NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1980 of 2024

[Arising out of the Order dated 18.10.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi, Court-IV), in CP (IB) No. 595(ND)/2023 & IA 1285(ND)/2024]

IN THE MATTER OF:

1. **RAJENDER KUMAR PAHWA**
   (SUSPENDED DIRECTOR OF GOODLUCK CARBON PRIVATE LIMITED)
   RESIDENCE AT:
   FARM HOUSE No. 53/20, SILVER OAK LANE, JONAPUR, NEW DELHI - 110047 **...Appellant**

Versus

1. **CANARA BANK**
   HAVING HEAD OFFICE AT:
   112, J.C. ROAD, BENGALURU KARNATAKA-560002
   THROUGH STRESSED ASSETS MANAGEMENT (SAM) BRANCH:
   C-34, 3rd FLOOR, DDA OFFICE-CUM-SHOPPING COMPLEX, OPPOSITE MOOLCHAND HOSPITAL DEFENCE COLONY, NEW DELHI -110024
   EMAIL-cb19208@canarabank.com **...Respondent No. 1**
2. **ASHOK KUMAR GULLA**
   INTERIM RESOLUTION PROFESSIONAL FOR GOODLUCK CARBON PRIVATE LIMITED
   HAVING OFFICE AT:
   FLAT NO. 23, IAPL HOUSE, 2nd FLOOR SOUTH PATEL NAGAR, NEW DELHI - 110008 **...Respondent No. 2**
   EMAIL- ashok.gulla@rsba.in
3. **PUNJAB NATIONAL BANK**
   HAVING HEAD OFFICE AT:
   PLOT NO. 4, 205 DELHI RD, SECTOR 10 DWARKA, NEW DELHI, DELHI, 110075
   THROUGH:
   ZONAL SASTRA CENTRE, PLOT NO. 5
   3rd FLOOR, FEROZPUR ROAD LUDHIANA, PUNJAB-141001 EMAIL- zs8352@pnb.co.in **...Respondent No. 3**

Present:

For Appellant	**:**	Mr. Gaurav Mitra, Ms. Lavanya Pathak, Ms. Ankita Bajpai, Ms. Vatsala Kak & Mr. Sagar Thakkar, Advocates.
For Respondent	**:**	Mr. Abhishek Naik, Ms. Gulafsha Kureshi, Ms. Katyayani, Ms. Deepsikha Mishra, Mr. Falak Zaidi & Mr. Mojahid Karim Khan, for R-1. Mr. Santosh Kumar Root & Ms. Dharna Veragi, for R-3/ PNB.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been filed by Shri Rajender Kumar Pahwa Suspended Director of the Corporate Debtor (CD) Good Luck Carbon Pvt. Ltd. under section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC) assailing the impugned order dated 18th October 2024 passed by Ld. Adjudicating Authority, New Delhi, Court- IV in Company Petition No. 595 of 2023 under section 7 of the IBC, whereby the application filed by the petitioner / Respondent No.1 has been accepted and the CIRP process has been initiated against the CD namely Good Luck Carbon Pvt Ltd.

2. Necessary facts required for disposal of this appeal are that a petition under Section 7 of the IBC was presented by the respondent No. 1 before Ld. Tribunal against the CD, which is an MSME Company, which has been accepted by passing the impugned order and CIRP has been initiated against the CD and Mr Ashok Kumar Gulla, Respondent No.2, was appointed as Interim Resolution Professional (IRP) for the corporate debtor.

3. It is stated by the Appellant that the Corporate Debtor was incorporated as M/s Good Luck Impex Pvt. Ltd. in the year 1993 and thereafter in the year 2007 the name of it was changed to Good Luck

Carbon Pvt Ltd. The Company is having its unit located at Village Jitwal Kalan, Tehsil Malerkotla, District Sangrur, Punjab-148019, and is engaged in the business of manufacturing all grade of furnace blacks, soft black and hard black grades for the purpose of strengthening and reinforcing rubber products, adding opacity to plastics and balancing colour formulations.

4. It is also stated in the Memo of Appeal that in the usual course of business the CD sought credit facilities from various banks individually under Consortium of lending between the year 2011 to 2013. The company diligently met its repayment obligations to the concerned banks, against the loan facilities sanctioned by the Lenders to the company.

5. In the year 2014, the Corporate Debtor, with the objective of expansion of its business availed a project loan of Rs. 57.74 crores which was sanctioned by a consortium of banks comprising of the Punjab National Bank as the Lead Bank, Bank of Baroda, Canara Bank (Respondent No.1), Vijaya Bank, vide consortium agreement dated 10.03.2014 by providing adequate security.

6. It is further stated that the entire District of Sangrur, where the unit of the corporate debtor was located, was placed in Red category with respect to the extracting of ground water by the Central Pollution Control Board (CPCB), the Punjab Pollution Control Board (PPCB) and they declined consent to the CD to operate its co-generation plant whereas all the other necessary permissions were obtained from respective authorities and despite efforts made by the CD, due to the disapproval of statutory permissions required for running the plant, the project of the CD could not be completed

by July 2015. In addition to this the demand of carbon black reduced by 50%-60% resulted in further financial stress and there was erosion of working capital funds, forcing the CD to operate the plant at a very low capacity. Due to this the CD was unable to meet its payment obligations to the lender banks and the account of the corporate debtor was categorised as 'under stress account' category and subsequently the lenders of the corporate debtor formed a Joint Lender Forum ('JLF') as per the RBI guidelines.

7. It is further stated that an agreement dated 10th August 2015 was executed comprising of the Punjab National Bank as the lead bank, Canara Bank /Respondent No. 1., Vijaya Bank (now amalgamated into Bank of Baroda), Oriental Bank of Commerce, UCO Bank, Punjab and Sind Bank and Bank of Baroda ('Consortium of Banks') and corrective action plans were agreed by the JLF. It is further stated that for preservation of the economic value of the Corporate Debtor a request was made to the Lenders for extension of the Commercial Operation Date (COD) of the project by one year i.e. to July 2016 in view of the pending statutory clearance for extracting groundwater for power generation project from the concerned department of the state government. It is further stated that in the JLF meeting dated 24.09.2015, amongst other Agendas discussion on request of the CD for financing of part of interest during implementation of project as a term loan and charging of common rate of interest by all lender banks was discussed and the JLF sought for a proposal on the issue of extension of COD from the corporate debtor. It is stated that while PNB, the lead bank and Canara bank approved the extension of COD and sanctioned its share

in fresh term loan, the other members of the consortium failed to follow and the other members of the consortium informed the JLF that the proposal of extension of the COD and sanction of term loan is under consideration with the competent authority of the respective banks. In February 2016, the Corporate Debtor made a trial run of its plant with enhanced capacity for manufacturing of the Carbon Black, however, on account of shortage of working capital funds, the company failed to start the commercial production.

8. It is further stated that the Punjab National Bank and the Canara Bank approved the extension of the commercial operation date of the project by one year and sanctioned its fresh term loan, the other member of the consortium failed to follow. The delay in approval of the extension of the COD and in sanction of term loan and also in disbursal of sanctioned credit limits by the members of the consortium and due to various other contributing factors, the Corporate Debtor came under tremendous pressure, and in addition, the unit of the CD was sealed in October 2016 by the Punjab Pollution Control Board, which could only be unsealed in February 2017, but the plant could not operate at its full capacity.

9. The JLF in its meeting dated 25.05.2017, decided to initiate the proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) and a demand notice was issued on 20th June 2017 under section 13(2) of the SARFAESI Act, 2002. It is also stated that the JLF never tried to implement its decision to resolve the stress of the corporate debtors account to preserve its economic value. The request for extension of COD of the corporate debtor

was not acceded to by the consortium of banks and disbursal of working capital limits was also blocked however, the JLF sought for a revival plan from the CD for restructuring the various facilities with detailed restructuring scheme for revival of the unit.

10. It is further stated that the CD submitted its restructuring proposal in the month of December 2017 and resubmitted the same in April 2018 on the observations made by the members of the consortium. The lead bank of the consortium has also submitted its report dated 15.06.2018 concluding that the unit is technically feasible and financially viable. However, the said restructuring proposal was not considered for the reasons best known to the lenders, including the Respondent No.1 bank and thereafter an OTS offer dated 06.12.2019 was also given to the lead bank of the consortium vide email dated 07.12.2019. The CD at the JLF meeting held on 11.12.2019 informed the lenders that efforts are being made pursuant to which an OTS may be offered and he also requested the lead bank of the consortium for restructuring of limits for rehabilitation of the unit of the CD.

11. It is further stated that the rehabilitation/restructuring scheme was submitted by the CD to the consortium of banks on 27.01.2020 wherein the CD has shown its intent to run the company as valuable unit and has requested the member banks to consider the restructuring on merits as proposed in the Draft Restructuring Scheme, however the consortium of banks did not take any step towards implementation of the plan for restructuring of the company as proposed by the CD and thereafter on 24.01.2023 an OTS offer of Rs. 39,00,00,000/- (Thirty-Nine Crore) was provided on behalf of the CD for settlement of the outstanding dues. This

OTS was discussed by the Lenders at the joint lenders meeting held on 30.01.2023 where in the appellant was also invited to join and it was decided that a decision on this OTS would be taken on the basis of fresh valuation of the mortgaged assets. After the meeting of the JLM held on 08.05.2023 further information and clarification was submitted and a new OTS offer of Rs. 39.50 Crore was provided by the CD and in its meeting held on 25.05.2023 the OTS proposal of the CD was decided to be forwarded to the competent authorities for their approval and decision. On 08.06.2023, it was informed to the consortium that the company has arranged to deposit 5% OTS amount of Rs. 39.50 Crores i.e. Rs. 1,97,50,000/- from a financer/investor and is ready to deposit the same in an escrow account to be set up with Punjab National Bank. The PNB vide letter dated 13.06.2023 shared the escrow bank account details and the CD on 08.08.2023 deposited Rs. 1,97,50,000/- in this escrow account.

12. It is further stated that while the OTS proposal was pending before the consortium of banks the Respondent No.1 preferred an Application under Section 7 of the IBC alleging default of Rs. 90,43,74,091.45/- as on 31st August 2023, inclusive of interest, showing 30th September 2015 as the date of default and also the alleged date of NPA. Appellant, has filed its reply informing in detail the communications held with the consortium of banks with regard to the OTS submitted by the Appellant and also wrote various emails to the consortium of banks to show its bonafide and also proposed to settle the Car loan account by paying the entire due amount of Rs. 59.98/- lakhs but no fruitful result was achieved.

13. It is also stated that the Respondent No.1 vide letter dated 28.03.2024 was pleased to approve the OTS proposal of the CD for the car loan account for an amount of Rs. 60 lakhs and the CD has duly made payment of the said amount. It is further stated that the petitioner bank deliberately failed to disclose the details of the OTS proposals before the Ld. Adjudicating Authority and also did not inform that the Petitioner (Respondent No.1) has also sanctioned the OTS proposal given by the CD subject to the condition that the OTS proposal is also sanctioned by all other member banks of consortium. It is further stated that no other bank has rejected the OTS proposal given by the Respondent No.1/petitioner and the same is under consideration of all other lender banks before their respective head office(s). It is in this background Appellant claimed that the impugned order is liable to be set aside as the same has been passed in utter disregard to the factual matrix and while the OTS proposal floated by the appellant was under active consideration of various members of the consortium the initiation of CIRP should not be done at the instance of that bank which had earlier approved the OTS proposal of the Appellant.

14. It is further case of the appellant that during the pendency of this appeal Respondent No. 3 has filed an affidavit stating that the OTS proposal dated 24.05.2023 is under consideration before the competent authority of Respondent N0. 3 however during the pendency of the appeal the OTS earlier sanctioned by the Respondent No. 1 bank was illegally cancelled.

15. It is pertinent to mention here that Respondent No. 2 and Respondent No. 3 did not file their Reply and they have argued on the basis of the material which is already on record. Respondent No. 1 however has filed

reply and also an application bearing IA No. 2165 of 2025 for vacating the stay granted by this Tribunal at the time of first hearing, however later on he also consented to argue the appeal finally.

16. Respondent No. 1 in his reply has stated that all the facts pertaining to the non-consideration of the OTS Proposal in right perspective and also with regard to the non-sanctioning of financial facilities as and when desired by the appellant are false, concocted and could not be believed and the same have been levelled by the appellant in order to shield his inability and to over shadow mishandling of the affairs of the CD resulting in its financial breakdown.

17. It if further stated that the account of the CD and its Director including of the appellant was declared as fraud vide notice dated 23.08.2024, however, the said notice was later on quashed by the Hon'ble High Court of Delhi with the liberty to the Respondent to initiate fresh action.

18. It is also stated that the OTS submitted by the CD which was pending with the lead Bank of the consortium i.e. Punjab National Bank was in principle was conditionally approved by the Respondent however, the said OTS has now been withdrawn/cancelled by the Respondent, in view of the appellant's inability to convince the Punjab National Bank to accept its OTS, which was a pre-condition set out by the answering Respondent for approving the OTS submitted by the appellant and this cancellation/rejection of OTS has been duly conveyed to the lead bank vide email dated 17.03.2025 as well as to the appellant on 19.03.2025.

19. It is also stated that the CD for the first time informed Adjudicating Authority about the settlement talks on 02.02.2024 and had taken adjournment multiple times and the impugned order could only have passed on 18.10.2025 and neither during the course of pendency of the CIRP application nor during the pendency of the instant appeal. The appellant has taken the approval of the other members of the consortium.

20. It is also submitted that there is no statutory bar for initiation of insolvency proceedings against the CD while an OTS is under consideration. In this regard, the law laid down by this Appellate Tribunal in ***Ram Bhaj Jain vs. Tarun Batra, Resolution Professional Vardhman Rice Mills Pvt. Ltd & Anr. [Company Appeal (AT)(INS) No. 1011/2022],*** has been relied.

21. It is also stated that in view of Section 12 A of the IBC and Regulation 30A, IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, if the OTS of the appellant is approved by the all the members of the consortium the recourse may be taken under these provisions, as the CD is MSME he can also submit a resolution plan. It is also stated that disbursal of loan and its default has not been denied and hyper technical grounds have been taken in the appeal with regard to the dates of default.

22. It is further stated that as per the settled law the Respondent No. 1 is not required or bound to take any authorisation/permission of any member/bank of consortium to initiate insolvency proceedings as it is having a statutory right to avail the mechanism of IBC, reliance in this

regard has been placed on 'Asian Natural Resources (India Ltd.) vs. IDBI Bank Ltd.', CA (AT) (Ins) No. 60 of 2017.

23. It is also stated that the Respondent is the custodian of the public money and cannot disburse funds at the wish and will of the appellant without following the due procedure/policy established. In fact the appellant or the CD are not having any means to settle the dues of the Respondent and that is why the whole amount of the OTS proposal has not been deposited.

24. It is also stated that in normal course the limitation would have expired on 30.09.2018 as the account of the CD was classified as NPA on 30.09.2015 within which the lead Bank i.e. Punjab National Bank has issued a notice under Section 13 (2) of the SARFAESI Act, 2002, asking the appellant to pay the dues within 60 days which expired on 29.08.2017. However, thereafter a working capital consortium agreement was executed between the CD and the consortium of Banks on 01.03.2017 renewing the credit facilities to the CD and by this event the period of limitation was further extended for three years i.e. till 01.03.2020 and this agreement was also executed within three years from the date of declaration of account of the appellant as NPA.

25. The CD failed to abide by the terms of repayment and sought restructure of the loans by submitting several OTS proposals dated 06.12.2019, 28.01.2020, 26.02.2021, 18.03.2021, 15.05.2021, 17.03.2021, 07.12.2022, 24.01.2023 and 06.05.2023 whereby it has also acknowledged the debt in writing whereby also the period of limitation has extended again for three years from 06.05.2023 and the application under Section 7 of the

IBC has been filed within limitation and the appeal of the appellant be dismissed.

26. Ld. Counsel for the appellant while drawing our attention towards the short note submitted by him submits that the appellant has made all efforts to settle the dispute by submitting and OTS offer of Rs. 39.50 Crore to the consortium of lenders including the Respondent No. 1 for the settlement of the outstanding dues, as earlier OTS submitted by the CD were rejected by the lead Bank of the consortium. It is further submitted that the OTS submitted by the CD was discussed in the joint lenders meetings of the consortium banks and all the members of the consortium decided to forward the OTS proposal to their respective higher authorities for their approval and decision on the same was yet to be taken in the next scheduled meetings of the JLM but without waiting for the decision of the higher authorities the Respondent NO. 1 has filed the insolvency petition.

27. It is further submitted that the dates of default which has been shown by the bank in its application moved under Section 7 of the IBC are not correct and no default has occurred on these dates, however this important fact has been ignored by the Ld. Adjudicating Authority. The attention of this Appellate Tribunal is drawn on the Affidavit dated 1st February 2025 filed by the Respondent No. 3/PNB, wherein the OTS Proposal of the Appellant is shown, being considered and vide email dated 17.03.2025 the Respondent No. 1/Canara Bank has now informed that the OTS has been cancelled on account of purported inordinate delay in approval of OTS by other lender banks.

28. It is submitted with considerable force that the cancellation of the OTS by the respondent number one is arbitrary and unlawful and without any reason, no default has occurred in the OTS on the part of the appellant. It is also highlighted that the bonafide of the appellant may be assessed by the fact that the Appellant has settled the Car loan which was exclusively sanctioned by the Canara Bank by paying the entire due amount of Rs. 59.98 Lakhs. It is emphasised that the Respondent No. 1 after reaching on an OTS, which was awaiting approval of other member banks of consortium of lenders was not empowered to withdraw the same without approval of other member banks of consortium of lenders. It is also submitted that on 13th June 2024 when the order was reserved by the NCLT the OTS sanction by Respondent No. 1 was subsisting and was not withdrawn as may be assessed by the minutes of JLM dated 22.05.2024 and 25.09.2024.

29. It is also submitted that the appellant has deposited Rs. 1.68 Crore with the Respondent No. 1 in order to prove its bonafide which is about 20% of the OTS amount which was approved by the Respondent No. 1 and after deposition of this amount the Respondent No. 1 has taken a U turn from its own stand taken on 22.05.2024 and 25.09.2024. It was also highlighted that about 80% of the members of the consortium are still considering the OTS proposal and therefore there was no urgency before the Respondent No. 3 to have initiated the CIRP.

30. It is also submitted that to show its bonafide the CD has made a proposal to deposit 5% of the OTS amount of Rs. 39.50 Crores i.e. Rs. 1,97,5 0,000/- and for this purpose has also sought the details of an escrow account from the Punjab National Bank and in fact Rs. 1,97,50,000/- was

deposited by the CD in this escrow account in terms of OTS dated 13.06.2023, thus there was no occasion for the Respondent No.1 to have filed the insolvency petition.

31. It is further submitted that the Adjudicating Authority has committed a patent illegality in accepting the prayer of the petitioner for initiation of CIRP against the Appellant as the filing of the petition was not sanctioned by the other members of the consortium banks or even by the lead bank i.e. Punjab National Bank. It is also submitted that when the CD was seriously discussing the timeline for repayment of the outstanding dues and has also deposited the settled amount of its car loan account and when the Respondent No. 1 itself has sanctioned the OTS proposal of the CD subject to the condition that it is sanctioned by all other member banks of consortium, there was not at all any necessity or urgency to have filed the petition. It is further submitted that so much so during the pendency of the appeal the Respondent No. 1 has also cancelled the OTS proposal earlier approved by it, which shows the utmost high handedness of the Respondent No. 1.

32. It is also submitted that on the request of the Appellant the meeting of the JLM was called on 19.05.2025 wherein the appellant was also invited at the time of discussions on OTS however even then Respondent No. 1/bank vide its letter informed the CD about the rejection of its OTS proposal. It is submitted that once the OTS has been approved/sanctioned by the Respondent No. 1, the same could not be cancelled. Reliance in this regard has been placed on the law laid down by the Hon'ble High Court of Delhi in

'Ambience Pvt. Ltd. and Another vs. Punjab and Sindh Bank and Another' reported in 2024 SCC online Delhi 4571.

33. Ld. Counsels for the Respondent No. 1 and 3 vehemently opposes the submissions made by Ld. counsel for the appellant and submit various credit facilities and loan was granted to the Appellant by it and other member banks of consortium pertaining to which the consortium agreements were also executed by them.

34. It is also submitted that the project of the CD was running behind schedule and his account came under stress and as such a Joint Lenders Meeting (JLM) was called on 10.08.2015 and a joint unit was formed comprising of all consortium members who thereof made necessary inspection of the plant site of the Corporate Debtor and observed that the new line of production related to the production of carbon black was not in operation and that the Co-generation plant of 6 megawatt was yet to be set up and soon thereafter the loan accounts of the corporate debtor was declared as non-performing assets (NPA) on 30.09.2015.

35. It is also submitted that as no payment was forthcoming from the CD to the financial creditor along with other consortium member banks the Punjab National Bank being the lead Bank of the consortium issued a demand notice dated 20.06.2017 under SARFAESI Act, 2002 on behalf of all consortium members seeking payment of the amount within 60 days and when no payment was made by the Corporate Debtor PNB also issued possession notice dated 8.12.2017 and 11.12.2017 against the secured/ collateral properties.

36. It is also submitted that the Respondent No. 1 had also approached the Debt Recovery Tribunal for enforcement of the securities however in the meantime the CD attempted to settle the matter by offering several onetime settlement proposals to the consortium and the last OTS was offered vide letter dated 24.05.2023 for a total amount of Rs. 39.50 crores only but the same was dismissed by the consortium considering that the amount is too low and could not be accepted.

37. It is further submitted that as on 31.05.2023 the Corporate Debtor owes financial debt of Rs. 90,43,74,091.45/- inclusive of interest to the financial creditor however even after repeated demands, the CD failed to make the repayment of disbursed loan and repeatedly assert that it is not in a capacity to pay the huge amount and in this background the Application under Section 7 of the IBC was filed.

38. It is submitted that since the CIRP was initiated on 18.10.2024 a substantial time has elapsed and during this entire period the appellant has failed to get the approval of the OTS proposal from the lead bank or any other member of the consortium despite their repeated attempts. It is submitted further that the answering Respondent No. 1 has already withdrawn its earlier in principle approval and there is no clarity or assurance that the PNB/ Respondent No. 3 or any other lender intends to approve the proposal.

39. It is also submitted that mere pendency of an OTS proposal does not create a right in favour of the appellant to indefinitely halt the CIRP

proceedings. Moreover, consideration of an OTS proposal also does not amount to its approval or sanction.

40. It is also submitted that the Appellant can also avail the liberty to settle the dues with the consortium of banks, who will constitute the committee of creditors and being a MSME, he can also file a Resolution Plan for restructuring of the debt as provided under section 240 A of the IBC.

41. It is further submitted that the Punjab National Bank is the lead Bank of the consortium and inter se agreement executed amongst the member banks were only for their internal operational convenience and the appellant was not a party to these agreements and the purpose of these agreements was only to regulate the internal rights and obligations of the members and the same may not stand in the way of an application moved under Section 7 of the Code and for initiation of CIRP no permission or consent of any other member bank is required, reliance in this regard has been placed on '***Asian Natural Resources India limited vs IDBI Bank Ltd.'***, CA (AT) (Ins) No. 60 of 2017.

42. It is also submitted that although the account of the appellant was classified as NPA on 30.09.2015 and the period of limitation would have expired on 30.09.2018 however the period stood extended due to the execution of the fresh working capital consortium agreement dated 01.03.2017 between the appellant and the consortium of banks and thus the limitation period extended by 3 years till 01.03.2020 and thereafter various OTS were proposed by the appellant on 06.12.2019, 28.01.2020, 26.02.2021, 18.03.2021, 15.05.2021, 17.03.2021, 07.12.2022, 24.01.2023,

06.05.2023, 06.05.2025, 19.05.2025 and 10.05.2025 therefore keeping in view the fact that the acknowledgement of the debt has been made up to 10.05.2025 the application has been filed by the bank within the stipulated time, as the limitation has extended by the acknowledgement of debt by the appellant in terms of section 18 of the Limitation Act, Reliance in this regard has been placed on '***Tejas Khandhar vs Bank of Baroda'***, CA (AT) (Ins) No. 371 of 2020 .

43. It is submitted with considerable force that to initiate CIRP, only the existence of a legally payable debt and default is required to be proved by a financial creditor, while in this case the debt is admitted to the appellant and he has also admitted the default and his only defence is that when his OTS scheme was being considered by the other member's banks of the consortium the Respondent NO. 1 should not have filed an application under Section 7 of the IBC. It is submitted that various OTS proposals have been made by the CD and they were all rejected by the consortium of banks as the amount proposed was very low and it is only for the purpose of buying time a new OTS proposal was made by the CD and he never intended to repay the loan taken by him and thus there was no option remained available with the Respondent NO. 1 except to initiate the proceedings of insolvency against the CD. It is submitted that there is no illegality in the impugned order passed by the Tribunal and thus the Appeal is liable to be dismissed. Reliance has been placed on the Law laid down by the Hon'ble Supreme Court in '***Suresh Kumar Reddy versus Canara Bank and others,'*** Civil Appeal No. 7121 of 2022.

44. Heard Ld. Counsels for the parties and peruse the record as well as the written submissions filed by them.

45. At the outset it may be highlighted that present is the case wherein neither the existence of a legally payable debt nor default in paying the said debt is disputed. The Appellant in paragraph No. 1 to 7 of the Appeal has admitted to have taken loan from a consortium of banks including the Respondent No. 1 Canara Bank and in Paragraph No. 8 of the appeal stated that the CD was unable to meet its payment obligations to the Lenders banks and its account was categorised as 'under stress' Account. The appellant in appeal has given various reasons resulting in low production of its unit i.e. clearance not given by the concerned authorities and also placing of the whole district of Sangrur in red category with respect to the extraction of groundwater by the Central Pollution Control Board and the Punjab Pollution Control Board.

46. It is not in dispute that pursuant to grant of credit facilities Consortium agreements were executed at first on 05.08.2013 between the appellant and Punjab National Bank, Oriental Bank of commerce now merged with PNB, UCO Bank, Punjab and Sindh Bank and Canara Bank and they together constitute a consortium of banks. On sanctioning of another term loan another consortium agreement was executed on 10.03.2014. On the request of Corporate Debtor, the existing working capital credit facilities were again renewed and enhanced wide sanctioned letter dated 30.03.2015.

47. There is also no dispute with regard to the fact that the loan accounts of the corporate debtor were declared as NPA on 30.09.2015, however the credit facilities appear to have further renewed and working capital consortium agreement was executed on 01.03.2017 between Appellant and consortium of banks. In the event of default, a notice appears to have been issued by the lead bank Punjab National Bank on 20.06.2017 to the Corporate Debtor under section 13(2) of SARFAESI Act, 2002 on behalf of the consortium of banks there after possession notices also appears to have been issued by the Punjab National Bank. The appellant in meantime has proposed many OTS offers on various dates ranging from 06.12.2019 till 06.05.2023 and all these OTS proposals were rejected.

48. The case of the Appellant is that as per the Joint Lenders Forum here in after called (JLF) dated 10.08.2015 it was agreed by the consortium of banks under the correction action plan CAB that JLF shall explore various options including restructuring of loan to resolve the stress in the Corporate Debtors Account and shall also make effort to arrive at an early feasible solution to preserve the economic value of the underlying assets of the Corporate Debtor, however according to the appellant these corrective measures has not been implemented by the consortium of banks. The Corporate Debtor stated to have submitted its restructuring proposal in December 2017 which was resubmitted on April 2018 however the shared restructuring proposal was not considered by the consortium. Another OTS offer was shared by the appellant wide email on 06.12.2019 which was also not materialised. Thereafter a rehabilitation and restructuring scheme stated to have been submitted by the corporate debtor to the consortium of

banks on 27.01.2020, however the consortium of bank is stated to have not taken any steps towards implementing the proposed plan for restructuring of the company as proposed by the corporate debtor. Thereafter on 24.01.2023 an OTS offer of Rs. 39,00,00,000 (Thirty-Nine Crores) appears to have been given by the Corporate Debtor to the consortium of lenders for settlement of the outstanding dues. The said OTS dated 24th January 2023 is stated to have been discussed in the joint lenders meeting held on 30th January 2023, where in the appellant was also invited to participate. The minutes of this meeting has been placed on record and perusal of the same would reveal that this OTS was discussed in the said meeting and the decision was taken that any decision on OTS offer would be taken on the basis of fresh valuation report of mortgaged assets, however the record doesn't show about the further discussion on this OTS and it appears that the same was not accepted.

49. The next OTS appears to have submitted by the Appellant on 24th May 2023 for Rs. 39.50 crores, for the settlement of the outstanding dues. Prior to this as stated by the Appellant in para number 31 of the appeal the many OTS proposals were submitted by the CD on 6th December 2019, 28th January 2020, 26th February 2021, 18th March 2021, 15th May 2021 and 17th March 2023 and all these proposals were rejected by the consortium of banks.

50. Coming to the fate of the OTS proposal given by the appellant on 24th May 2023, it was discussed in the meeting of JLM on 25th May 2023 and after discussing the offer and on the appellant showing his inability to comply improvements suggested by the consortium members, the appellant

was informed that decision on the OTS offer will be subject to approval from the respective competent authorities of the member banks and all the member banks unanimously decided to forward this OTS proposal to their respective competent authorities for their approval and decision. The minutes of this meeting would reveal that it is recorded therein that no improvement has been made by the appellant in its original proposal and this proposal was simply forwarded by the member banks to their higher authorities for consideration.

51. In our considered view, by any standards the decision of the consortium of banks to forward the OTS proposal submitted by the appellant to their higher authorities may not amount to acceptance of the same.

52. The appellants claim is that vide letter dated 8th June 2023 it was informed to the consortium of lenders that company has arranged deposit of 5% of the OTS amount i.e. Rs 39.50 crores (Rs.1,97,50,000/-) from a financer/ investor and is ready to deposit the same in an escrow account and request was made to the PNB to provide the details of this account. Annexure 5 to the Appeal would reveal that on 13th June 2023 the details of this account was shared by the Punjab National Bank and this amount is also claimed to have been deposited.

53. In the meantime the petition under Section 7 of the IBC appears to have been filed by the Canara Bank on 2nd September 2023 and during the pendency of this petition a meeting of JLM was convened on 22nd May 2024, wherein Respondent No.1, Canara Bank informed that their bank has

sanctioned the OTS subject to the condition that OTS is also sanctioned by all the member banks of the consortium, while the other member banks informed that their proposal is pending at the level of the Head Office and they are waiting for the sanction of the same by the lead bank and their decision on the OTS will depend upon the sanction of OTS by the lead bank i.e. PNB. To this the lead bank i.e. PNB informed that OTS proposal has been forwarded to the head office and is under consideration.

54. Another meeting of the JLM appears to have been convened on 25th September 2024, apparently on the request of Respondent No.1, Canara Bank and it is stated there in that the account has been reported as fraud on 19th August 2024 by Canara Bank while the PNB apprised that competent authority has already declared the account as 'No Fraud' on 24th April 2024. The representative of UCO bank also informed that the same account has already been declared as fraud but as per revised guidelines re-examination has been reinitiated and now they have recommended for 'No Fraud' to the competent authority and expressed its views about invocation of personal guarantee. The discussion taken place in the meeting as recorded in the minutes dated 25th September 2024 will show that the discussion has taken place with regard to the fact that Canara Bank has approved the OTS proposal subject to the condition of approval by all the member banks and also that the Account was earlier reported as Fraud.

55. The Appellant appears to have written a letter to the Respondent No. 3, Punjab National Bank on 6th may 2025 informing to have made certain improvements in the OTS offer amount and with a further request to revival

of the earlier OTS sanction, however he was informed pertaining to the rejection of the OTS proposal by Respondent No.1 Canara Bank.

56. Thus the above facts would sufficiently demonstrate that the OTS offer/proposal of the appellant was discussed many times in the JLM meetings and once upon a time the said OTS proposal was also send for approval of the higher authorities of the banks, however the same was never approved by the Consortium of Banks as a whole, may be because the account at some point of time was labelled as Fraud. Respondent No.1, Canara Bank appears to have approved the OTS proposal subject to its approval by other members of the consortium especially the Lead member of the Consortium i.e. PNB. In nutshell it appears to be an admitted situation that the OTS proposal of the appellant was never approved, at any point of time, by all members of consortium of banks and the approval of the Respondent No.1, Canara Bank was also conditional as the same was dependent on the approval by other members of the consortium specially the lead bank, Punjab National Bank. It is also to be recalled that there were some members of the consortium who have declared the account of the appellant as 'Fraud account' though there was some confusion with regard to the declaration of this account as fraud account, as in one of the meeting of the consortium it was informed that decision has already been taken pertaining to this account as no fraud account. Be that as it may the proposal floated by the appellant was never approved by the higher authorities of the other member banks of consortium and was rejected subsequently by the Respondent No.1 Canara Bank also.

57. We are in agreement with the submissions made by Ld. counsel for the Respondent No.1 Canara Bank and Respondent No. 3 Punjab National Bank that in the guise of pending OTS the proceeding of CIRP may not be kept in abeyance for a long time. The record would reveal that many proposals of the appellant, made earlier have also been rejected by the consortium and only one proposal was pending pertaining to which only one member of the consortium i.e. Respondent No.1 Canara Bank has given its approval, that too subject to the condition that the other members of the consortium must also approve the same. Thus the same was conditional. The other members of the consortium have sent the proposal to their Higher authorities and till date the said proposal has not been approved by the head office of any of the member Bank.

58. We are also in agreement with the submissions made by Ld. counsel for the appellant that the consortium agreement executed between various members of the consortium is an agreement of ease and convenience and it is for the internal management of the consortium banks and also that this inter se agreement entered between the consortium members would not stand in the way of any application which may be moved by any of the member of the consortium under Section 7 of the IBC. We are also of the view that all the members of the consortium have advanced loan to the corporate debtor and there is also a disbursement by all and there is existence of a legally payable debt and admittedly there is also a default as the loan account of the CD was declared as NPA on 30.09.2015 and within three years of it a fresh agreement of working capital was executed on 01.03.2017 between CD and consortium of banks, demand notice under

Section 13 (2) of SARFAESI Act, 2002 was also issued on 20.06.2017, possession notice was issued by PNB on 08.12.2017 and 11.12.2017 and various OTS proposal in writing were moved by the appellant ranging from 06.12.2019 till 06.05.2023, which amounts to acknowledgment of debt under Section 18 of the Indian Limitation Act and continuous acknowledgment of the debt by the appellant by moving various OTS proposals, has extended the limitation as provided under Section 18 of the Indian Limitation Act and the application appears to have been filed under the extended limitation, therefore only because the other members of the consortium have not joined the Respondent No.1 in the petition, the petition moved by one of the member of the consortium, Respondent No.1, may not be rejected only on this score, if the same is fulfilling all other conditions required for initiation of CIRP against the Corporate Debtor. The part IV of the Form 1 submitted by the Respondent No. 1 clearly show the debt and also the dates of default and we do not find any infirmity therein. The claim of the appellant that he had deposited about 20% of the OTS amount is also of no consequence as the OTS once approved by the Respondent No. 1 was conditional i.e. subject to the approval of other member of the consortium and no other member has approved the same, thus pendency of OTS could not be termed or deemed as its approval. Admittedly the first restructuring proposal was submitted in 2017, thus the financial creditor cannot wait for ever to exercise his statutory right only on the score that the OTS proposal of appellant has been forwarded to the higher authorities of some members of consortium.

59. We are of the considered view that sufficient rather more than sufficient time has been granted to the appellant as well as to the other members of the consortium for the purpose of approval of the OTS proposed by the appellant and since the various OTS proposals earlier proposed by the appellant have already been rejected, we do not see any reason as to why the Adjudicating Authority should have waited for the result of the consideration of this OTS proposal by the superior authorities of the other members of the consortium.

60. In '**M. suresh Kumar Reddy vs Canara Bank and others, reported in (2023)8 SCC 387'**, Hon'ble Supreme Court, while considering the issue with regard to the admission of a petition under section 7 of the IBC, has held as under: -

> *"**9.** We have given careful consideration to the submissions. This Court in **Innoventive Industries Ltd. v. ICICI Bank [Innoventive Industries Ltd. v. ICICI Bank**, has explained the scope of Section 7. Paras 28 to 30 of the said decision read thus: (SCC pp. 438-39)*
>
> > *"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim*

resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. ***The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.***

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing— i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such

a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

(emphasis supplied)

***10**. The view taken in Innoventive Industries has been followed by this Court in E.S. Krishnamurthy. Paras 32 to 34 of the said decision read thus: (E.S. Krishnamurthy case, SCC pp. 177-79)*

"32. In Innoventive Industries, paras 28 and 30, a Two-Judge Bench of this Court has explained the ambit of Section 7 IBC, and held that the adjudicating authority only has to determine whether a "default" has occurred i.e. whether the "debt" (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application unless it is incomplete. Speaking through Rohinton F. Nariman, J., the Court has observed: (SCC pp. 438-39, paras 28 & 30)

'28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such

form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

* * *

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the

debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.'

33. In the present case, the adjudicating authority noted that it had listed the petition for admission on diverse dates and had adjourned it, inter alia, to allow the parties to explore the possibility of a settlement. Evidently, no settlement was arrived at by all the original petitioners who had instituted the proceedings. The adjudicating authority noticed that joint consent terms dated 12-2-2020 had been filed before it. But it is common ground that these consent terms did not cover all the original petitioners who were before the adjudicating authority. The adjudicating authority was apprised of the fact that the claims of 140 investors had been fully settled by the respondent. The respondent also noted that of the claims of the original petitioners who have moved the adjudicating authority, only 13 have been settled while, according to it '40 are in the process of settlement and 39 are pending settlements'. Eventually, the adjudicating authority did not entertain the petition on the ground that the procedure under IBC is summary, and it cannot manage or decide upon each and every claim of the individual homebuyers. The adjudicating authority also held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it would dispose of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time-frame. The petition was accordingly disposed of by directing the respondent to settle the remaining claims no later than within three months, and that if any of the remaining original petitioners were aggrieved by the settlement process, they would be at liberty to approach the adjudicating authority again in accordance with law. The adjudicating authority's decision was also upheld by the appellate authority, who supported its conclusions.

34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."

(emphasis in original and supplied)

11. *Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:*

"3. Definitions. —In this Code, unless the context otherwise requires—

* * *

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.*"*

(Emphasis given and also supplied by us)

61. A coordinate Bench of this Appellate Tribunal in '***Apresh Garg vs. Indian Bank and Ors.',*** (2025) ibclaw.in 382 NCLAT, decided on 15th May 2025, in similar facts where the loan was given by many banks and a

consortium was formed and a OTS proposal was also pending, which was rejected subsequently, this Tribunal held that this is a case where the fact that CD has failed to discharge its debt liability is not even disputed and the default in payment is also not disputed, it was opined that there are sufficient materials to indicate that debt and default is an admitted fact, the NARCL, who was assigned the entire debt by all the Consortium Members, including the Indian Bank, having not accepted the settlement proposal submitted by the Appellant, it was decided that in these circumstances the resolution of the CD has to take place in accordance with the IBC.

62. In '**Amitabh Kumar Jha vs. Bank of India & Anr.' [Company Appeal (AT)(INS) No. 1392 of 2019]**, a coordinate bench of this appellate tribunal, while considering the identical issue held as under: -

> *"6. Per contra, it is submitted on behalf of the 'Financial Creditor'- 'Bank of India' that the 'I&B Code' empowers a single 'Financial Creditor' to initiate 'Corporate Insolvency Resolution Process', for which consent of other 'Financial Creditors' is not required. It is submitted that since the factum of debt and default has not been disputed, the independent right of 'Bank of India' as individual lender to enforce its rights and seek triggering of 'Corporate Insolvency Resolution Process' is not affected by the terms of CLA.*
>
> *9. …It would be a travesty of justice to raise a plea that since the creditors has an inter se agreement in regard to enforcement of the liability of the debtor qua the creditor, an individual creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by the creditor which is otherwise payable in law and not barred by any legal framework including the law of limitation. What transpires among the creditors in regard to 'Inter-Creditor Agreement' is a matter exclusively inter se the Creditors. The debtor*

has no locus to meddle with the internal arrangement and affairs of the creditors in regard to their joint or individual interests…

10. The statutory right across the ambit of Section 7 of the Code cannot be curtailed or made subservient to any 'Inter-Creditor Agreement'. The contractual rights, unless recognized by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute.

12. In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The Financing Documents do not in any manner curtail or limit the rights of the 'Financial Creditor'- 'Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed."

63. Another coordinate bench of this appellate tribunal, while considering the identical issue in **Company Appeal (AT) (CH) (INS.) No. 385 of 2022, M/s. 'GVK Energy Ltd. and Anr. vs Axis Bank Limited and Anr.**', decided on 24.04.2023 held as under: -

"83. It is to be pointed out that the `Petition / Application', under Section 7 of the I & B Code, 2016, is to be `disposed of', within the purview of `Section 7 of the Code'. In an application under Section 7, the `Petitioner', must be able to establish the `Existence' of a `Debt', which is due from a `Debtor'.

84. Although a `Debt', is disputed, if the amount is more than the `threshold limit', as per Section 4 of the I & B Code, 2016, then the `Petition', under Section 7, per se, is `maintainable'. No wonder, `Section 7 Application/ Petition', is to be considered by an `Adjudicating Authority', on its own merits, taking into consideration the record, even though, the `Debt', is `disputed', and if the amount is more than the `threshold limit', then, the `Application', is `maintainable'.

85. It is to be remembered that a reason for inability of `Corporate Debtor', to pay its `Debt', is not required to be looked into, by an `Adjudicating Authority'. To put it succinctly, the circumstances, under which, a `Corporate Debtor', could not `repay', the `Financial Debt', need not be taken as a `defence', in a `Proceeding(s)', under the `Code'.

86. That apart, a mere `Dispute', about the `Quantum of Payment', does not affect the `Right' of a `Financial Creditor'. Moreover, an `Adjudicating Authority'/ `Tribunal', is not a `Civil Court', to determine the `Violation of Contract', between the `Parties', in the considered opinion of this `Tribunal'.

121. It is to be remembered that the Corporate Debtor, cannot seek an `umbrage', under the `Inter Creditor Agreement', with a view to avoid, evade, circumvent and supplant its obligation(s), in terms of the `Loan Facility Agreement'. Continuing further, the I & B Code, 2016 (vide Section 238 of the I & B Code, 2016), will have an `overriding effect', in regard to anything inconsistent therewith contained in any other `Law', for the time being in force.

129. It must be borne in mind that the `Inter Creditor Agreement', is meant to take care of the interest of all the `Lenders', among themselves, coupled with the Corporate Debtor, dehors the fact that the `Corporate Debtor'/`GVK Power (Goindwal Sahib) Ltd.', was not a privy and party to any of the `Clauses' of the said `Agreement'."

64. Hon'ble Supreme Court of India in "**The Bijnor Urban Cooperative Bank Limited, Bijnor & others vs. Meenal Agarwal & others, CIVIL APPEAL NO. 7411 OF 2021, decided on 15.12.2021**, while considering the issue as to whether benefit under the OTS Scheme can be prayed as a matter of right? held as under: -

"9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge 16 amount, for

example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

10. If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one-time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme."

Thus it is clear from the above placed legal precedents that the statutory right of a Financial Creditor bestowed under Section 7 of the 'IBC' cannot be curtailed or made subservient to any 'Inter-Creditor Agreement' or Consortium agreement executed between the lender banks, as the same was only for regulating the inter se affairs of the consortium and the OTS proposal cannot be claimed by a borrower as a matter of right. Thus the 'Petition/Application moved under Section 7 of the IBC, 2016 must be decided within the purview of Section 7 of the Code and the same is to be considered by the Adjudicating Authority, on its own merits, taking into consideration the facts of the particular case and the Law established, in this regard. However, there is no much discretion available to the Adjudicating authority, if all the requirement as mentioned under section 7 of the IBC are satisfied by a Creditor Applicant. It is also to be remembered that any reason or inability of Corporate Debtor, to pay the Debt, is also not required to be looked into at this stage by the Adjudicating Authority. The reliance of the appellant on the law laid down by the Hon'ble Delhi High Court in Ambience Pvt. Ltd. (Supra) is also of no help to the appellant due to the difference of factual matrix. In that case the approval/sanction of OTS was absolute, while in the instant case the approval has been given only by the Respondent No. 1, that too, subject to the approval of all members of the consortium and admittedly other members of the consortium have never approved the OTS proposal of the appellant.

65. So far as the submission of Ld. Counsel for the appellant, that the Respondent No. 1, alone cannot file any application under Section 7 of the IBC, is concerned, we do not find much force therein also. Section 7 of the

IBC itself provides that a financial creditor either by itself or jointly with other financial creditors may move such application, therefore there appears no bar as to why a single creditor in isolation may not move any such application. However, a joint application by many financial creditors under Section 7 of the IBC is required to be filed with the consent of those who have joined therein as petitioners. In the case in hand the application has been filed by Financial Creditor Respondent No.1, Canara Bank alone, on its own, without approval or consent of other members of the consortium and in our considered opinion there was absolutely no need to take the consent or permission from other creditors (Members of Consortium) to file any such application. Therefore, keeping in view all the facts of circumstances of the case and the legal position enumerated herein before we do not find any illegality in the impugned order passed by the Adjudicating Authority. Resultantly the appeal is lacking force and is **dismissed**. The impugned order passed by the adjudicating authority is hereby affirmed.

66. Keeping in view the peculiar facts and circumstances of this case there is no order for costs. The pending IA's are also closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
03.09.2025.
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