



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V NEW DELHI BENCH**

**COMPANY PETITION IB (IBC) NO. 664/ND/2022**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

**CANARA BANK**

112, JC Road, Head Office,  
Bangalore- 560002, Karnataka.

...Applicant/Financial Creditor

*Versus*

**M/S SAYA AUTOMOBILE LTD.**

Registered Office at: 30-31, Municipal Market  
Connaught Circus,  
New Delhi- 110001

...Respondent/Corporate Debtor

**Order Delivered on: 04.03.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant:

Mr. PBA Srinivasan, Mr. V Aravind, Ms. Srishti  
Bansal, Mr. Sumit Swami, Adv.

For the Respondent:

Mr. Kartik malhotra, Adv




## **ORDER**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. This is an Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016, by Canara Bank (/hereinafter referred to as ‘Financial Creditor’), through its Authorized Representative Mr. S.K. Vimal, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Saya Automobiles Limited (“Corporate Debtor”).
2. The Corporate Debtor was incorporated on 28.04.1984, having CIN: U74899DL1984PLC018058 under the Companies Act, 1956. Its registered office is at 30-31, Municipal Market, Connaught Circus, New Delhi- 110001. Therefore, this Bench has jurisdiction to deal with this petition. The Nominal Share Capital of the Corporate Debtor is Rs. 1,00,000/- (Rupees One Lakh) divided into 1000 (Thousand) Equity Shares of Rs. 100/- each.
3. The present application was filed on 08.04.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 76.28 Cr/- (Rupees Seventy-Six Crores) as on 31.03.2020 (date of default as stated in the instant application).


### **Submissions of Learned Counsel appearing for the Applicant are as under: -**

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
  - a) The present application is being filed by the Financial Creditor seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor which has defaulted in payment of the loan disbursed by the Financial Creditor in terms of credit facilities dated 09.09.1996. The corporate debtor availed credit facilities on 09.09.1996 and the said facilities have been enhanced, revived and renewed on several occasions and lastly it was renewed on 26.09.2018. Subsequent, to the renewal of credit facilities on 26.09.2018, the corporate debtor failed to regularize



the account and hence the account was classified as Non-Performing Asset on 31.03.2020 as per the MOC dated 30.09.2020 and the same was intimated to the Corporate Debtor vide letter dated 19.11.2020.

- b) Thereafter, Corporate Debtor vide letter dated 04.08.2020 approached the Financial Creditor requesting for regularizing and restructuring the account of the Corporate Debtor. Financial Creditor vide letter dated 10.08.2020 replied to the Corporate Debtor's request asking for projections and a roadmap for repayment of debt to be converted to term loan and further informed that the outstanding liability as on date is Rs.59.35 crores.
- c) Further, the Financial Creditor issued a demand notice under Section 13(2) of the SARFAESI Act 2002 on 26.08.2020 calling upon the Corporate Debtor to repay the outstanding dues and thereafter the Corporate Debtor duly replied to the demand notice on 08.10.2020. Thereafter, the Corporate Debtor vide letter dated 11.12.2020 informed the Financial Creditor that they would be selling the assets of the company in order to send One Time Proposal to the Financial Creditor. Moreover, the Corporate Debtor has acknowledged the debt on several occasions and the same is evident from the following documents:
- i. Balance sheet as on 31.03.2020
  - ii. OTS letter dated 13.03.2021
  - iii. OTS letter dated 17.03.2022
  - iv. OTS letter dated 28.08.2022
- d) Further, the Financial Creditor states that the present application is not barred in view of Section 10A of IBC, 2016. Section 10A of IBC 2016 is only applicable to defaults which occur during the period mentioned therein i.e., 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, however in the present case default did not occur in period as mentioned in Section 10A of IBC 2016. Moreover, despite permitting renewal and revival and sanction of OTS, Corporate Debtor defaulted in payment of OTS amount constraining the Financial Creditor to file an application for initiation of insolvency resolution process claiming an amount of Rs.76.28 crores + future interest as evident from the various loaning and security documents.



The Corporate Debtor has been in default since 2019 and the same is evident from the default report dated 16.02.2022, according to which, the first default occurred in November 2019. Therefore, when as per the information utility, default is recorded to be of November 2019, the present application will not be hit by Section 10A of IBC 2016 which is only applicable to defaults which occur during the period mentioned therein i.e., 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.

- f) In the instant application, the contention made by the Corporate Debtor that an OTS offer is pending therefore, financial creditor cannot file an application under Section 7 of the IBC 2016, it is untenable in law and further, as per Section 12A of IBC 2016, the Adjudicating Authority may allow the withdrawal of an admitted application filed under Section 7 of the Code 2016. However, as per the settled law, consideration of an OTS is not a ground barring initiation of corporate insolvency resolution process under Section 7 of the IBC 2016. Further, it is submitted that the Hon'ble Supreme Court in catena of judgments such as *M. Suresh Kumar Reddy vs Canara Bank & Ors. (2023) 8 SCC 387 [Para No.9-11]*, *Innoventive Industries Limited vs ICICI and Anr. (2018) 1 SCC 407 [Para No.28-30]* and *ES Krishnamurthy and Ors. vs Bharath HiTech Builders Pvt Ltd (2022) 3 SCC 161 [Para No.31-32]* upheld that Ld. Adjudicating Authority must admit a petition under Section 7 once existence of debt and default has been established.
- g) As per Section 7(3) (a), financial creditor shall make an application under subsection (1) accompanying a record of default recorded with the information utility or such other record or evidence of default as may be specified and the same has been upheld in the case of *ES Krishnamurthy and Ors. vs Bharath HiTech Builders Pvt Ltd (2022) 3 SCC 161 [Para No.29]*. In the present case, as per the information utility report, the first default occurred in November 2019. Hence, the present application.

**Submissions of Learned Counsel appearing for the Corporate Debtor are as under:**

5. The details of the submissions made by the Corporate Debtor are as follows:

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The Respondent is a going concern MSME Company engaged in the business of Automobiles since 1988. The Respondent runs one of the most trusted Maruti outlets in Delhi. There is no default as such either in the account with the Applicant Bank or in the disbursement of salaries/ wages etc, to its workmen / employees and no other proceedings under the I&B Code have been instituted before this Adjudicating Authority against the Respondent herein. The present Application is neither maintainable in law nor on facts and has been preferred with a motive to abuse the process of law to illegally extort money and arm-twist the Respondent.

b) That the Applicant has approached this Ld. Adjudicating Authority as a 'recovery forum' with unclean hands and with disregard to the due process of law in seeking to initiate. The captioned Application filed under Section 7 of I&B Code is clearly barred under Section 10A of I&B Code. Without admitting to the default on part of the Respondent, as per the Applicant Bank's own case, the date of alleged default is 31.03.2020 and/or 25.08.2020. A perusal of pg.29 of Part IV in the Section 7 Application clearly reveals the same. The Applicant, even during the period of COVID-19 i.e., the period excluded under Section 10-A of the Code had continued to capitalise the interest as well as the penal interests during the excluded period. Such capitalisation of interest by the Applicant is not contemplated under the Code and defeats the purpose of Section 10A of the Code. A conjoint perusal of the pages/ documents herein below reveals the consistent stand of the Applicant Bank in re: the date of alleged default/NPA on part of the Respondent: -

- i. Applicant's Application under Section 19 of RDB Act before Ld. DRT, dated 01.02.2021
- ii. Applicant's Notice under Section 13(2) of SARFAESI Act dated 26.08.2020
- iii. Applicant's Auditor's Memorandum of Changes along with Applicant Bank's Letter dated 19.11.2020
- iv. Applicant's Rejoinder before this Ld. Adjudicating Authority dated 10.12.2022

c) The Respondent, from time to time, had submitted three bona fide OTS offers to the Applicant Bank to settle the accounts. In fact, one of such OTS offers was submitted during the pendency of the present Application and a perusal of the orders dated




21.04.2023, 04.05.2023 and 30.05.2023 passed by this Ld. Adjudicating Authority would reveal the same. The Applicant Bank kept the Respondent's OTS offer pending on its table for 3 months and rejected it arbitrarily, which caused substantial loss of a prospective investment in the Respondent Company. Such arbitrary act on part of the Applicant Bank clearly shows its arbitrariness and mala fides with the sole motive of extorting money from the Respondent. In fact, the present matter is a piece of forum shopping of recovery and not insolvency resolution by the Applicant Bank with deliberate concealment of true and correct facts and documents from this Ld. Adjudicating Authority.

- d) The Respondent is in a good financial health and viable to run its own affairs. Presently, there are several persons who are generating their source of livelihood from the Respondent's Company. The Respondent has good prospects of growth and therefore, insolvency proceedings against the Respondent ought not to be triggered. This Adjudicating Authority ought to exercise its jurisdiction and not spell the death knell of the Respondent Company.


### **Analysis and Findings**

6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and written submission. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
8. In the instant application, the Corporate Debtor availed credit facilities on 09.09.1996 and the said facilities have been enhanced, revived and renewed on several occasions and lastly it was renewed on 26.09.2018. Subsequent, to the renewal of credit facilities on 26.09.2018, the corporate debtor failed to regularize



the account and hence the account was classified as Non-Performing Asset on 31.03.2020 as per the MOC dated 30.09.2020 and the same was intimated to the Corporate Debtor vide letter dated 19.11.2020. Further, the Financial Creditor issued a demand notice under Section 13(2) of the SARFAESI Act 2002 on 26.08.2020 calling upon the Corporate Debtor to repay the outstanding dues and thereafter the Corporate Debtor duly replied to the demand notice on 08.10.2020. Thereafter, the Corporate Debtor vide letter dated 11.12.2020 informed the Financial Creditor that they would be selling the assets of the company in order to send One Time Proposal to the Financial Creditor. Moreover, the Corporate Debtor has acknowledged the debt on several occasions and the same is evident from Balance Sheet as on 31.03.2023 and OTS Letters dated 13.03.2021, 17.03.2022 and 28.08.2022. Therefore, one essential ingredient with respect to Section 7, that there has been a “debt”, stands substantiated.

9. Further, despite permitting renewal and revival and sanction of OTS, Corporate Debtor defaulted in payment of OTS amount constraining the Financial Creditor to file an application for initiation of insolvency resolution process claiming an amount of Rs.76.28 crores + future interest as evident from the various loaning and security documents. Further, the default report dated 16.02.2022, substantiate the fact that the default occurred on 15.01.2020. Therefore, another major essential ingredient of Section 7 i.e., “default” with respect to the debt stand substantiated.
10. Further, the Corporate Debtor had raised the contention that the default in the instant case occurred during the period excluded by Section 10A of IBC. i.e. 31.03.2020, which is also mentioned in Part IV of the instant application. However, on perusal of the Information Utility placed on record as Annexure-226, the date of default as mentioned in Part A is 15.01.2020. Moreover, we also perused the notice dated 25.08.2020 under Section 13(2) of the SARFAESI Act, 2002, placed on record as Annexure-229. It is mentioned in notice dated 15.01.2020 that “*from 15.01.2020, the operation and conduct of the said financial assistance/credit facilities have become irregular*”
11. However, in Para 24 of the rejoinder filed by the Financial Creditor it is stated that the account of the Corporate Debtor was declared as NPA on 25.08.2020 but  
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subsequently the Central Statutory Auditors have declared the account as NPA w.e.f 31.03.2020 instead of 25.08.2020 during the quarter September 2020 Balance Sheet Audit. However, Clause 2.1.2 of Prudential Norms of RBI states that “A non-performing asset (NPA) is a loan on an advance where; i. interest and/or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan”. Therefore, default occurred 90 days prior to declaration of Corporate Debtor’s account as NPA. Hence, the default occurred prior to the period excluded by virtue of Section 10A of IBC. Therefore, the contention of the Corporate Debtor that the default in the instant case occurred during the period excluded by Section 10A of IBC. i.e. 31.03.2020, does not hold ground.

12. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. “*Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.*”

Section 5(7) of IBC defines Financial Creditor: “*Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.*”

Section 5(8) of IBC defines Financial Debt. “*Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

*(a) Money borrowed against the payment of interest;*


*(b) Any amount raised by acceptance under any acceptance credit facility or its de-materialized equivalent;*



- (c) *Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) *Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) *Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) *Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) *Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) *The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*

13. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 08.04.2022, and even admittedly the debt owed to the Financial Creditor is an amount of Rs. 76.28 Cr/- (Rupees Seventy-Six Crores) which meets the threshold of Rs. One Crore.

14. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/664(ND) 2022** filed by Canara Bank, the Financial Creditor, under Section 7 of the Code read with Rule IB 664/ND/2022  
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4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Saya Automobiles Limited, the Corporate Debtor, stands **admitted** and CIRP of M/s Saya Automobiles Limited is initiated.

15. That the petitioner in part-III of the petition has proposed the name of CA Rajiv Bhatnagar, as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P00075/2017-18/10160 and E-mail ID carajivbhatnagar@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The proposed Interim Resolution Professional is directed to give his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration certificate as well as a valid AFA within 5 days of receipt of this order.


16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (a) *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;*
- (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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) *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) *The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar*



*grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
18. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
19. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely CA Rajiv Bhatnagar to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
20. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings



with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

21. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.
22. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
23. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
24. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./664 (ND)/2022, stands admitted.**
25. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**