



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 939/MB/2023

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

In the matter of

Canara Bank

Having its Head Office at – 112, J.C. Road, Bangaluru – 560002 and having a Branch known as Stressed Asset Management Branch, Canara Bank, Circle Office Building, 8th Floor, B Wing, C-14, G-Block, Bandra-Kurla Complex, Bandra East, Mumbai - 400051

...Petitioner/Financial Creditor

Vs

Nishta Mall Management Company Pvt. Ltd.

Pantaloon Knowledge House, Shyam Nagar, Off. Jogeshwari Vikroli, Link Road, Jogeshwari (E), Mumbai - 400060, (Maharashtra)

... Respondent/Corporate Debtor

Order Dated: 24.03.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

**Appearances:**

For the Petitioner: Adv. Roshan Gaod (PH)

For the Respondent: Adv. Malhar Zatekia (PH)

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ORDER***Per: Reeta Kohli, Member (Judicial)***

I. This Company Petition is filed by **Canara Bank** (hereinafter referred as the “**Petitioner/Financial Creditor**”) on 12.10.2023 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Nishta Mall Management Company Pvt. Ltd.** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 170,96,81,356.18/-** with the date of default as **31.03.2022**.

II. Facts of the Financial Creditor-

1. As submitted, the Financial Creditor sanctioned Term Loan I of Rs. 200 Crores to the Corporate Debtor on 19.05.2014 for acquiring new fixed assets (excluding land) for leasing to Future Retail Limited. The Corporate Debtor accepted the terms through a Board Resolution dated 13.06.2014 and subsequently executed a Term Loan Agreement on 20.06.2014, along with supporting financing and security documents including a Deed of Hypothecation, Deed of Guarantee, and a Tripartite Agreement.
2. As contended, the Corporate Debtor sought an additional loan from the Financial Creditor. The Financial Creditor further sanctioned Term Loan II of Rs. 150 Crores on 07.03.2015 to the Corporate Debtor for acquiring new fixed assets (excluding land) for leasing to Future Lifestyle Fashion Limited. The Corporate Debtor accepted these terms through a Board



Resolution dated 12.03.2015 and executed a Term Loan Agreement on 18.03.2015, along with supporting financing and security documents.

3. As stated by the Financial Creditor, the Corporate Debtor's account became irregular on 25.09.2020 and was classified as a Non-Performing Asset (NPA) on 24.12.2020, in compliance with the RBI's Prudential Framework notification dated 07.06.2019.
4. As per the RBI circular dated 06.08.2020 on the One-Time Restructuring (OTR) Scheme for stressed assets, the Corporate Debtor requested a realignment of its debt obligations on 27.09.2020 to restore long-term viability. Based on a fresh sanction letter dated 28.05.2021, the Corporate Debtor executed a Framework Agreement ("OTR Agreement") on 02.06.2021, along with additional financing and security documents, in favour of the Financial Creditor.
5. As alleged by the Financial Creditor, the Corporate Debtor defaulted on payments under the OTR Framework Agreement starting from / on 31.03.2022. The Financial Creditor issued a letter on 01.04.2022 notifying the default and requesting payment of the overdue amounts in six accounts to regularize the company's account.
6. Following the Corporate Debtor's failure to repay its liabilities, the Financial Creditor issued a Recall Notice on 08.07.2022, demanding full repayment of dues along with interest. To enforce the secured assets, the Financial Creditor issued a Demand Notice under section 13(2) of the SARFAESI Act on 15.07.2022 and a Possession Notice under section 13(4) of the SARFAESI Act on 13.10.2022.
7. As the Corporate Debtor failed to respond or meet repayment obligations, the Financial Creditor filed Company Petition No. 939 of 2023 under section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.



8. The Financial Creditor submitted that the petition is not barred by Section 10A of the IBC as the Corporate Debtor has defaulted under the OTR Agreement, which was sanctioned in 2021. The Financial Creditor placed reliance on the judgment of the Hon'ble NCLAT in the matter of ***Pradeep Madhukar More v. Central Bank of India (CA. 837 of 2023)***, wherein the Hon'ble NCLAT settled that a default under the OTR Agreement constitutes a fresh default, thereby entitling the Financial Creditor to take actions permitted under the OTR Agreement and applicable law.
9. The Financial Creditor preferred IA No. 1234 of 2024 before this Court seeking to amend the date of default from 25.09.2020 to 31.03.2022 as mentioned in the present Company Petition. This Hon'ble Tribunal vide order dated 09.08.2024, allowed the amend in the date of default sought by the Financial Creditor. As submitted, this Hon'ble tribunal, through its judgment dated 09.08.2024 in Interlocutory Application No. 1234 of 2024, established that the date of default prior to the execution of the OTR Agreement lost its relevance once the Corporate Debtor entered into a fresh arrangement with the Financial Creditor under the OTR Agreement dated 02.06.2021.
10. The Financial Creditor further submitted that for ascertaining limitation, the date of "default" and not the date of NPA has to be taken into account as per ***Laxmi Pat Surana Vs. Union Bank of India & Anr., (2021) 8 SCC 481.***
11. The Financial Creditor alleged that the Corporate Debtor has neither challenged nor opposed the debt owed, the documents annexed to the petition, or the default committed. Instead, the Corporate Debtor has raised technical submissions and objections concerning defects in the petition.
12. The Financial Creditor, relying on ***Suresh Kumar Reddy Vs. Canara Bank and Ors. 2022 SCC Online NCLAT 3483***, submitted that while admitting an application under Section 7 of the Code, the adjudicating authority



would have to exercise its discretion on satisfaction of the existence of a financial debt and default on the part of the corporate debtor in payment of the debt.

13. As contended by the Financial Creditor, since the Corporate Debtor has admitted its "default" and is not in a position to clear a huge default of Rs.170,95,81,356.18/- as on 31.07.2023, the Financial Creditor humbly submits that this Hon'ble Tribunal may be pleased to pass orders for Admitting the Application under Section 7(5)(a) of the Code.

III. Facts of the Corporate Debtor

1. The Corporate Debtor, at the outset, denies all contentions of the Financial Creditor and submits that the Company Petition is not maintainable.
2. As submitted by the Corporate Debtor, on 20.06.2014, the Financial Creditor and the Corporate Debtor executed a Term Loan Agreement for a loan of Rs. 200 crores. Subsequently, on 18.03.2015, the parties entered into a second Term Loan Agreement for an additional loan of Rs. 150 crores. Collectively, these agreements and documents are referred to as the '*Original Financing Agreements*'.
3. As submitted by the Respondent, the Financial Creditor alleged that from September 2020, the Corporate Debtor's account became irregular, with the first default occurring on 25.09.2020. On 24.12.2020, the account of the Corporate Debtor was classified as NPA in accordance with the Prudential Framework Notification dated 07.06.2019 issued by the Reserve Bank of India.
4. On 28.05.2021, pursuant to the Reserve Bank of India's Circular dated 06.08.2020 concerning Framework for Covid-19 related stress, the Financial Creditor sanctioned an OTR credit facility by a letter in favour of the Corporate Debtor.



5. On 02.06.2021, pursuant to the abovementioned OTR, the Financial Creditor and Corporate Debtor executed the Framework Agreement to set out the terms of the said OTR to be implemented. As stated, under the OTR read with the Framework Agreement, in case of default by the Corporate Debtor, the Financial Creditor had the option to treat the commitments as cancelled and thereby revoke the restricting under the said OTR. However, the Financial Creditor exercised this right and preferred the present Petition under the Original Framework Agreement.
6. As stated, it is alleged that the Corporate Debtor again defaulted in payment under the OTR/Framework Agreement from 31.03.2022. Further, the Financial Creditor has alleged that it called upon the Corporate Debtor to discharge its alleged liabilities and issued recall notice dated 08.07.2022. The Financial Creditor also issued demand notice dated 15.07.2022 against the Corporate Debtor under Section 13(2) of the SARFAESI Act, 2002 and further issued a Possession Notice dated 13.10.2022 under Section 13(4) of the SARFAESI Act, 2002 to pay the alleged outstanding dues.
7. Thereafter, the Financial Creditor preferred the present Company Petition under Section 7 of the IBC. The Corporate Debtor contends that the Financial Creditor failed to mention the date of default in Part IV of the Company Petition and as such, the date of default, if any, fell within the period prescribed under Section 10A of the IBC.
8. As alleged by the Corporate Debtor, the Financial Creditor in its Additional Affidavit dated 25th January 2024, in paragraph 20, has itself contended that during the scrutiny stage before the registry, the Financial Creditor added the date of default as 25.09.2020, subtracting 90 days from the date of NPA.
9. Pursuant thereto, only when the Corporate Debtor sought dismissal of the Company Petition for failing to fulfil the basic requirement of providing a date of default therein, allegedly, the Financial Creditor filed Interlocutory



Application No. 1234 of 2024 (IA 1234 of 2024) after a period of five months from the date of filing the Company Petition, by which, the Financial Creditor sought to amend the Company Petition by altering the date of default from 25.09.2020 to 31.03.2022, solely with an intent to escape the bar prescribed under Section 10A of the IBC.

10. As submitted by the Corporate Debtor, this Hon'ble Tribunal passed order dated 09.08.2024, allowing the IA 1234 of 2024 thereby allowing the Financial Creditor to amend the date of default to 31.08.2022. The Corporate Debtor submits that the aforementioned Order is limited to permitting the Financial Creditor to amend the Company Petition regarding date of default and does not adjudicate on the merits of the proceedings.
11. The Corporate Debtor submits that the Financial Creditor, under the RBI guidelines as also Framework Agreement read with the OTR, has the option to pursue its remedy against the Corporate Debtor either under the Framework Agreement or treat the Framework Agreement as revoked and proceed under the Original Financing Agreements.
12. The Corporate Debtor contends that the Financial Creditor has filed the Company Petition in respect of alleged defaults under the Original Financing Agreements and therefore, the alleged date of default is 25.09.2020 and the same cannot be changed.
13. The Corporate Debtor submits that the claims in respect of the date of default under this Company Petition being 25.09.2020 is barred as per the stipulated period under Section 10A of the IBC and therefore the Company Petition is not maintainable.
14. In light of the abovementioned submissions, the Corporate Debtor prays for the dismissal of the present Petition.

IV. Rejoinder by the Financial Creditor-



1. At the outset, the Financial Creditor states that the Corporate Debtor has not disputed the validity and legality of all the agreements, sanction letters, deeds of Guarantee, NeSL records, notices of default, reminder letters et al and therefore, the documents and pleadings related to all such documents stand admitted by the Corporate Debtor.
2. It is further submitted that the date of default on the basis of which the present application has to be adjudicated is 31.03.2022 pursuant to the order dated 09.08.2024, and the issue relating to the correct date of default is no longer res integra. Any attempt by the Corporate Debtor to argue that the date of default is not 31.03.2022 cannot be entertained as otherwise, such an argument will allow for the clock to be set back to the position prior to the order dated 09.08.2024.
3. The Corporate Debtor's argument that the default interest has to be claimed only under the Original Agreement and not under the OTR Agreement is incorrect for the following reasons:

A. The Corporate Debtor has conveniently ignored various important provisions of the OTR Agreement that clearly state that the loan facilities shall entirely be governed by the OTR Agreement and that all consequences and actions will have to be taken in pursuance of the said OTR Agreement alone. Clause 1.3(b) of the OTR Agreement states: "The facilities shall be governed by the terms of this Agreement and the Financing Documents including the terms of the Sanction Letter which shall be specific to the relevant Lender." Further, Clause 1.3(d) provides that pursuant to this Agreement and in consideration of the OTR, existing events of default shall be unconditionally and irrevocably waived until the occurrence of an Event of Default in terms of the OTR Agreement.

B. The OTR Agreement provides for restructuring of Corporate Debtor's existing outstanding by availing the Funded Interest Term Loan ("FITL")



facilities in terms of Schedule VIII read with Schedule II and III to the OTR Agreement. FITL, by concept, is a loan for repaying an existing loan. So the Principal amount of FITL comprises of the outstanding principal with past (or default) interest, and the FITL separately has its own interest component.

C. A borrower cannot dictate or compel the lender to exercise its right of resolution or recovery in a manner as the borrower wants, when there exists multiple avenues or options for resolution or recovery in the event of a default committed by the borrower. Clause 9.3 deals with the Consequences of Event of Default, and Clause 9.3(m) expressly states that the lender may exercise any right that it may have under the Financing Documents and/or under Applicable law. Clause 9.3(n) further clarifies that any of the rights can be exercised without priority or preference between such rights and without affecting the entitlement to exercise any other right.

4. The Corporate Debtor's argument that no action can be initiated under the OTR Agreement in view of Clause 22 of the RBI Circular dated 06.08.2020 is entirely misplaced and misconceived for the following reasons:

A. Clause 22 only deals with the process that leads to the finalisation of the Resolution Plan (or OTR Agreement) and is, therefore, dealing with the timelines associated at the stage of pre-implementation process of the Resolution Plan and not post-implementation process. Clause 22 deals with the process leading up to the finalisation and signing of the terms of the Resolution Plan in a time-bound manner and does not deal with the situation once the Resolution Plan has been signed and executed.



B. Clause 22 clearly emphasizes on 'above timelines'. The above timelines provided under Clauses 13 to 19 deal with the eligibility of a borrower to sign a Resolution Plan read with the number of days within which the Inter-Creditor Agreement (ICA) or a Resolution Plan has to be signed or implemented. If the Resolution Plan has been finalised and signed by the parties within the timeline as provided under Clauses 13 to 19, then Clause 22 will not apply, which is the case here.

C. What is really applicable to the present case is Clause 46 onwards, which is stated under the caption 'Post-Implementation Performance', because these clauses deal with how the asset classification is required to be dealt with when there is a fresh default post-Resolution Plan under this RBI Framework. RBI instructed all lenders, through Clause 48, that only the asset classification will have to be again downgraded to NPA once there is default under the ICA/Resolution Plan from the date when the borrower was first classified as an NPA.

5. In light of the Hon'ble NCLAT settling the legal position in Pradeep Madhukar More v/s Central Bank of India (CA. 837 of 2023) that a default under the OTR Agreement amounts to fresh default, the Financial Creditor is free to take any or all actions as permitted under the OTR Agreement and the applicable law, which includes filing the present application for the revival of the Corporate Debtor.
6. Therefore, the present company petition deserves to be admitted and all the contentions of the Corporate Debtor deserve to be rejected in toto.

V. Findings-

1. After hearing the Ld. Counsels for both the parties and perusing the documents available on record, it stands established that the present



Petition has been preferred by Canara Bank against the Respondent/Corporate Debtor for an amount of Rs. 170,95,81,356.18/- which was the amount advanced to the Respondent/Corporate Debtor as a term loan. The date of default in the original petition was stated to be 25.09.2020 which subsequently after seeking permission from the Hon'ble Court vide detailed order dated 09.08.2024 was changed to 31.03.2022 on the strength that the Respondent/Corporate Debtor defaulted on the OTR terms as well. Date of NPA in this case is 24.12.2020.

2. The Counsel for the Petitioner contended that in view of Covid-19 and subsequent notification by the RBI dated 06.08.2020 wherein the RBI was pleased to grant the liberty to the Creditor to decide about the date of default and in view of that, despite the concession of OTR having been extended by the Petitioner-Bank to the Respondent/Corporate Debtor, the Respondent failed to honor the commitment under the OTR as well. The Petitioner submits that the default under the OTR Agreement constitutes a fresh default as held by the Hon'ble NCLAT in Pradeep Madbukar More v. Central Bank of India (CA. 837 of 2023).
3. Ld. Counsel for the Respondent vehemently contended that amount stated in the present petition is in terms of the original facility agreement whereas the Petitioner has very conveniently opted to choose the date of default under the OTR. Thus, benefit cannot be extended to the Petitioner to conveniently choose. The contention of the Ld. Counsel for the Respondent is that the Petitioner will have to choose either to rest his case upon the Facility Agreement or under the OTR. Ld. Counsel for the Respondent has submitted that he would rest his case on this ground only.
4. The Respondent further contended that the claims in respect of the date of default under this Company Petition being 25.09.2020 is barred as per the stipulated period under Section 10A of the IBC and therefore the Company Petition is not maintainable.



5. After having perused the detailed order dated 09.08.2024 wherein this Court was pleased to grant the permission to the Petitioner to allow the date of default in view of RBI Circular. Thus, the Petitioner/Creditor had the choice of choosing the date of default which in the present case has been stated to be 31.03.2022.
6. The contention of the Ld. Counsel for the Respondent is rejected on the ground that defaulter cannot be granted the liberty of raising this technical objection when he has not disputed the amount due and also the fact that he entered into an OTR but failed to execute the same. The Financial Creditor has established the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt as required under Section 7 of the Code. In this regard, it is imperative to place reliance on the judgment of the Hon'ble Supreme Court in the matter of *M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407*

“28. 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.”

7. Therefore, keeping in view of the above stated facts and circumstances, we deem it appropriate to allow the present Petition and admit the CP into CIRP by passing the following Order-

ORDER



- a. The above Company Petition No. 939/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Nishta Mall Management Company Pvt. Ltd.**
- b. The Petitioner has proposed the name of **Mr. Manoj Kumar Agarwal**, bearing Registration No. **IBBI/IPA-001/IP-P00714/2017-2018/11222** as Interim Resolution Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution



plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 939/IBC/MB/2023 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

MADHU SINHA

Member (Technical)

/Jhanvi/

Sd/-

REETA KOHLI

Member (Judicial)