IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
I.A. NO. 2418/ND/2026
IN
Company Petition No. IB/720/ND/2024
Under Section 65 of the Insolvency and Bankruptcy Code, 2016

IN THE MAIN MATTER OF:

DCB Bank Limited ... **Applicant**

Versus

M/S Genesis Infratech Pvt Ltd **Respondent**

AND IN THE MATTER OF:

M/S Genesis Infratech Pvt Ltd **...** **Applicant/RP**

Versus

DCB Bank Limited **Respondent**

CORAM:
SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on 10.07.2026

PRESENT:

For the Applicant	Mr. Akhil Shankhwar Adv. on behalf of CD.
For the Respondent	Ms. Kashika Singla, Adv. Hashmat Nabi, Adv. Farah Naaz for Financial Creditor/DCB Bank

ORDER
Per: Mahendra Khandelwal (Member Judicial)

1. The present instant Application has been filed by the Corporate Debtor /corporate guarantor M/S Genesis Infratech Pvt. Ltd under section 65 of the Insolvency and Bankruptcy Code 2016 read with Rule 11 of the

NCLT rules on behalf of the corporate debtor seeking dismissal of the petition under section 7 of the Insolvency and Bankruptcy Code 2016 filed by the financial creditor. The applicant has made following prayers

a) Impose a penalty of not less than one Lac rupees on the Petitioner under Section 65 of the IB Code; and/or

b) Dismiss the Petition under Section 7 of the Insolvency and Bankruptcy Code with exemplary costs; and

c) Pass any other order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.

Submissions of the Applicant

2. The Applicant has submitted that the sec 7 petition CP IB 720/ND/2024 filed against the applicant corporate guarantor has been initiated by the Financial Creditor in a mala fide, mechanical and legally untenable manner, not for the legitimate purpose of insolvency resolution of the Corporate Debtor, but solely as a coercive recovery mechanism and with malicious intent to exert undue pressure upon the Corporate Debtor. The present proceedings are therefore squarely hit by the provisions of Section 65 of the Code, which specifically prohibits fraudulent or malicious initiation of insolvency proceedings for any purpose other than insolvency resolution.

3. The applicant further submitted that the petitioner has filed contradictory pleadings and suppressed material facts and is filled with

multiple irregularities and the petitioner has not taken due diligence in filing the sec 7 petition.

4. The NESL certificate attached in the petition mentions principal borrower and not the corporate guarantor. And the sec 7 petition is filed against the applicant not the principal borrower, therefore reliance can't be placed on the NESL certificate.
5. The demand notice relied upon by the petitioner has not been annexed anywhere in the petition. Also, no proof of service is attached in the petition. The applicant submitted that it never received any notice of demand from the petitioner.
6. The date of default for a guarantor starts from the date of invocation of guarantee and the date of default for principal borrower can't be used for the corporate guarantor particularly where the terms of the Guarantee specifically require invocation of the Guarantee as a condition precedent for crystallization of liability.
7. The applicant has relied on Mudhit Madanlal Gupta Vs. Supreme Constructions and Developers Pvt. Ltd. wherein the Hon'ble NCLAT, while dealing with invocation of a corporate guarantee, categorically held in Paragraph 7 that Liability of corporate guarantor although is coextensive of the Principal Borrower but when the Guarantee requires invocation of the guarantee deed, default on the guarantor shall be the date when corporate guarantee has been invoked.

"It is well settled that the condition precedent invocation of Section 7 of the Code is the existence of a 'financial debt' and a 'default' in its repayment. The scheme of the Code is to ensure that when a debt becomes due and is not paid, the Insolvency Resolution Process

.

8. The entire claim of the corporate debtor has already been admitted by the RP of the corporate debtor, hence there was no need to file a separate petition against the corporate debtor as such the present proceedings are nothing but a duplicative, oppressive and coercive attempt to recover the same amount simultaneously through multiple insolvency forums.
9. The Financial Creditor has also failed to disclose whether any recoveries, distributions, voting rights, security realizations or adjustments have already accrued or are likely to accrue to it in the CIRP proceedings of the Principal Borrower. Such deliberate withholding of material particulars further demonstrates lack of bona fides and disentitles the Financial Creditor from invoking the discretionary jurisdiction of this Hon'ble Tribunal under Section 7 of the Code.
10. The Applicant further submitted that the Financial Creditor has also invoked coercive measures under the SARFAESI Act including issuance of notice under Section 13(4) against the secured assets in relation to the very same alleged debt. Thus, the Financial Creditor is

simultaneously invoking remedies under the SARFAESI Act, proceedings before the DRT, proceedings before the NCLT Chandigarh against the Principal Borrower, appellate proceedings before the Hon'ble NCLAT and the present Section 7 proceedings against the Corporate Guarantor, all in respect of the same underlying transaction and alleged default.

11. The petitioner has not followed RBI circulars before categorizing the Bank account of the applicant NPA.

Analysis and Findings

12. We have perused the application filed by the applicant and heard the arguments of the applicant.

13. The present Application has been filed under Section 65 of the IBC. Section 65 read as under:

> ***65. Fraudulent or malicious initiation of proceedings.***
>
> *(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*
>
> *(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*
>
> *(3) If any person initiates the pre-packaged insolvency resolution process--*
>
> *(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or*
> *(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."*

14. Hon'ble NCLAT in the case of **Canara Bank vs Bhavesh Mansukhbai Rathod, Interim Resolution Professional & Ors.** Company Appeal (AT) (Insolvency) No. 556 of 2025 in their judgment dated 17.04.2026 has observed that proceeding under Section 65 application has to be based on specific pleadings and materials to show that initiation of CIRP was malicious and fraudulent.

15. The Applicant in their pleading has not provided any material/ documents to substantiate that the Petition has been filed with malicious or fraudulent intent. The points raised by the applicant in support of their Application are related to merits of Section 7 of the Petition and not in respect of ingredients of Section 65 IBC. All these points raised by the Applicant have been thoroughly examined and discussed in our Order passed in C.P. (IB) 720/2024.

16. The applicant has failed to substantiate ingredients of Section 65 of the IBC i.e. Petition has been filed with fraudulent and malicious intent.

17. Hence, the IA/2418/ND/2026 is dismissed.

-SD/- **-SD/-**

ATUL CHATURVEDI
MEMBER (TECHNICAL)

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-IV

Company Petition No. IB/720/ND/2024

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

IN THE MAIN MATTER OF:

DCB Bank Limited **...Applicant/Financial Creditor**

Versus

M/s Genesis Infratech Pvt Ltd **...Respondent/Corporate Debtor**

CORAM:

SHRI MAHENDRA KHANDELWAL

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

Order Delivered on 10.07.2026

PRESENT:

For the Applicant	:	Ms. Kashika Singla, Mr. Hashmat Nabi, Ms. Farah Naaz, Advocates.
For the Respondent	:	Mr. Akhil Shankhwar Advocate.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present Petition has been filed by the Applicant, DCB Bank Limited (hereinafter referred to as "Bank") against M/S Genesis Infratech Pvt. Ltd "Respondent/Corporate Guarantor") on 17.10.2024 under 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") seeking initiation of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Guarantor, to appoint Interim Resolution Professional ("IRP") and declare moratorium.

Earlier Disposal of the Petition and restoration

2. This Petition was initially disposed of vide Order dated 30.01.2025, as this Adjudicating Authority vide Order dated 30.01.2025 passed in C.P. (IB) No. 165/ND/2024, already initiated Corporate Insolvency Resolution Process against the Corporate Debtor M/s Genesis Infratech Private Limited, and had appointed IRP. The Applicant was directed to approach the IRP appointed in the said matter and take steps for filing their claim. However, liberty was granted to the Financial Creditor/Applicant for revival/restoration of the present matter, if a settlement is arrived at and the CIRP is terminated as per law in the Company Petition No. 165 (ND)/2024. Later on, the CIRP initiated vide Order dated 30.01.2025 in

CP(IB) 165/2024 against the Corporate Debtor was closed by this Adjudicating Authority vide Order dated 11.08.2025, due to the reasons mentioned in the said Order. Therefore, Petitioner filed Restoration Application No. 112/ND/2025 and this Adjudicating Authority vide Order dated 08.01.2026 allowed the Restoration Application and consequently, the present Company Petition No. (IB)-720/ND/2024 was restored to its original number. The Corporate Debtor was directed to file reply. The Corporate Debtor filed their reply on 04.05.2026 and the Petitioner filed their rejoinder on 13.05.2026. Arguments of both the sides were heard on 29.05.2026.

Contentions of the Financial Creditor/Applicant

3. The Financial Creditor is a scheduled commercial bank. The Principal Borrower approached the Financial Creditor for availing the various credit facility being Term Loan-I of Rs. 1.00 Crore and Term Loan -II of Rs. 12.50 Crores for the purpose of Development of residential housing project namely "Genesis Skyheights" at Village Naugawan, Tehsil Tijara, District Alwar, Near Genesis Mall, Bhidawadi, Rajasthan. The applicant had sanctioned 3 Term Loans of 1 Crore, 12.5 Crores and an additional fund under working capital Term Loan (WCTL) of Rs. 1,46,16,000/-to the principal borrower M/s. Swastik Home Build Pvt. Ltd. for which the respondent herein i.e. corporate guarantor had provided guarantee and signed the continuing deed of guarantee.

4. Details of the debt sanctioned, disbursal and default as provided by the Applicant in Part IV of the Petition is as under:

TOTAL AMOUNT OF DEBT GRANTED

Sanction Date	Loan Type	Rupees in Crore
28.03.2016 which was revised on 27.06.2016	Term Loan -1	Rs.12.50 Crore
28.03.2016 which was revised on 27.06.2016	Term Loan -2	Rs.1.00 Crore
11.01.2021	GECL Loan	Rs. 1.46 Crore
Total Amounting to Rs.		Rs. 14.96 Crores

DATES OF DISBURSEMENT

Date of Disbursement of Loan	Amount Disbursed (INR)
Term Loan1: 06255100000091	Rs 12.50 crs
30-06-2016 17-02-2017 30-11-2017 06-04-2018 16-08-2018 06-12-2018 17-01-2020 30-03-2020	6,00,00,000.00 2,00,00,000.00 1,25,00,000.00 1,05,00,000.00 45,00,000.00 12,00,000.00 25,00,000.00 1,38,00,000.00 **12,50,00,000.00**
Term Loan2: 06255100000082 29-06-2016	1,00,00,000.00
GECL Loan: 06256200000091 11-01-2021	1,46,16,000.00

AMOUNT OF DEFAULT

Account No.	Outstanding /Dues
06255100000091 Term Loan-1	Rs. 3,60,83,022.99 (Rupees Three Crore Sixty Lakhs Eighty-Three Thousand and Twenty-Two and Ninety Nine Paise) being the outstanding as on 30-05-2023 along with pendente lite and future interest @9.25% P.A (plus 2% penal interest)
06255100000082 Term Loan-2	Rs. 15,09,127/- (Rupees Fifteen Lakhs Nine Thousand One Hundred Twenty-Seven) being the outstanding as on 30-05-2023 along with pendente lite and future interest @12.74% P.A (plus 2% penal interest)
06256200000091 GECL Loan	Rs. 72,93,531.00 (Rupees Seventy Two Lakhs Ninety Three Thousand Five Hundred Thirty One) being the outstanding as on 30-05-2023 along with pendente lite and future interest @12.77% P.A (plus 2% penal interest)

5. The Corporate Debtor herein executed a continuing Corporate Guarantee on 11.01.2021 for an amount of Rs. 7,84,00,000/. A copy of which is annexed as Annexure A 36 with the Petition.

6. The Principal Borrower and Corporate Guarantor failed to maintain financial discipline and committed defaults on 01.03.2023. The total outstanding debt claimed by the applicant at the time of filing this Section 7 application therein is the total dues of Rs. 9,90,440,308.69/- (Rupees Nine Cores Ninety Lakhs Forty-Four Thousand Three Hundred Eight and Paise Sixty-Nine) only being the dues in the account Nos. 06221300000091 (Term Loan-I) (GECL Loan) 0622200000082 (Term Loan-I) 06221300000091.

7. The Corporate Guarantor confirmed and acknowledged liability from time to time to the accounts maintained by Financial Creditor in the ordinary and usual course of its business.

8. The Financial Creditor issued Legal Notice dated O8.04.2024 against Principal Borrower, Corporate Guarantor /Personal Guarantor demanding outstanding an amount of Rs. 7,54,51,270.99/- (Rupees Seven Crore Fifty-Four Lakhs Fifty-One Thousand Two Hundred Seventy and Paise Ninety-Nine).

9. The Financial Creditor also filed an Original Application No 315 of 2024 before the DRT-I, Delhi (U/s 19 of Recovery of Debts Due to Banks and Financial Institution Act, 1993) for Recovery of Rs. 7,15,18,836.00 (Rupees Seven Crore Fifteen Lakhs Eighteen Thousand Eight Hundred Thirty-Six) as on 24.04.2024.

10. The financial creditor recorded (Form C) the debts accrued from these 3 loans sanctioned to the Principal Borrower with the Information Utility i.e. NeSL.

Contentions of the Corporate Debtor (Respondent)

11. The present petition is filed without the proper authority as the applicant has not been given special power of attorney which is a legally mandated norm as per IBC. The Application is filed by the Applicant through an officer/employee, namely Mr. Sriram Chandrasekar Iyar, who has been authorized by a General Power of attorney dated 29.05.2023 ("POA") which is also not specific. The authorized representative should have a specific power of attorney for filing the Section 7 petition but the authorized representative has only provided a general power of attorney. In this regard, reliance is placed upon judgment of Hon'ble NCLAT in the matter of Palogix Infrastructure Private Limited v. ICICI Bank Limited, Company Appeal (AT)(INS)No. 30 of 2017 wherein it was clarified that a general power

of attorney or any such general authorization does not suffice as a valid authorization for filing an application for initiation of insolvency proceedings under the IBC. And since, there is no specific authorization to initiate CIRP against the corporate guarantor, the petition is liable to be dismissed.

12. The Financial Creditor has failed to adhere to the conditions enumerated in the Master General Terms Agreement dated 27th June, 2016 and subsequent Master General Terms Agreement dated 11.01.2021 (the" MGA"). The MGA expressly stipulates that, upon the occurrence of any default by the principal borrower, the Financial Creditor is obligated to terminate the Loan Facility. The Financial Creditor's failure to comply with the provisions of the MGA constitutes a breach of its terms. The master general agreements have mandated that in case of default, the financial creditor will have to terminate the loan facility and since the applicant has failed to terminate the loan facility, this is in violation to the terms of loan agreement. Further, the applicant has failed to send the notice for termination of loan facility.

13. RBI norms as mandated in its circular has not been followed for declaring the accounts of the corporate guarantor as NPA. Reliance on judgment of Andhra Pradesh High Court in Sravana Dall Mill P Ltd. Vs. Central Bank of India, AIR 2010AP,35 and judgment of Punjab & Haryana High Court in Amar Alloys Pvt. Limited Vs. State Bank of India (CWP No.16490 of 2018) has been made.

14. The Petitioner has failed to fulfill its obligations under the Letter of Continuing Guarantee dated 11.01.2021 (the "Guarantee") by neglecting to serve any notice or Demand Certificate to either the principal borrower or the Corporate Guarantor, as explicitly required under the provisions of the Guarantee (clause 14). The failure to adhere to the prescribed manner of demand constitutes a material non-compliance with the terms and conditions of the Guarantee.

15. It is a well-established principle that the mere issuance of a legal notice does not suffice unless it is duly served upon the intended recipient. While the Petitioner claims to have issued a legal notice dated 08.04.2024, the said notice was never served upon the Corporate Debtor. Serving of the demand certificate is a mandatory requirement as per the deed of continuing guarantee. The applicant has failed to provide any service of proof regarding the delivery of the alleged legal notice.

16. The Financial Creditor failed to invoke guarantee thereby neglecting a fundamental procedural requirement under the terms of the agreement. The issuance of an invocation notice is a critical step to formally demand performance or payment under the guarantee. The Petitioner's failure to issue such a notice effectively precludes the Corporate Guarantor from being duly notified of the Petitioner's intent to enforce the guarantee. Further, the omission not only constitutes a violation of the contractual terms but also undermines the Petitioner's legal position, as it has failed to initiate the necessary actions to preserve its rights under the agreement.

17. The present petition is contrary to the object and scheme of the Insolvency and Bankruptcy Code as the financial creditor is using the forum for debt recovery suits. The objective of the Code is to develop credit markets and encourage entrepreneurship and facilitate more investment.

18. The corporate guarantor is a solvent and profitable company and the present petition is filed as a recovery mechanism.

Contentions of the Financial Creditor in Rejoinder to the reply filed by the respondent:

19. It is a settled position of law, that the Adjudicating Authority under Section 7 of the IBC is only required to ascertain the existence of a "debt" and a "default" as held by the Hon'ble Supreme Court, in the matter of ***Innoventive Industries Ltd. Vs. ICICI Bank Ltd***. The Corporate Guarantor has not disputed the disbursement of the facility, nor have they provided any evidence of repayment. Consequently, the default is undisputed, and the present petition is liable to be admitted.

20. The Hon'ble Supreme Court in 2021 in the matter of ***Rajendra Narottamdas Sheth & Anr. v. Chandra Prakash Jain & Anr***., clarified that any official given general authorization by the Bank with respect to all the business and affairs of the Bank, including commencement of legal proceedings before any court and tribunal with respect to any demand and filing of all necessary applications in this regard. Such authorization, having been granted by way of power of attorney pursuant to a resolution passed by the Bank's Board of Directors, does not impair the officer's authority to file an application under Section 7 of the Code.

21. The Corporate Debtor has erroneously relied upon clauses of the Master General Agreement to contend that termination of the loan facility upon notice to the principal borrower is a mandatory precondition for initiation of proceedings. The said clauses merely confer a contractual liberty upon the Financial Creditor to terminate the loan facility upon occurrence of default and do not impose any mandatory obligation. The use of enabling language such as "may terminate" clearly establishes that termination is discretionary and not a condition precedent. In any event, contractual stipulations cannot override the statutory framework of the Insolvency and Bankruptcy Code, 2016, wherein the trigger for initiation of CIRP is the occurrence of default. Once default is established, the Financial Creditor is entitled to invoke remedies under Section 7 irrespective of whether the loan facility has been formally terminated. The Financial Creditor had issued a recall/legal notice dated 08.04.2024, thereby accelerating the debt and calling upon the borrower and guarantors to repay the outstanding dues, which constitutes sufficient compliance in substance.

22. It is settled law that classification of an account as NPA is not a condition precedent for maintaining an application under Section 7.

23. The Legal Notice dated 08.04.2024 serves as a clear, unambiguous invocation of the guarantee, demanding the outstanding dues. The lack of a specific "format" does not invalidate the invocation.

24. The Legal Notice was dispatched to the registered address of the Corporate Debtor and the Corporate Guarantor. As per the Section 27 of the General Clauses Act,1897 the service of any document through post is deemed to be affected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been affected at the time at which the letter would be delivered in the ordinary course of post.

25. Liability of the corporate guarantor is coextensive with that of the principal borrower in terms of Section 128 of the Indian Contract Act, 1872 and arises immediately upon default. Invocation of the guarantee in a particular format is not a condition precedent for initiation of proceedings under Section 7 of the Code. The recall/legal notice dated 08.04.2024 constitutes invocation of the guarantee in substance, and any hyper-technical objection regarding format or manner of invocation is untenable.

26. The assertion that the Corporate Guarantor is a "solvent and profitable" running concern is legally immaterial for a Section 7 admission.

Findings and Analysis

27. We have heard the submissions made by Ld. counsels of both the parties, and have perused all the documents on record.

28. Regarding admission of Section 7 petition, the law is clear that the petitioner has to establish debt and default for the application to be admitted. The Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407** has observed as under:

> ***27.*** *The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.*
>
> ***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 disbursal of loan to the Principal Borrower and the execution of the Guarantee Agreement dated 11.01.2021 by the Corporate Debtor (Corporate Guarantor) has not been disputed by the Corporate Debtor.

30. It is understood that CIRP against the Principal Borrower has already been initiated vide Order dated 19.12.2024 passed by the NCLT Chandigarh Bench in CP(IB) No. 134/Chd/Hry/2021 in the matter of Vikas Mittal & ors. Vs Swastik Homebuild Pvt Ltd. It is also understood that the Financial Creditor herein has filed their claim in the said matter.

31. The contention raised by the Corporate Debtor that the Petition has been filed without proper authority by the Financial Creditor as no special power of attorney has been given to the officer who has filed the present Petition has no merit. The judgment of Hon'ble NCLAT in *Palogix Infrastructure* relied upon by the Corporate Debtor has been considered by the Hon'ble Supreme Court in ***Rajendra Narottamdas Sheth v. Chandra Prakash Jain*, (2022) 5 SCC 600** and the Hon'ble Supreme Court has referred to following observations of the Hon'ble NCLAT itself:

> *41. Insofar as the present case is concerned, the "Financial Creditor"-Bank has pleaded that by Board's Resolutions dated 30-5-2002 and 30-10-2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any "Financial Creditor" or "Operational Creditor" or "Corporate Applicant" in favour of its officers to do needful in legal proceedings by and against the "Financial Creditor"/"Operational Creditor"/"Corporate Applicant" in favour of its officer, mere use of word "Power of Attorney" while delegating such power will not take away the authority of such officer and for all purposes it is to be treated as an "authorisation" by the "Financial Creditor"/"Operational*

Creditor"/"Corporate Applicant" in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the "Authorised Representative" for the purpose of filing any application under Section 7 or Section 9 or Section 10 of "I &B Code".".

Hon'ble Supreme Court finally held as under:

> *"15. In the present case, Mr Praveen Kumar Gupta has been given general authorisation by the Bank with respect to all the business and affairs of the Bank, including commencement of legal proceedings before any court or tribunal with respect to any demand and filing of all necessary applications in this regard. Such authorisation, having been granted by way of a power of attorney pursuant to a resolution passed by the Bank's Board of Directors on 6-12-2008, does not impair Mr Gupta's authority to file an application under Section 7 of the Code. It is therefore clear that the application has been filed by an authorised person on behalf of the financial creditor and the objection of the appellants on the maintainability of the application on this ground is untenable."*

32. In the present case in hand, the Financial Creditor is a private sector scheduled commercial Bank in India. The present Petition has been presented by Mr. Sriram Chandrasekar Iyar who is the Vice president of the Bank on the basis of Power of Attorney dated 29.05.2023 (copy of which is Annexed as Annexure A-1 with the Petition). The Power of Attorney has been given in terms of Resolution of the Board of Directors passed on 23.01.2023. The relevant clause of the Power of Attorney which authorizes Mr. Sriram Chandrasekar Iyar to file the Petition is as under:

"2. To ask, demand or sue for in any Court, Tribunal, or before any other judicial or quasi judicial authority, recover, receive, enforce payment, *require delivery or transfer or possession and to obtain possession from any person, firm, society, company, corporation, body corporate; association, syndicate, government or local or public or statutory body or authority wherever situate, of all claims, amounts, debts, demands, dues, securities of any kind whatsoever and any goods, wares, merchandise, chattels and effects and things and any property movable and immovable or. any actionable claim which now are or which may or " . shall become due or owing or payable to or recoverable by the Bank whether as owner, mortgagee, pledgee, hypothecate, charge; trustee, executor, creditor or guarantor or as subrogate or otherwise howsoever and whether under or by virtue of any mortgage, pledge, hypothecation, charge, lien, bond, agreement or any other security or upon or by virtue of any bills of exchange, promissory notes, cheques, bills of Jading or any other negotiable or mercantile instruments whatsoever.*

3. In respect of any person, firm, society, company, corporation, association, syndicate or body corporate, to apply or petition for adjudication as insolvent or bankrupt or for winding up and prove any debt or claim in bankruptcy or insolvency or winding up or liquidation and to initiate any proceedings *and appear or cause an appearance to be entered for the Bank in any proceeding for in or after any such bankruptcy or insolvency or winding up and to make, sign, verify; affirm,· swear, support, declare, present and file any petition, affidavit, declaration, application or other claim or affidavit in proof of any debts, dues, claim or demand or any. right, title, interest, or claim in any property, matter or thing now or hereafter claimed to be due or owing or payable or in anyway belonging to or recoverable or receivable by the Bank and to vote and/or to take part in appointment of any inspector, trustee, official* *liquidator, receiver or committee and generally to act for the Bank in all insolvency or bankruptcy or winding up proceedings or authorise any employee(s) of the Bank or any other suitable person to so act on his behalf."*

33. The above mentioned clauses and other clauses of the Power of Attorney clearly indicate that Mr. Sriram Chandrasekar Iyar has been given general authorization by the Bank with respect to all the business and affairs of the Bank, including ***demanding or sue for in any Court, Tribunal, or before any other judicial or quasi judicial authority, to recover, receive, enforce payment,*** *and* ***to apply or petition for adjudication as insolvent or bankrupt or for winding up and prove any debt or claim in bankruptcy or insolvency or winding up or liquidation and to initiate any proceedings.*** Such authorization, having been granted by way of a power of attorney pursuant to a resolution passed by the Bank's Board of Directors on 23.01.2023, does not impair Mr. Sriram Chandrasekar Iyar's authority to file an application under Section 7 of the Code. It is therefore clear that the application has been filed by an authorized person on behalf of the financial creditor and the objection of the Corporate Debtor on the maintainability of the application on this ground is untenable.

34. The Corporate Debtor has also raised an issue that the Financial Creditor has failed to adhere to the conditions enumerated in the Master General Terms Agreement dated 27th June, 2016 and subsequent Master General

Terms Agreement dated 11.01.2021 which stipulates that, upon the occurrence of any default by the Principal Borrower, the Financial Creditor is obligated to terminate the Loan Facility. The Financial Creditor has not terminated the Loan Facility. In order to examine the issue, we may refer to the relevant clause in the Master Agreement dated 11.01.2021. Relevant part of Clause 10 read as under:

> *"**10. Default and termination***
> *10.1 Upon the occurrence of any of the following events or the events of default-*
> *(a) any moneys owing by or due from the Borrower to the Bank or to any person or lender are not duly and punctually paid and satisfied as and when they fall due or when demanded, or…………*
> ***the Bank may** at any time thereafter by notice to the Borrower forthwith terminate any and all Facilities granted to the Borrower, and all sums. obligations and liabilities of the Borrower to the Bank, whether accrued or contingent, including all moneys lent or advanced to the Borrower in respect of such facilities and all interest and/or fees accrued thereon, shall become immediately due and payable without any further demand."*

This clause only talks about consequence of default in making payment by the borrower. In the event of default in payment, the Bank may terminate facility granted and the sums including moneys lent shall become immediately and payable. The event of default is given in clause 10(1)(a) of the Agreement.

35. The terms, 'debt' and 'default' are defined in Section 3(11) and (12) of the IBC which read as under:

> *"(11) "**debt**" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*
> *(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;"*

As provided in Section 7 of the IBC, a Financial Creditor may file petition against a Corporate Debtor when a default has occurred. As per above definition in Section 3(12), 'default', means non payment of debt when the amount has become due and not paid.

36. In the present case, amount payable/Repayment schedule is mentioned in the Sanctioned letter dated 11.01.2021. Upon non-adherence to the repayment schedule, financial creditor sends recall/legal notice dated 08.04.2024, thereby accelerating the debt and calling upon the borrower and guarantors to repay the outstanding dues. On 30.05.2023 i.e. on subsequent defaults, the account was classified as Non-performing Assets. It is not the case of the Corporate Debtor that as per the repayment schedule, payments were made. Therefore, the contention of the Corporate Debtor that the Financial Creditor has failed to adhere to the conditions enumerated in the Master General Terms Agreement dated 11.01.2021 which provides for termination of the Loan Facility agreement, and therefore Section 7 Petition is not maintainable has no merit as default as per Section 3(12) of the Code has occurred when the amount due was not paid.

37. The Corporate Debtor has also raised an issue that RBI norms as mandated in its circular have not been followed for declaring the accounts of the Corporate Guarantor as NPA. In this regard, we may refer to the judgment of Hon'ble Supreme Court in the matter of ***Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Another-(2021) 6 SCC 366,*** wherein the Hon'ble Supreme Court has stated that Section 7 comes into play when the Corporate Debtor commits "default". Section 7, consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA. The Hon'ble Supreme Court has held as under:

> *"However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean 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. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor*

(corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt."

Therefore, the contention raised by the Corporate Debtor that RBI norms were not followed by declaring NPA has no merit, as the Section 7 can be filed on the basis of default committed as per Section 3(12) and not on the basis of declaration of NPA.

38. The Corporate Debtor has also raised an issue that the Petitioner has failed to fulfill its obligations under the Letter of Continuing Guarantee dated 11.01.2021 (the "Guarantee") by neglecting to serve any notice or Demand Certificate to either the Principal Borrower or the Corporate Guarantor, as explicitly required under the provisions of the Guarantee (clause 14). Further, legal notice dated 08.04.2024, was never served upon the Corporate Debtor. The Financial Creditor has submitted that Legal Notice dated 08.04.2024 was dispatched to the registered address of the Corporate Debtor and the Corporate Guarantor. Postal receipt of the Speed Post is also brought on record. The Petitioner has also relied upon Section 27 of the General Clauses Act,1897 which provides that the service of any document through post is deemed to be affected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been affected at the time at which the letter would be delivered in the ordinary course of post.

39. The Hon'ble Supreme Court in the matter of ***Harcharan Singh v. Shivrani,* (1981) 2 SCC 535** has considered the scope of Section 27 and has observed s under:

> *"Section 27 of the General Clauses Act, 1897 deals with the topic—"Meaning of service by post" and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more."*

In the present case, the legal notice invoking the guarantee has been given by the Financial Creditor to the Corporate Debtor by way of speed post. In view of Section 27 of the General Clauses Act and in the light of Hon'ble Supreme Court's judgment, the contention of the Corporate Debtor has no merit. We have perused the power of attorney and it meets the condition, hence the contention of the respondent cannot be accepted.

40. In view of the above discussions, this Adjudicating Authority is of the considered view that the Financial Creditor has successfully established the existence of financial debt and occurrence of default. As discussed above, all the contentions of the Corporate Debtor/Guarantor have no merits.

41. Accordingly, this Adjudicating Authority is satisfied that the present Application fulfils the requirements of Section 7 of the Insolvency and Bankruptcy Code, 2016, i.e. a financial debt exists and that default has occurred. The Application is complete in all material particulars and there is no legal impediment to its admission. The present Application, therefore, deserves to be admitted.

42. In view of the foregoing, the Application bearing **CP (IB) No. 720/ND/2024** filed by DCB bank Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 against **M/s. Genesis Infratech Pvt. Ltd**. is **admitted.** It is hereby ordered as follows:

i. The application bearing **CP (IB) No. 720/ND/2024** filed by DCB Bank Limited, the Financial Creditor, under Section 7 of the Code for initiating CIRP against Genesis Infratech Pvt. Ltd, the Corporate Debtor, is hereby admitted.

ii. The Applicant has proposed the name of Mr. Mukesh Gupta, having Registration Number IBBI/IPA001/IP/IP-001494/2018-2019-12254. However, upon perusal of the AFA details as available on the website of the Insolvency and Bankruptcy Board of India (IBBI), the proposed IRP does not have a valid AFA at present. Therefore, this Adjudicating Authority appoints_**Mr. Ajay Gupta** as the Interim Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals/Liquidators as maintained by the IBBI. The details of the IRP are as follows:

Name : Mr. Ajay Gupta

Registration No. : IBBI/IPA-001/IP-P00140/2017-2018/10304

Email – ip.ajaygupta@corpvisory.com

iii. The IRP so appointed shall file consent in Form-2, a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three working days (3) of pronouncement of this order.

iv. We direct the Applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, shall be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.

v. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

e. The IB Code 2016 also prohibits suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

f. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central

Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

vi. The Interim Resolution Professional shall perform all functions contemplated, inter alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

vii. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, he Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.

viii. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

ix. A copy of the order shall be communicated to the Applicant/Financial Creditor, Corporate Debtor and IRP above named, by the Registry.

x. In addition, a copy of the order shall also be forwarded to IBBI for its records.

xi. Applicant is also directed to provide a copy of the complete paper book to the IRP.

xii. A copy of this order shall also be sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

43. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **CP (IB) No. 720/ND/2024** stands admitted.

-SD/-	**-SD/-**
ATUL CHATURVEDI **MEMBER (TECHNICAL)**	**MAHENDRA KHANDELWAL** **MEMBER (JUDICIAL)**