



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB) No. 27/CB/2023

In the Matter of:

An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016:

In the Matter of:

Small Industries Development Bank of India, Bhubaneswar Branch, Plot No.-L-3, Jayadev Vihar, Opp. Loyala School, Near XIMB Square, Bhubaneswar, Dist- Khurda, represented through its Authorized Power of Attorney Holder, Sri. Pradyumna Kumar Choudhary, Dy. General Manager, SIDBI;

... Financial Creditor

-Versus-

Sambandh Finserve Pvt. Ltd. & Others, represented through its Administrator, having its Regd. Office at Jubilee Villa, Plot No-7, Sindhi Colony, Mission Hata, Rajgangpur-770 017, District- Sundargarh, Odisha, State Office at A: 2nd Floor, Plot No- 216, District Centre Chandrasekharpur, Bhubaneswar – 751 016, Dist- Khurda,

... Corporate Debtor

Appearances: -

For Applicant: Mr. Ramachandra Panigrahy, Advocate.

For Respondents. Mr. Anupam Dash, Adv.

Order reserved on: 02.05.2023

Order pronounced on: 08.05.2023

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. This petition is filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code,



2016 R/w Rule 4 of Insolvency and bankruptcy (Application to Adjudication Authority) Rules 2016.

2. In the petition it is submitted that the respondent/corporate debtor approached the financial creditor/Petitioner and availed loan from February 2019 to October 2019 aggregating to the tune of Rs.50,00,00,000/- The loan documents and hypothecated deeds were executed by the respondent in favour of the petitioner. The respondent agreed to repay the loan amount by equated monthly instalments (EMI). The respondent failed to repay the loan amount as agreed. As such a sum of Rs.47,74,79,929/-including interest calculated till from 10.07.2021 to 10.02.2023 inclusive of pendent lite and future interest. The corporate debtor availed the credit facilities which is debt within the definition of Section 3(11) and committed default within the meaning of section 3(12) of IBC, 2016. For the purpose of IBC, the debt is calculated from 10.07.2021 to 10.02.2023. The financial creditor had filed an application under section 7 of the IBC, 2016 before this Adjudicating Authority in C.P. No. (IB) No. 42/CB/2022, which was dismissed as not maintainable in view of the bar provided under Section 10 A of IBC, 2016 by order dated 22.11.2022. The appeal Company Appeal (AT)(Insolvency) No.28 of 2023 preferred against the dismissal order dated 22.11.2022, the appeal was dismissed by order dated 12.01.2023, while dismissing the appeal liberty was given to file fresh application in accordance with law.

3. Respondent/Corporate debtor filed counter, in which admitted the borrowal of loan and default. The Reserve Bank of India cancelled the certificate of Registration vide letter dated 16.09.2021 it leads to stop all its NBFC-MFI activities since October 2020.

4. After heard both side submission and perusal of records the following point is framed for determination.

Points for consideration is: -

Whether the present petition is maintainable in view of dismissal of previous petition C.P.No.42/CB/2022?



5. The previous petition C.P.No.42/CB/2022 and the present petition are filed on the same debt. The previous petition was dismissed since the default date 15.12.2020 falls during the suspension period to initiate CIRP under section 10A of IBC 2016. Now the present petition is filed without specifically mentioning the date of default in the relevant column. In part IV (2) of the petition it is mentioned that amount claimed from “10.07.2021 to 10.12.2022”. At the time of argument, petitioner counsel stated that the default rely by the petitioner for this petition is 10.07.2022, but it is not so specifically stated in the relevant column of the petition. In page 4 of the petition under the caption List of Dates, 10.07.2021 is mentioned against the column Date of Default. The date of default 10.07.2021 rely by the petitioner is not in consonance with the averment made in the petition. In page 9 para-K and in page 18 sub-clause ix to part IV of the petition it is averred that “That the corporate Debtor paid instalments up to November 2020 and thereafter defaulted in payment of the principal amount as well as the interest in terms of the loan Agreement”. The above passage reiterated the fact what stated in the previous petition C.P.No.42/CB/2022 that the respondent committed default in the month of December, 2020.

6. The petitioner stated in page 20 sub-clause xiii to Part IV of the petition that the previous petition C.P. (IB) No.42/CB/2022 was filed on 14.09.2022 under section 7 of IBC 2016 there by inadvertently mentioned two dates of defaults. One date being the date on which corporate debtor’s account was declared as NPA i.e., 15.12.2020 and the other date of default i.e., 10.12.2022, due to which this Tribunal vide order dated 22.11.2022 rejected the application. It is not understandable how the second date of default could be mentioned as 10.12.2022 in a petition filed on 14.09.2022. The said petition also dismissed on 22.11.2022, then how it is possible to mention the date of default as 10.12.2022 in the petition which was dismissed on 22.11.2022 prior to this default date. These discrepancies are not properly explained.



7. The petitioner filed this petition changing the date of default from 15.12.2020 to 10.07.2021. On the petitioner side unable to justify/explain how the date of default is fixed as 10.07.2021. The Apex court in '**Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd., (2021) 3 SCC 224**' held that the date of default cannot be changed. Of course, the supra citation is relating to section 9 of IBC 2016.

8. No petition under section 7,9 and 10 IBC 2016 can be filed for the default falls between 25.03.2020 to 24.03.2021 in view of specific bar provided under section 10A of IBC 2016. Proviso to Section 10A runs as follows:

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.

9. The proviso made it clear that once the date of default falls within the period set out in Section 10A, initiation of CIRP is totally barred for ever. In this case in respect of the debt mentioned in the petition, petition already filed by the petitioner against the respondent, the same was rejected by this Adjudicating Authority in C.P. No. 42/CB/2022 by order dated 22.11.2022. As per the proviso to section 10A of IBC 2016, no petition can be filed for ever relating to the same debt.

10. Now in contrary to proviso to section 10A of IBC 2016 on the petitioner side attempt to initiate the CIRP by passing the proviso to section 10A by adopting novel method of fixing/shifting the date of default on its own, to suit their convenience, the same is not permissible. 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 between 25.03. 2020 to 24.03.2021. The petitioner cannot be permitted to circumvent the situation and file the petition against the statutory bar provided under the Act.

11. On the petitioner side rely upon the NCLAT-Delhi Citation Koncentric Investments Ltd and Another vs Standard Chartered Bank London and Another 2022 SCC OnLine NCLAT 1254, this is the citation relating Limitation there it is



held that non-filing of petition under section 7 IBC, 2016 on default of interest shall not foreclose the right of the financial creditor to file an Application under section 7 IBC, 2016 when default on first instalment occurred subsequently and when entire loan became due. In the case in our hands the question of limitation not arises, the issue is whether the financial creditor can change the date of default, and file a fresh petition, when the previous petition filed by him was dismissed because of statutory bar provided under section 10A IBC, 2016. In the scenario the supra citation is not helpful to the case of the petitioner.

12. In these circumstances it is answered that because of dismissal of previous petition C.P.No.42/CB/2022, this second petition for the same debt against the same debtor is not maintainable in consequence the petition is **DISMISSED**.

13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.05.08 16:48:07 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.05.08 15:14:19 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 8th day of May, 2023.

Kaushal P.S