

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

**Company Appeal (AT) (Insolvency) No. 396 of 2024**

**In the matter of:**

**Apresh Garg**

**....Appellant**

**Vs.**

**Indian Bank (erstwhile Allahabad Bank) & Anr.**

**...Respondents**

**For Appellant**

Dr. Abhishek Manu Singhvi, Mr. Abhijeet Sinha, Mr. Mohit Chaudhary, Sr. Advocates with Mr. Kunal Sachdeva, Mr. Sumit K. Batra, Mr. Manish Khurana, Ms. Priyanka Jindal, Mr. Avishkar Singhvi, Mr. Prakhar Mithal, Mr. Anubhav Singal, Advocates.

**For Respondents**

Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Anani Achumi, Advocates for Indian Bank  
Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms. Ankita Bajpai, Advocates for R2.  
Mr. Chandra Prakash Advocate for Indian Overseas Bank

**(ORDER)  
(05<sup>th</sup> March, 2024)**

This Appeal has been filed against the order dated 30.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench (Court-II) by which Section 7 application filed by the Respondent-Indian Bank has been admitted. Appellant was extended the loan facility by consortium of banks through joint consortium agreement executed on 25.10.2017. Indian Overseas Bank being lead bank consortium comprises of 11 banks including the Indian Bank Respondent herein. In the total lending to the Corporate Debtor, Respondent- Indian Bank has 2.47% share. The Corporate Debtor is a going concern. Corporate Debtor submitted a debt restructuring plan to the lead bank. The debt restructuring plan of the

Corporate Debtor was considered in several joint lenders' meeting. In September, 2023 while all banks of the consortium were considering restructuring proposal, the Respondent No.1- Indian Bank filed Section 7 application claiming an amount of Rs.51,07,40,896/- due as on 10.08.2023. In the joint lenders' meeting held on 27.09.2023, out of 11 banks, 9 banks have given their in-principle approval for proposal of restructuring. For giving effect to restructuring proposal as per the RBI directives, credit rating has to be examined. CARE, the credit rating agency, assigned RP5 rating to the Corporate Debtor due to which restructuring proposal could not be approved. In the meeting held on 06.01.2024 of joint lenders, resolution was taken to refer the loan account of the Corporate Debtor to the National Asset Reconstruction Company Limited (NARCL). The process of assignment commenced thereafter. The Corporate Debtor filed a Civil Suit being CS (OS) No.818 of 2023- "*Agson Global Pvt. Ltd. vs. CARE & Anr.*" challenging the decision of CARE and also seeking direction to the consortium to execute restructuring agreement. Delhi High Court vide order dated 16.01.2024 directed the credit rating agency to have a relook at CRA Rating of RP5 in view of inputs given by the lead bank. In pursuance of the decision dated 06.01.2024 taken in the joint lenders' meeting, the process of assignment was initiated on 23.01.2024 and the Corporate Debtor was served with an intimation that one M/s. BOBCAPS has been appointed as a Consultant by the NARCL to conduct the financial due diligence of the account of the Corporate Debtor. A joint lenders meeting was held on 29.01.2024 where all the member banks of consortium unanimously gave their mandate to assign the loan account of the Corporate Debtor to NARCL. The Adjudicating

Authority heard the matter on 30.01.2024 and admitted Section 7 application holding that the debt and default is proved and further as on date, it is not shown that the debt has been assigned to NARCL. The Adjudicating Authority in paragraph 17 further stated that if there is any positive development regarding transfer of loan account to NARCL, it would be open to the parties to take steps in accordance with law. Aggrieved by the order, this Appeal has been filed.

**2.** We have heard Dr. Abhishek Manu Singhvi and Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant and Shri Rajesh Gautam, Learned Counsel appearing for the Indian Bank.

**3.** Dr. Abhishek Manu Singhvi, Learned Senior Counsel for the Appellant challenging the impugned order submits that before the Adjudicating Authority all relevant materials have been brought to indicate that 93% of lenders bank forming part of consortium has agreed in principle for restructuring of the debt of the Appellant. It is submitted that restructuring could not be implemented on account of credit rating of Corporate Debtor being RP5 for which steps have been taken by the Corporate Debtor by filing a suit and Delhi High Court has already directed the credit rating agency to reconsider its decision which order was passed on 16.01.2024. It is submitted that in the joint lenders' meeting on 06.01.2024, lenders bank took a decision to assign the debt of the Corporate Debtor to NARCL and due diligence for the said has already been initiated and in the meeting held on 29.01.2024, there is unanimous agreement by all banks including the Respondent for assignment of debt to NARCL. When lenders have decided to assign a debt to

NARCL, there is no justification in one Bank i.e. Respondent No.1 having 2.47% shares in the lending to put the Corporate Debtor into insolvency. The Corporate Debtor is a going concern and all efforts are being made by the Corporate Debtor itself to revive the company by restructuring its debt. It is submitted that in the restructuring proposal the Corporate Debtor is not proposing any haircut to the debt of the lenders. It is submitted that on 30.01.2024, it was brought into notice of the Adjudicating Authority that the lenders in their meeting on 30.01.2024 are going to take a decision regarding assignment, hence, application under Section 7 not be admitted. It is submitted that when more than 93% lenders are favorably considering restructuring proposal, one member of consortium who have only 2.47% in lending cannot be permitted to put the Corporate Debtor into insolvency to frustrate the entire process. It is submitted that it is well settled that the object of the IBC is to revive and reorganize the company and in the facts of the present case, the Adjudicating Authority committed error in admitting Section 7 application without awaiting completion of assignment when the lenders have already in-principle decided to assign the debt. There is no occasion to initiate CIRP against the Corporate Debtor at this stage. It is submitted that the Adjudicating Authority itself in paragraph 17 given liberty to take steps if assignment is made. It is submitted that when CIRP has been commenced, liberty granted in paragraph 17 is meaningless. It is submitted that the balance of convenience is in favour of the Appellant and this Tribunal may pass appropriate interim order to protect the Appellant from being put into insolvency specially when more than 93% lenders are favorably considering restructuring and all lenders have decided to assign the debt to NARCL. It is

further submitted that the Indian Bank has filed Section 7 proceeding as a measure of recovery. Section 7 proceedings cannot be resorted as a measure of recovery and proceedings initiated by Indian Bank is not resolution for Corporate Debtor

**4.** Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant has also submitted that the Appellant be given a chance to revive which are being taken by majority of lenders of consortium having more than 93% share. One member of the consortium cannot be allowed to trigger insolvency against the Corporate Debtor in the facts of the present case.

**5.** Shri Rajesh Kumar Gautam, Learned Counsel appearing for the Indian Bank has vehemently opposed the submissions advanced by Learned Counsel for the Appellant. It is submitted that in the present case debt and default is not even denied. Even though Indian Bank has only 2.47% share in the lending to the Corporate Debtor, the Indian Bank has all right to take steps as permissible in law. Filing of Section 7 application by Indian Bank is fully maintainable and justified. The Corporate Debtor owed in total amount more than Rs.1008 Crores debt to all the lenders. It is submitted that in the IBC proceedings where management is handed over to an IRP since the Corporate Debtor is unable to serve its debt, there is no right in the Appellant to claim that they should continue in the management. Appellant having failed to service their debt, they cannot be allowed to carry on in the management of the Company. It is submitted that no restructuring could be allowed as per the RBI Circular since the credit rating of the Corporate Debtor is R5. It is submitted that the credit rating of the Corporate Debtor has not been reviewed

till date and till date the Corporate Debtor is not eligible for any restructuring of the debt. It is submitted that even though lenders have taken in-principle decision to assign the debt to NARCL but debt has not yet been assigned. It is not known that how much time shall be taken in completion of process of assignment of debt and the Financial Creditors cannot wait for a long period to receive back their money. It is submitted that in-principle approval by the lenders of assignment of debt of Corporate Debtor to NARCL cannot be a ground to stop the CIRP process against the Corporate Debtor.

6. We have considered the submissions of the Counsel for the parties.

7. From the facts, as noticed above, it is apparent that the consortium of lenders led by Indian Overseas Bank has expressed their agreement for restructuring of the debt which having more than 93% shares in the lending. It is the Indian Bank or one or other two banks who have not given their consent and they have been opposing restructuring. The Corporate Debtor is a going concern. Learned Counsel for the Appellant has referred to Agenda Item No.2 of the joint lenders meeting held on 29.01.2024, which is as follows:-

***“2) In-principle Mandate on Transfer of Account to NARCL for Recovery:***

*Shri Rajiv Ranjan Mallick AGM, IOB Defence Colony Branch informed that DFS is closely monitoring all the accounts above Rs. 500 crores and there have been several review meetings conducted by DFS to monitor the progress on this issue. He further informed that IOB has in principle agreed to transfer M/s Agson Global Pvt. Ltd. to NARCL and Subsequently SBI being the leader of NARCL had been*

*enquiring on the progress on this matter during NARCL Review meeting. Therefore, this meeting has been called specifically to obtain the approval of mandates from all the member banks to take a call on In- Principle transferring this account to NARCL*

**IOB CRM** reiterated that in the last JLM meeting it was requested that all the member banks will clear their stand in next JLM meeting on transferring this account to NARCL. Further Shri Rajiv Ranjan Mallick requested all the Member banks to confirm their stand on providing the mandate in favour of transferring the account to NARCL or non-approval as the case may be.

*All the Banks then one by one conveyed their stand on transferring the account to NARCL. The details of which is as annexed below:-*

<b>Bank</b>	<b>Views on In-principle Transfer of Account to NARCL</b>
<i>IOB</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable</i></li> </ul>
<i>PNB</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable</i></li> </ul>
<i>Union Bank of India</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable to go with the majority</i></li> <li>• <i>There should be Swiss Challenge</i></li> </ul>
<i>BOI</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable to go with the lead bank</i></li> </ul>
<i>UCO Bank</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable and recommended to HO, awaiting final approval</i></li> </ul>
<i>Canara Bank</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable</i></li> </ul>
<i>SBI</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable</i></li> </ul>
<i>Central Bank of India</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable</i></li> </ul>
<i>BOB</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable to go with the majority</i></li> </ul>
<i>Indian Bank</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Alternate recovery process by the bank shall proceed</i></li> </ul>
<i>IDBI Bank</i>	<ul style="list-style-type: none"> <li>• <i>Agreeable</i></li> </ul>

***All the member banks unanimously give their mandate to lead bank for in- principle transferring the account to NARCL.***

*As decided by member banks in the last JLM dated 06.01.2024, IOB has conveyed NARCL to start the initial Due Diligence so that entire exercise can be completed in a time bound manner. IOB further informed that from the NARCL side BOBCAPS has been assigned the responsibility of doing the due diligence.*

***UCO Bank*** *enquired that if there has already been any offer by NARCL to which IOB informed that NARCL will make any offer only after completing the due diligence process and whenever there will be any offer by NARCL it will comprehensively discussed and final decision will be taken by JLM.*

***Union Bank*** *representative informed that their bank is undertaking the Asset tracing exercise which will be concluded soon. CRM of IOB thanked him for the efforts by their bank and stated that this is a value addition to the whole exercise and also requested them to share the report among the JLM/Member Banks.*

***Indian Bank, DGM*** *informed that they had a crucial hearing on the next day in NCLT to which it was replied that all the banks are independent to follow recovery measure as per their own Bank's recovery policy.*



**SBI** representative suggested for doing enterprise valuation as per their Bank's policy, which was agreed by the JLM that it may be explored in future.

Many other banks requested for Stock valuation or the stock audit report of the primary stocks. IOB confirmed that though the last stock audit is completed in the month of May 2023 and it is 08 Months old only but as per necessity the stock valuation/audit may be done.”

8. Both the Learned Counsel for the parties have made respective submissions in support of their claim. From the facts which have been brought on record, it does appear that the majority of lenders having more than 90% share in the lending have expressed their agreement on for restructuring of the debt which could not be accomplished due to credit rating of the Corporate Debtor which is R5. We also notice that the High Court of Delhi on 16.01.2024 has already passed an order to the credit rating agency to have a relook at CRA Rating of RPF in view of inputs given by the lead bank which process is still on way. The minutes of meeting dated 29.01.2024 of joint lenders clearly minutes following decision:-

*“all the member banks unanimously give their mandate to lead bank for in-principle transferring the account to NARCL.”*

9. We have already noticed that the said decision was also taken on joint lenders meeting on 06.01.2024 and thereafter process has started. When all member banks unanimously have agreed in-principle to transfer the account to NARCL, we fail to see any necessity at this stage to continue the CIRP

against the Corporate Debtor. When the Corporate Debtor is put in insolvency process, all steps to revive including the re-structuring of the debt shall stand closed and defeated and there shall be no chance of revival of the Corporate Debtor. We have already noticed that Section 7 application filed by the Indian Bank is a lender who has only 2.47% share in the lending where majority of the lenders banks has not adopted the course which has been adopted by the Indian Bank. In the minutes of meeting dated 29.01.2024 of joint lenders, the stand of the Indian Bank has been noticed in following words:-

*“Indian Bank, DGM informed that they had a crucial hearing on the next day in NCLT to which it was replied that all the banks are independent to follow recovery measure as per their own Bank’s recovery policy”.*

**10.** The statement of the Indian Bank, as noted above, clearly indicates that the proceedings of Section 7 which was filed and being prosecuted by the Indian Bank was a recovery measure. In the facts of the present case, we are of the view that in the ends of justice be served in awaiting the decision of lenders regarding assignment for which in-principle approval has already been taken. When the lenders have decided in principle to assign their debt to NARCL, it is assignee who is to chalk future course of action regarding the Corporate Debtor.

**11.** Submissions which have been advanced by Counsel for the parties, as noticed above, need consideration.

**12.** Issue Notice. Respondent Bank is allowed two weeks’ time to file Reply. Rejoinder, if any, may be filed within two weeks thereafter.

**13.** List this Appeal on 05.04.2024.

In the meantime, the interim order already granted shall continue. Both the parties are at liberty to file an Affidavit bringing on record the steps regarding assignment of debt as was decided in the meeting dated 29.01.2024. We make it clear that any observations made by us in this order are not expression of any conclusive opinion by us on issue raised in the Appeal and all observations are *prima facie* which are subject to decision in the Appeal.

**[Justice Ashok Bhushan]  
Chairperson**

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

**[Arun Baroka]  
Member (Technical)**

***Anjali/nn***