

**DIVISION BENCH**

**ITEM NO. 102**

**NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH  
PRAYAGRAJ**

**CP (IB) No. 100/ALD/2022**

**CORAM:**

- 1. SHRI PRAVEEN GUPTA,  
HON'BLE MEMBER (JUDICIAL)**
- 2. SHRI ASHISH VERMA,  
HON'BLE MEMBER (TECHNICAL)**

**Date of Order: 14<sup>th</sup> July, 2023**

**Attendance-Cum-Order Sheet of the Hearing.**

<b>NAME OF THE COMPANY</b>	<b>WHEELABRATOR ALLOY CASTINGS LIMITED &amp; ANR. V/S ANAND AGROCHEM INDIA LIMITED</b>
<b>UNDER SECTION</b>	<b>7 IBC</b>

**COUNSEL APPEARED THROUGH PHYSICAL HEARING:**

Sh. Sushant Chandra, Adv.

*: For the Financial Creditor*

Sh. Rahul Agarwal, Adv.

*: For the Corporate Debtor*

**ORDER**

1. The Rejoinder has been filed vide Diary No.1361 dated 09<sup>th</sup> May, 2023 and the same is taken on record.
2. This application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the Applicants/Financial Creditor.
3. It has been averred in the petition that the Financial Creditor No.1 has entered into an Inter-Corporate Deposit Agreement dated 28<sup>th</sup> March, 2018 with the Corporate Debtor and Financial Creditor No.2 entered into an ICD Agreement dated 31<sup>st</sup> March, 2018 with the Corporate Debtor.
4. In terms of the said agreements, the Financial Creditors disbursed interest free ICDs in the cumulative sum of Rs.22 crore to the Corporate Debtor on the date of execution of the agreement. The terms of the ICDs were 24 months each and accordingly the same became repayable on 27<sup>th</sup> March, 2020 and 30<sup>th</sup> March, 2020 respectively.

5. It has also been averred in the petition that the Financial Creditors addressed multiple separate letters to the Corporate Debtor seeking repayment of Rs. 11 crore each which according to the Financial Creditors became due and payable by the Corporate Debtor as per the respective agreements. The Financial Creditors also issued separate notices to the Corporate Debtor of its default in repayment of the ICDs.
6. It has been averred that the registered office of the Corporate Debtor is in Uttar Pradesh and according to the Financial Creditor, therefore, this Tribunal would have subject matter/jurisdiction in the present matter. The Corporate Debtor has filed short reply to the petition wherein it has been inter-alia contended that the date of defaults as mentioned in Part IV of the petition are 27<sup>th</sup> March, 2020 and 30<sup>th</sup> March, 2020, and therefore, the present petition is barred under Section 10A of the Code. The relevant paras No.4, 5 and 6 of the reply submitted on behalf of the Corporate Debtor are reproduced hereunder.

4. That further, a perusal of paragraph 2 of Part-IV of the company petition would indicate that the interest free ICD extended by Financial Creditor No.1 became repayable on 27.03.2020 while the interest free ICD extended by Financial Creditor No.2 became repayable on 30.03.2020. The same dates are also mentioned in the communication appended collectively as Annexure-J addressed by the Financial Creditor No.1 and the communications appended collectively as Annexure-K addressed by the Financial Creditor No.2.

5. That it may be noted that these dates, 27.03.2020 and 30.03.2020, get covered under Section 10-A of the Insolvency and Bankruptcy Code, which absolutely bars the filing of any application in respect of any default committed for a period of one year after the insertion of Section 10-A in the Insolvency and Bankruptcy Code by the legislature. For convenient perusal of this Hon'ble Court Tribunal Section 10-A reads as under:

*“Section 10A: Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period. Explanation.-For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25<sup>th</sup> March, 2020.”*

6. That accordingly, it is submitted that the present petition could not even be filed and ought to be dismissed on account of the applicability of Section 10-A of Insolvency and Bankruptcy Code, 2016.
7. The Rejoinder Affidavit has been filed on behalf of the Financial Creditor wherein it has been stated by the Financial Creditor that the Section 10A and the proviso thereto cannot reasonable be construed to be a bar on the initiation of CIRP if the default originally occurred between 25<sup>th</sup> March, 2020 to 25<sup>th</sup> March, 2021 but its continuing even after 25<sup>th</sup> March, 2021.
8. It is also stated in the Rejoinder Affidavit that the debt arising out of the 2 Inter-Corporate Deposits became due for repayment on 27<sup>th</sup> March, 2020 and 30<sup>th</sup> March, 2020 and the Financial Creditors addressed several correspondences dated 30<sup>th</sup> June, 2021, 30<sup>th</sup> July, 2021, 29.11.2021, 18.12.2021 and 03.03.2022 to the Corporate Debtor demanding repayment of sum of Rs.22 crore arising out of the ICDs. It is also further stated that however no re-payments were forthcoming on the part of the Corporate Debtor.
9. We have examined and perused the record as well as heard the Ld. Counsel representing both the parties and therefore without going into the merits of the matter, we are prima facie convinced that the present petition is barred under Section 10A.

10. In view of the fact that as stated in Part IV, the date of default have clearly occurred on 27<sup>th</sup> March, 2020 and on 30<sup>th</sup> March, 2020 as stated against the column entry No.2 relating to “amount claimed to be in default and the date on which the default occurred” given at Page 24 of the petition under Section 7 filed by the Financial Creditor. The averments have been made by the Financial Creditor in the petition at Page 22 as well as in their Rejoinder Affidavit that several correspondences were made to the Corporate Debtor, however, in our view would not stretch or shift the date of default to a subsequent date. Merely sending communications to the Corporate Debtor do not alter the date of default. The sending communications to the Corporate Debtor at best is reminder or a notice to the Corporate Debtor that some debts are due to be paid.
11. As per the provisions of Section 10A, it is evident that no application for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed for any default arising on or after 25<sup>th</sup> March, 2020. The proviso thereto further states that no application shall “ever be filed” for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor for the said default occurring during the said period.
12. In a *decision dated 09.02.2021 in case of Ramesh Kymal vs. M/S. Siemens Gamesa Renewable Power Ltd. (Civil Appeal No.4050 of 2020)*, the Hon’ble Supreme Court while dealing with an appeal in which Petition u/s 9 was filed before 5<sup>th</sup> June 2020 (the date when section 10A was inserted) but the default occurred during the period covered by Section 10A, has held in respect of provision of Section 10A read with proviso and explanation to it as under:-

*“The onset of the Covid-19 pandemic is a cataclysmic event which has serious repercussions on the financial health of corporate enterprises. The Ordinance and the Amending Act enacted by Parliament, adopt 25<sup>th</sup> March, 2020 as the cut-off date. **The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP "for the said default occurring during***

*the said period". The expression "shall ever be filed" is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25<sup>th</sup> March, 2020 for a period of six months, extendable up to one year as notified. The explanation which has been introduced to remove doubts places the matter beyond doubt by clarifying that the statutory provision shall not apply to any default before 25<sup>th</sup> March, 2020. The substantive part of Section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of the CIRP in respect of a corporate debtor for a default occurring on or after 25<sup>th</sup> March, 2020; the embargo remaining in force for a period of six months, extendable to one year. Acceptance of the submission of the appellant would defeat the very purpose and object underlying the insertion of Section 10A. For, it would leave a whole class of corporate debtors where the default has occurred on or after 25<sup>th</sup> March, 2020 outside the pale of protection because the application was filed before 5<sup>th</sup> June, 2020."*

13. Taking a cue from the above cited decision of the Hon'ble Supreme Court and further taking into account the situation where default has occurred during the period covered by Section 10A but it continued during the period beyond the period covered by Section 10A, as contended by the Ld. Counsel for the Financial Creditor, we are unable to agree with the contention made on behalf of the Financial Creditor that several correspondences were made subsequent to the date of default, and therefore, Section 10A would not apply. Such a contention would run contrary to the provisions of Section 10A and proviso stipulated therein that no application for

initiation of Corporate Insolvency Resolution Process shall ever be filed in case of a default occurring during the said period of time. Since both the dates of default as mentioned in Part IV i.e. 27<sup>th</sup> March, 2020 and 30.03.2020 undisputedly fall within the bar imposed under Section 10A as well as the proviso thereto, the present application deserves to be dismissed.

14. In view of the forgoing reasons, the present application filed under Section 7 is dismissed being barred by Section 10A of the Code. No order as to costs.

*-Sd-*

**(Ashish Verma)**  
**Member (Technical)**

***14<sup>th</sup> July, 2023***

*Priya Agarwal*  
*(Stenographer)*

*-Sd-*

**(Praveen Gupta)**  
**Member (Judicial)**