

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 228/2025
(IA Nos. 649, 650 & 651 / 2025)

In the matter of:

Vasavai Power Services Pvt. Ltd.
Represented by its Managing Director,
Door No.4-13, Post Ibrahim Patnam,
Vijayawada, Krishna District,
Andhra Pradesh – 521456

Also at:

No. 405, Golden Edifice Building,
Khairatabad, Hyderabad – 500004
Telangana State

..... Appellant

V

Canara Bank Ltd.
A Bank constituted by the Banking Companies
(Acquisition and transfer of
undertakings) Act, 1970,
Governor Peta Branch, Eluru Road,
Vijayawada – 520002
Represented by its authorized officer

..... Respondent

Present:

For Appellant : Mr. Satish Parasaran, Senior Advocate
For Ms. Deepika Murali, Advocate

For Respondent : Mr. R. Manav Gecil Thomas, Advocate

ORDER
(Hybrid Mode)

30.04.2025:

Oral Judgment : Justice Sharad Kumar Sharma, Member (Judicial):

1. The brief facts, which may be precisely required to be considered are that, a Financial Creditor has filed the proceedings under Section 7 of the I & B Code,

2016, which was numbered as Company Petition i.e. CP (IB) / 3 / 7 / AMR / 2024, before the Learned NCLT, Amaravati Bench. In those proceedings, admittedly the date of default which has been reflected in the pleadings raised by the Respondent was shown to be 17.08.2023.

2. While the proceedings were pending consideration the Appellant, had file the IA (IBC) / 418 / 2024, raising a contention qua the modalities adopted for determination of the date of default, which has been taken by the Financial Creditor for the purposes of justifying the drawing of the proceedings under Section 7 of I & B Code, 2016.

3. The said Interlocutory Application has been objected by the Respondent by filing a counter affidavit on 06.11.2024, to which the Rejoinder has also been filed on 08.01.2025, it's at this stage, the Application is pending consideration.

4. The Application for amendment was preferred by the Respondent thereafter seeking an amendment in the rectification of the date of default, which has already been given in the proceedings of Section 7 before the Ld. NCLT.

5. The question, which emerges for consideration before this Tribunal, is that, as to whether, there could be a judicial advice being imparted to a party to the proceedings, to opt to file an Application for amendment for the purposes of seeking a rectification of the date of default, the answer would be absolutely ``no'', the reason being that, the Tribunal, since exercising its judicial powers has got no privity to judicial proceedings, as such, to step into the shoes of either of

the parties, particularly when it exercises the powers as given on an advice to a party to the proceedings.

6. Apart from it, if the nature of amendment, which has been sought, in form of change of the date of default is permitted to be modified, in pursuance to the Impugned Order, which has been passed on IA (IBC) / 98 / 2025, that will amount to nullifying the proceedings of IA (IBC) / 418 / 2024 in which the Appellant has already raised an objection to the aspect of determination of the date of default qua, its implication to the proceedings regards the limitation which has significant bearing for the purposes of initiation of the proceedings under Section 7 of the I & B Code, 2016.

7. As per the settled principles of law governing to the field of amendment, the amendment cannot be permitted to be carried in the shape which withdraws a pleading already raised before the Ld. Tribunal or which has a substantial bearing on the very genesis of the proceedings, which are held before the Courts or the Tribunals or which amounts to withdrawal of an admission.

8. Besides that, there were various contentions raised including the contention raised by the Respondent themselves in the Application qua justification of the amendment with regards to the date of default, which was alleged to have been supported by certain Judgments, which he intended to rely upon. The Impugned Order passed on IA (IBC) / 98 / 2025, does not reflect the consideration or record the findings on the pleading raised by the parties to the proceedings in IA (IBC)

/ 98 / 2025 and while allowing the same, the Court has rather permitted the Appellant to carry out the amendment qua the date of default, which has been referred to in the pleadings which was already raised by him. The Amendment as permitted to be carried by virtue of the Impugned Order passed on IA (IBC) / 98 / 2025, when it was an issue being hotly debated and was already a subject matter of IA (IBC) / 418 / 2024, which was objected by the Appellant, in all judicial propriety, was an issue which was required to be determined at the stage when the IA (IBC) / 418 / 2024 itself was being decided on merits. Rather the adverse implication of the Impugned Order would be that, the issue of the date of default, which has already been raised by the Appellant in IA (IBC) / 418 / 2024, would stand nullified, since having been overridden by the Impugned Order, which is under challenge in the instant Appeal permitting the Respondent to carry out the amendment with regards to the description of the date of default as given in the pleading of the initial proceedings drawn by the Respondent.

9. In view of the aforesaid reasons, the Impugned Order as passed on IA (IBC) / 98 / 2025, would hereby stand quashed. The matter is remitted back with the request to the Learned Tribunal to decide the IA (IBC) / 418 / 2024 on merits, to which the parties may exchange their pleadings in which, the question of the date of default having its impact on limitation, if any, could be considered in accordance with law.

10. Accordingly, Company Appeal (AT) (CH) (INS) No. 228 / 2025, would stand allowed / disposed of. The pending Interlocutory Applications, if any, would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SR / MS