

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI - BENCH-II**

CP (IB) No. 646/MB/2024

*[Under Section 7 of the Insolvency and Bankruptcy Code,
2016 r/w Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

Catalyst Trusteeship Limited

[CIN No. U74999PN1997PLC110262]

Registered Office: GDA House,
First Floor, Plot No. 85, Sector No. 94
& 95, Bhusari Colony (Right), Kothrud
Pune, Maharashtra -411038.

...Financial Creditor/(FC)

V.

Bombay Rayon Clothing Limited

[CIN: U18101MH2005PLC150375]

Registered Office: 402, 4th Floor
Kamla Hub, N.S. Road No.1
Juhu Scheme, Vile Parle (West)
Mumbai-400049, Maharashtra.

...Corporate Debtor/(CD)

Order Pronounced: 24.04.2025

CORAM:

**SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**

Hearing: Hybrid.

Appearances:

For Financial Creditor : Adv. Shyam Kapadia a/w Adv. Jyoti Singh a/w
Adv. Sakil Ansari i/b AJA Legal.

For Corporate Debtor : Adv. Nausher Kohli a/w Adv. Ashwini Gawde
and Adv. Nashra Siddiqui i/b ASR & Associates.

ORDER

PER: ANIL RAJ CHELLAN, MEMBER (TECHNICAL)

1. BACKGROUND

1.1 This Company Petition No. C.P. (IB) 646/MB/2024 (Application) was filed on 12.06.2024 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AAA Rules) by Catalyst Trusteeship Limited, the Financial Creditor), for initiating Corporate Insolvency Resolution Process (CIRP) of Bombay Rayon Clothing Limited, the Corporate Debtor.

1.2 The date of default, as stated in Part IV of the application, is 25.03.2023. The total amount of default alleged is Rs.2,93,26,51,822/- arising out of invocation of corporate guarantee which was furnished by the Corporate Debtor in respect of the Non-Convertible Debentures issued by the Principal Borrower i.e., Reynold Shirting Limited (Principal Borrower), to

ECL Financial Limited (ECLFL). The bifurcation of the amount of default is given in the table below:

<u>Particulars</u>	<u>Outstanding Amount (in Rs.)</u>
Principal Outstanding	1,61,50,000/-
Interest Due	90,77,13,662/-
Redemption Premium	32,11,91,740/-
Default Interest	8,87,46,420/-
TOTAL	2,93,26,51,822/-

2. Facts of the case:

2.1 The Applicant / Financial Creditor i.e. Catalyst Trusteeship Limited, is a company incorporated under the erstwhile Companies Act, 1956, acting as a **Debenture Trustee** for 1700 Non-Convertible Debentures (NCDs) of Rs.10,00,000/- each, aggregating to Rs.170,00,00,000/- (One Hundred and Seventy Crore Rupees) under the Debenture Trustee Agreement dated 12.10.2017, executed with the Principal Borrower (i.e. Reynold Shirting Limited). Pursuant thereto, a Debenture Trust Deed dated 14.10.2017, was executed between the Principal Borrower in its capacity as the Issuer and the Debenture Trustee.

2.2 The Corporate Debtor (i.e. Bombay Rayon Clothing Limited) is a public limited company engaged in the manufacturing business of wearing apparel, except fur apparel. The Corporate Debtor is a group company of Principal Borrower and is the corporate guarantor for 1700 of NCDs, issued

by the Principal Borrower to ECLFL, on private placement basis, where the Corporate Debtor stood as Corporate Guarantor and executed a Guarantee Agreement dated 14.10. 2017 (Corporate Guarantee).

2.3 The NCDs along with all underlying securities interests/rights were assigned by ECLFL to CFM Asset Reconstruction Private Limited, acting in its capacity as trustee of the CFMARC Trust-1 (CFM ARC) under the Assignment Agreement dated 14.08.2020. Thereafter, on 23.12.2022, the NCDs along with all underlying securities interests/rights were assigned by CFM ARC to Edelweiss Asset Reconstruction Company Limited acting in its capacity of Trustee of EARC Trust - SC 462 (Debenture Holder/EARC). Thereafter, on 27.12.2022, at the request of the Principal Borrower, the Debenture Holder restructured the face value of NCDs to the extent of Rs.162.50 Crore payable in instalments, subject to terms and conditions as contained in the Annexure to the letter No. EdelARC/3719/2022-23 dated 27.12.2022 (Restructuring Letter). The details of the instalments are given in the table below:

<u>Instalments</u>	<u>Due Date</u>	<u>Amount (Rs. in Crore)</u>
1 st	5 days from the date of the Restructuring Letter	5.00
2 nd	On or Before 25.03.2023.	20.00
3 rd	On or Before 25.06.2023.	50.00
4 th	On or Before 30.06.2023.	75.00
5 th	On or Before 15.05.2024.	12.50
	TOTAL	162.50

2.4 The Principal Borrower made only an upfront payment of Rs.5,00,00,000/- (Five Crore Rupees) on 5.01.2023 as per the Restructuring Letter; however, failed to repay the second instalment as per the agreed timeline. Therefore, the Debenture Holder *vide* its letter No. EdelARC/1292/2023-24 dated 20.06.2023, intimated the obligors, including the Corporate Debtor and the Principal Borrower regarding the default in payment of the second Instalment of Rs.20,00,00,000/- of restructured debt, which was due on 25.03.2023, as per the restructuring schedule, under the Restructuring Letter dated 27.12.2022, and requested to cure the same within a period of 5 (five) working days on or before 26.06.2023, failing which Debenture Holder would be constrained to cancel the Restructuring Letter dated 27.12. 2022.

2.5 In view of the default, the Financial Creditor issued a recall cum Invocation of Guarantee for the NCD Facility, *vide* its letter No. CTL/23-24/RSL/05028 dated 23.01.2024, addressed to the obligors, including the Corporate Debtor, whereby the Financial Creditor provided the details of defaulted instalments and revoked the Restructuring Letter. Thereafter, no response was received from the Corporate Debtor. Hence this Application to initiate CIRP of the Corporate Debtor as it has committed default in terms of Section 7 of the Code.

3. Reply/contentions of the Corporate Debtor:

3.1 The Corporate Debtor contends that in terms of Section 215 of the Code, it is mandatory for the Applicant to furnish the default information to the

information utility. However, in the present case, the Applicant has annexed the document showing furnishing of default in regard to the Principal Borrower and not of the Corporate Debtor herein.

3.2 The default claimed by the Applicant / Financial Creditor is barred by Section 10A of the Code. The first default notice was issued by the Applicant on 16.06.2020, wherein the Applicant intimated the default of the Principal Borrower. The account of the Principal Borrower was declared as a Non-Performing Asset (NPA) by the aforesaid notice dated 16.06.2020. Thereafter, by a subsequent letter issued by the Applicant / Financial Creditor to the Principal Borrower and other obligors on 16.09.2020, calling upon them to pay the entire outstanding amount as on 15.09.2020, within a period of 3 days of the issuance of the notice. As the demand was made in the period between 25.03.2020 and 24.03.2021, the instant application is barred by Section 10A of the Code.

3.3 The default amount of over Rs.252 Crore claimed by the Financial Creditor is incorrect as the debt was restructured by the Financial Creditor and it was agreed that the Principal Borrower's liability was restricted to Rs.162.50 Crore to be payable in five instalments. The Corporate Debtor made a payment of Rs.5 Crore, and thereafter, defaulted in payment of the second instalment of Rs.20 Crore due as on 25.03.2023. However, the aforesaid part-payment has not been considered by the Applicant / Financial Creditor while arriving at the amount of default. Further, the Applicant has also concealed from this Tribunal the amount realised by it

from the sale/auction of various immovable properties of the Personal Guarantors.

3.4 Despite the initiation of proceedings against the Corporate Debtor by the Financial Creditor under the provisions of the SARFAESI Act, 2002, it has instituted the present proceedings with the sole purpose of recovery and not for insolvency resolution of the Corporate Debtor. Thus, the instant Application is liable to be dismissed as the Corporate Debtor is an operating company providing employment to numerous people.

3.5 The Applicant has relied upon the statement of accounts of the Corporate Debtor contained in electronic form to establish the alleged debt and default of the Corporate Debtor. However, the Applicant herein has failed to satisfy the conditions under Section 65B of the Indian Evidence Act, 1872, as no certificate has been annexed to the Application. Thus, the aforementioned evidence relied upon by the Applicant/Financial Creditor to establish the alleged debt and default by the Corporate Debtor cannot be appreciated by this Tribunal for want of a certificate under Section 65B of the Indian Evidence Act, 1872.

3.6 For the aforesaid reasons, the Corporate Debtor seeks dismissal of the present Company Petition.

4. ANALYSIS AND FINDINGS

4.1 We have heard both the Ld. Counsel for the Financial Creditor and the Corporate Debtor and perused all the documents and pleadings on record. We have also considered the Written Submissions filed by the parties.

4.2 It is an admitted position that the Corporate Debtor is a group company of the Principal Borrower and is also Corporate Guarantor for 1700 of NCDs issued by the Principal Debtor to ECLFL, under the Guarantee Agreement dated 14.10.2017, executed by it in favour of ECLFL. The Corporate Guarantee is a continuing guarantee, whereunder the Corporate Debtor has agreed and undertaken to make good the default by the Principal Borrower. The NCDs along with all underlying security interests/rights have been assigned from time to time and finally to EARC, acting in its capacity of Trustee of EARC Trust – SC 462. It is also an admitted fact that EARC restructured the face value of the NCDs to Rs.162.50 Crore payable in five instalments on the terms and conditions contained in the letter dated 27.12.2022. Though the Principal Borrower had made an upfront payment of Rs.5 Crore on 05.01.2023, it failed to pay any amount thereafter. The Financial Creditor states that EARC *vide* its letter dated 20.06.2023, intimated the Corporate Debtor and the Principal Borrower regarding the default in payment of the second instalment of Rs.20 Crore of the restructured debt, which was due on 25.03.2023, and requested to cure the same within five working days on or before 26.06.2023, failing which EARC would be constrained to cancel the restructuring communicated, *vide* letter dated 27.12.2022. Despite the above, the obligors- the Corporate Debtor herein and the Principal Borrower failed to cure the default, which led to the issue of Recall-cum-Invocation of Guarantee *vide* letter dated 23.01.2024, thereby revoking/withdrawing/terminating the Restructuring and invoking the

Corporate Guarantee of the Corporate Debtor. As a consequence of the event of default, the Financial Creditor has filed this Application.

4.3 On the contrary, the Corporate Debtor states that the Corporate Guarantee was invoked by the Financial Creditor on 05.11.2020, by way of issuing a notice to the Corporate Debtor and called upon it to pay a sum of Rs.2,06,15,63,997/- as the outstanding amount as on 15.09.2020. It is contended that the liability of the Corporate Debtor arises only when the demand is made on the Corporate Debtor under the terms of the contract of guarantee, and therefore, any purported default can only arise when such demand is not honoured in terms of the contract of guarantee. In support of the above, the Corporate Debtor has relied on the decision in *Yes Bank Limited v. Deserve Exim Private Ltd* in [IA No. 609 of 2022 in CP (IB) No. 1191 of 2021], wherein it was held by the Hon'ble NCLAT that the liability to pay upon a guarantee only arises when a demand is made on the guarantor. It is contended that since the demand was made on 16.09.2020, which falls within the period prohibited under Section 10A of the Code, the present Application is not maintainable.

4.4 While there cannot be any dispute regarding the invocation of the Corporate Guarantee on 16.09.2020, the subsequent events cannot be ignored. The records reveal that after the invocation of the Corporate Guarantee and initiation of legal/enforcement proceedings against the Principal Borrower and other obligors, the parties mutually agreed to restructure the dues in respect of the NCDs on the terms and conditions

contained in the Restructuring Letter dated 27.12.2022. The Restructuring Letter provides, *inter alia*, for restructuring the face value of NCDs to the extent of Rs.162.50 Crore, revising the due dates for payment of instalments, **the continuation of all securities, including the Corporate Guarantee furnished by the Corporate Debtor** and withdrawal of pending litigations/proceedings. Subsequently, due to the failure of the Principal Borrower and other obligors to adhere to the repayment schedule, EARC recalled the restructuring and made a fresh demand on the Corporate Debtor. There can be no disagreement on the proposition of law that the liability to pay upon the guarantee arises when a demand is made on the guarantor. However, the issue that falls for our consideration is whether the demand made on 16.09.2020, that triggered a cause of action against the Corporate Debtor continues to survive even after the restructuring of debt.

- 4.5 The Corporate Debtor is a signatory to the restructuring, which effectively puts on hold or temporarily waives the defaults. However, these defaults can be revived upon withdrawal or termination of restructuring. As a result, the cause of action for initiating legal action arises either from a default of the restructuring terms or from the withdrawal/termination of the restructuring itself. The argument of the Corporate Debtor that the demand made on the guarantor continues to survive even during the restructuring period contradicts the spirit and commercial understanding between the parties. Furthermore, the reliance placed by the Corporate Debtor on the decisions of *Archana Deepak Wani v. Indian Bank* [Company Appeal (AT)

(Insolvency) No. 301 of 2023] and *IDBI Trusteeship Services Limited v. Direct Media Distribution Ventures Private Limited* [Company Appeal (AT) (Insolvency) No. 850 of 2023] does not support its case, given the facts and circumstances of the matter.

4.6 In view of the above, we are of the view that the Corporate Debtor cannot assert at this stage that the demand notice dated 16.09.2020 remains effective despite entering into restructuring and agreeing that the Corporate Guarantee would continue. Thus, we hold that the demand notice dated 16.09.2020 has no legal effect, after the restructuring, on the liability of the Corporate Debtor to pay upon the guarantee. However, the Corporate Debtor's liability to honour the guarantee was reinstated when a fresh demand was made by EARC on 23.01.2024, following the failure of the restructuring agreed by them. The mere withdrawal/revocation of restructuring and reinstatement of the original liability does not automatically revive the invocation made on 16.09.2020.

4.6 The Corporate Debtor vehemently relied on the judgement of Hon'ble NCLAT in *Maneesh Kumar Singh v. State Bank of India & Ors* [Company Appeal (AT) No. 1484 of 2023]. In that case, the corporate debtor defaulted in servicing the facilities and declared the account as NPA on 08.08.2018. SBI also filed a recovery application before DRT on 30.01.2019. Thereafter, the parties arrived at an amicable settlement and based on the joint application filed on 25.06.2021, the DRT passed a consent decree on 26.04.2022. As the corporate debtor failed to adhere

to the terms of the OTS, SBI filed an application under Section 7 of the Code, which was admitted by the Adjudicating Authority. This was challenged in appeal on the ground that as per OTS, the amount was to be paid on 04.03.2021, which fell during the 10A period. It was contended that due to default in the OTS terms, there shall be a fresh cause of action, which arose during the 10A period. The Hon'ble NCLAT dismissed the appeal on the ground, *inter alia*, that when the default was committed on 08.08.2018 by the corporate debtor prior to the 10A period, it is not open for the appellant to claim that the application deserves to be rejected on the ground of Section 10A.

4.7. The facts of *Maneesh Kumar Singh* (supra) are clearly distinguishable for the reason that the OTS entered into between the parties provided that in the event the borrowers/guarantors fail to adhere to the terms of compromise, the compromise settlement shall stand automatically cancelled. The present is a case, where in case of failure to comply with any term or condition of restructuring, EARC shall have the right to revoke the restructuring and there is no automatic cancellation of restructuring. Thus, the above judgement of Hon'ble NCLAT does not help the Corporate Debtor.

4.8 Reliance has further been placed on a decision of the Hon'ble NCLAT in the matter of *Raghavendra Joshi v. Axis Bank Limited & Anr.* [Company Appeal (AT) (Insolvency) No. 914 of 2023], wherein default of the OTS amount during the Section 10A period was not considered while admitting

the application under Section 7 of the Code. In the present case, the defaults in respect of NCDs by the Principal Borrower occurred prior to the 10A period, but the first invocation of the guarantee was made during the 10A period. Though the date of default by the Principal Borrower remains unchanged, the date of invocation of the guarantee has changed on account of the restructuring agreed to by the Corporate Debtor. Hence, we are of the view that the decision in the aforesaid case does not apply to the facts of the case.

4.9 It is important to notice that the object of Section 10A is to protect the corporate debtors who suffer on account of COVID-19 Pandemic and was never intended to restrict or invalidate any restructuring of debt or entering into an OTS. We are unable to accept the argument that the restructuring is solely intended to circumvent the statutory bar under Section 10A. This view is supported by the fact that the Principal Borrower made an upfront payment of Rs.5 Crore at the time of restructuring, and the parties, including the Corporate Debtor, withdrew the pending legal proceedings as a result of the restructuring. When the restructuring terms provide for independent events of defaults, the occurrence of such events has created a fresh cause of action.

4.10. Having concluded that the valid demand on the guarantor is made on 23.01.2024 by the Recall-cum-Invocation of Guarantee, the contention of the Corporate Debtor that the liability has arisen during the period

prohibited under Section 10A of the Code has no substance and hence is rejected.

4.11. Another contention raised by the Corporate Debtor is that in terms of Section 215 of the Code, it is mandatory for the Applicant to furnish the default information to the information utility. In the present case, the Applicant has annexed the document showing the furnishing of default in regard to the Principal Borrower and not of the Corporate Debtor herein. The above argument does not merit consideration on two counts- first, the record of default with the information utility is not the only document that would prove the default , and second, the record of default with regard to the Principal Borrower serves as sufficient evidence, especially since there is no evidence, that the debt jointly owed to the Financial Creditor by the Principal Borrower and the Corporate Debtor has been discharged. Thus, we do not find any merit in this contention also.

4.12 Besides the above, no other contention has been raised by the Corporate Debtor.

4.13 In the result, we are satisfied that the present Application is complete in all respects, the Applicant/Financial Creditor is entitled to claim its outstanding financial debt from the Corporate Debtor, which has become due and payable and that the Corporate Debtor is in default of the same, as guarantor to the Principal Borrower.

4.14 In light of the above, this Tribunal pass the following Order:

ORDER

- (a) This Application bearing C.P. (IB) No. 646/MB/2024 under Section 7 of the IBC, filed by Catalyst Trusteeship Limited, the Financial Creditor, for initiating CIRP in respect of Bombay Rayon Clothing Limited, the Corporate Debtor, is **admitted**.
- (b) We further declare moratorium under Section 14 of the IBC, with consequential directions as follows:
- I. We prohibit-
- a) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Ram Singh Setia**, a registered Insolvency Professional having Registration Number- **IBBI/IPA-001/IP-P01189/2018-19/11935** and e-mail- **setiars@gmail.com**, having valid Authorisation for Assignment up to 31.12.2025 as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the Financial Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor

- VIII. on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- IX. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the Corporate Debtor.
- X. Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of e-mail and WhatsApp.
- XI. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)