debtor confirming the balance aggregating to Rs.97,28,66,613/- as on 31.03.2020. It is useful to notice pleadings in paragraph 12 of the Affidavit which is as follows:-

“12. Notwithstanding the aforesaid, I state that the Applicant vide letter dated 30.04.2020 confirmed the outstanding balance in respect of each type of loan facilities availed by the Applicant which aggregates to Rs 97,28,66,613 as on 31.03.2020. It is imperative to submit that the said balance confirmation letter was issued by the Applicant on the strength of the board resolution dated 29.04.2020. The Applicant never made any allegation in respect of the genuineness of the Statement of Accounts, ledger and/or computation of alleged dues. Similarly, the Applicant has never denied that the Applicant availed credit facilities from the Respondent as much as default in payment of interest and installment. It is also imperative that the Applicant does not appear to have made whatsoever to peruse the Board Resolution, Audited Balance Sheets available with the Applicant as also with the concerned regulator i.e., ROC.”

13. The balance confirmation which was issued by the Corporate Debtor on 30.04.2020 is not denied rather Appellant sought to contend that the said balance confirmation was issued on the request made by the Bank on 29.04.2020. The balance confirmation has been issued by the Corporate Debtor. It is not open for the Corporate Debtor to contend that there were no dues at the relevant time. It is also relevant to notice that the CIRP against the Corporate Debtor has commenced on the application filed by the Operational Creditor in the year 2020 in which CIRP, bank has filed its claim and IRP has admitted the claim to the extent of Rs.120,17,10,548/- which CIRP was subsequently set aside by this Tribunal.

14. Counsel for the Appellant has also referred to various receivables by the Corporate Debtor. There is no proof of any receivables by the Corporate Debtor nor there is any material to indicate that receivables were received by the Corporate Debtor due to which it can be said that no default committed by the Corporate Debtor.

15. We have also noticed that when this Appeal came for consideration Appellant made a statement on 28.02.2023 that it is submitting an OTS proposal with the bank. The statement of the Appellant is that Appellant endeavours to enter into settlement and try to liquidate the debt itself indicate that understanding of the Appellant that Corporate Debtor was in debt and default for which Appellant was endeavouring to settle the matter. Appellant having failed to obtain any OTS, the interim order subsequently vacated by this Tribunal on 01.09.2023 as noticed above but the fact remains that Appellant made a statement that it is entering into OTS with the Bank to liquidate the debt. The above is also clear indication that debt and default does exist. The debt and default on the part of the Corporate Debtor was not proved only from

NeSL Report dated 04.10.2021 but from the statement of account and other materials brought on the record by the State Bank of India.

16. Another submission which has been raised by the Appellant was that Appellant had filed its counter claim before the DRT where OA filed by the State Bank of India is pending consideration. The factum of any counter claim filed by the Corporate Debtor in the OA in no manner preclude consideration of Section 7 application. Insolvency process is a special proceeding and a right conferred on the Financial Creditor to initiate proceedings under Section 7 which proceeding can proceed unhampered by any proceeding pending before the DRT.

17. From the above, it is clear that the Adjudicating Authority after considering all relevant materials on the record has rightly come to the conclusion that Corporate Debtor is in default of more than Rs.100 Crore. The Adjudicating Authority has thus, rightly admitted Section 7 application. We, thus, do not find any error in the order impugned admitting Section 7 application. There is no merit in the Appeal. The Appeal is dismissed.

18. The interim order passed on 28.02.2023 having operated till 01.09.2023, the period from 28.02.2023 to 01.09.2023 stand excluded from CIRP period. Subject to the above, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**New Delhi
Anjali**