NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 698 of 2025

[Arising out of the Impugned Order dated 24.04.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court-II in C.P. (IB) No. 646(MB)/2024]

In the matter of:

GANGADHAR A. KOTIAN
SUSPENDED DIRECTOR OF
BOMBAY RAYON CLOTHING LTD.
RESIDENT OF 502, MADHUBAN VIHAR,
CHS LTD. MHATAR PADA ROAD,
SAINIK NAGAR, AMBOLI,
ANDHERI RAILWAY STATION,
MUMBAI- 400058
EMAIL; SHASHANK0487@,GMAIL.COM

...Appellant

Versus

1. **CATALYST TRUSTEESHIP LTD.**
   HAVING RESGISTERED OFFICE AT:
   GDA HOUSE, FIRST FLOOR,
   PLOT NO. 85 S. NO. 94 & 95,
   BHUSARI COLONY (RIGHT),
   KOTHRUD, PUNE, MAHARASHTRA - 411038
   EMAIL: BOD@CTLTRUSTEE.COM

   ...Respondent No.1

2. **MR. RAM SINGH SETIA**
   (IBBI/IPA-001/IP-P01189/2018-2019/11935)
   INTERIM RESOLUTION PROFESSIONAL
   OF BOMBAY RAYON CLOTHING LTD.
   1004, TOWER B, CELESTIA SPACES,
   TOKERSHI JIVRAJ ROAD, SEWRI,
   OFF ZAKARIA BUNDER ROAD, MUMBAI- 400015
   EMAIL: SETIARS@GMAIL.COM

   ...Respondent No. 2

Present:

For Appellant : Mr. Krishnendu Dutta, Sr. Advocate with Mr. Shashank Patnaik, Mr. Karan Grover and Mr. Yash Tandon, Advocates.

For Respondent : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Pranay Chitale and Ms. Smiti Verma, Advocates for R-1.

Mr. Ayush J. Rajani, Advocate for R-2/RP.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61(1) of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 24.04.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-II) in C.P. (IB) No. 646(MB)/2024. By the impugned order, the Adjudicating Authority has admitted the Section 7 application of IBC filed by Catalyst Trusteeship Ltd-Financial Creditor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant- Suspended Director of Bombay Rayon Clothing Ltd.-Corporate Debtor.

2. Coming to the factual matrix which is relevant to be noticed for deciding the matter placed before us, we find that a Debenture Trustee Agreement (**'DTA'** in short) was executed on 12.10.2017 between Principal Borrower-Reynold Shirting Limited and Respondent No.1 in its capacity as the Debenture Trustee/Financial Creditor for 1700 Non-Convertible Debentures ('**NCD**'). Pursuant to the DTA, a Debenture Trust Deed ('**DTD**' in short) was signed on 14.10.2017 between the Principal Borrower and the Debenture Trustee-Financial Creditor. A Guarantee Agreement was executed by the Corporate Debtor-Bombay Rayon Clothing Ltd. in favour of the Financial Creditor on 14.10.2017. The Principal Borrower defaulted in the repayment obligation following which the Respondent No.1 on 16.06.2020 classified the NCDs as NPA which fell during the Section 10A prohibited period. An Assignment Agreement

was executed between ECL Finance Limited and CFM ARC on 14.08.2020 by which the underlying securities interest/rights were assigned to CFM ARC. On 16.09.2020, Respondent No.1 called upon the Principal Borrower and the other obligors including the Corporate Debtor to pay the entire outstanding amount of Rs. 206.15 cr. which also fell during the Section 10A period. The Respondent No.1-Financial Creditor thereafter filed a Section 7 application on 15.03.2022 in the capacity of debenture trustee under the DTA executed with the Principal Borrower before the Adjudicating Authority vide CP (IB) No. 629/MB/2022 (hereinafter referred to as the "**First Petition**") seeking initiation of CIRP of the Principal Borrower. In the meantime, another Assignment Agreement dated 23.12.2022 was executed between CFM ARC and Edelweiss Asset Reconstruction Company Limited (**'EARCL'** in short). During the pendency of First Petition, EARCL restructured the dues of the Principal Borrower by a Restructuring Agreement dated 27.12.2022. By this Restructuring Agreement, the default amount of Rs.252.37 Cr. was restructured and the liability of the Principal Borrower was restructured to Rs. 162.50 cr which was payable in five instalments including Rs.5 crores as upfront payment within five days of the signing of Restructuring Agreement. In pursuance of the terms of Restructuring Agreement of 27.12.2022, the "First Petition" was withdrawn on 11.01.2023. The Principal Borrower paid the upfront payment of Rs.5 crores but defaulted in the payment of second instalment which fell due on 25.03.2023. The Financial Creditor issued a letter dated 20.06.2023 calling upon the Principal Borrower and the obligors including the Corporate Debtor-Corporate Guarantor to cure the default by 26.06.2023 failing which the restructuring letter would stand

cancelled. Though the Financial Creditor had invoked the Corporate Guarantee earlier on 16.06.2020, the Financial Creditor issued another recall-cum-invocation of guarantee on 23.01.2024 on the obligors including the Corporate Debtor-Corporate Guarantor and by this letter also revoked the restructuring letter. As no response was received from the Corporate Debtor-Corporate Guarantor, on 10.06.2024 the Respondent No.1 filed a Section 7 application against the Corporate Debtor vide CP (IB) No. 646 of 2024 (hereinafter referred to as the "**Second Petition**"). The Adjudicating Authority admitted the Section 7 application initiating CIRP of the Corporate Debtor. Assailing the impugned order, the Appellant has come up in appeal.

3. Making his submissions, Shri Krishnendu Dutta, Ld. Senior Advocate for the Appellant submitted that the DTA and DTD executed between the Principal Borrower and the Financial Creditor and Guarantee Agreement by the Corporate Debtor-Corporate Guarantor in favour of Financial Creditor constituted two different transactions. The liability of the Corporate Debtor as Corporate Guarantor is to be read from the Guarantee Agreement. Reliance was placed on the judgment of the Hon'ble Supreme Court in the matter of ***Syndicate Bank V. Channaveerappa Beleri (2016) 11 SCC 506*** wherein it has been held that the liability to pay by the guarantor arises only when a demand is made on the Guarantor. In the present case, the demand to pay was first made to the Corporate Guarantor on 16.06.2020/16.09.2020. Since the default notice fell within the Section 10A period, it was contended by the Appellant that the Section 7 application stood barred under Section 10A.

4. While admitting that the debt was restructured by the Restructuring Agreement on 27.12.2022, submission was pressed by the Appellant that the Adjudicating Authority had erroneously not taken into cognizance the judgement of this Tribunal in the matter *of* ***Maneesh Kumar Singh vs. State Bank of India & Ors. CA (AT) (Ins) No. 1484 of 2023*** wherein it has been held that once default has been committed under a subsequent OTS, then the date of default will relegate back to the date of default committed under the original agreement. Any subsequent restructuring/OTS cannot alter the crystallised date of default. Once a guarantee is invoked, it cannot be repeatedly invoked to create a new cause of action. Once the date of original default fell within the prohibited period, the Section 7 application could not have been admitted by the Adjudicating Authority. It was emphatically asserted that the Section 7 application was not maintainable and in support of their contention reliance was placed on the judgment of this Tribunal in the matter of ***Vikram Kumar, Proprietor vs. Arcana (Mumbai) Private Limited, in CA (AT) (Ins) No. 836 of 2023.*** Attention was also drawn to the judgment of this Tribunal in ***Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited (2021) 3 SCC 224*** to contend that the date of default cannot change.

5. It was also vehemently contended that the IBC is not a debt recovery mechanism which aspect, the Adjudicating Authority has failed to appreciate. because the IRP was working with the Financial Creditor. It is also contended that the Interim Resolution Professional (**'IRP'** in short) appointed in the present case was on the payroll of the Financial Creditor for more than six years and this was sufficient ground for apprehension of bias on part of the IRP. Hence a

prayer was made seeking substitution of the IRP to ensure that CIRP is conducted in a fair and unbiased manner.

6. Refuting the contentions raised by the Appellant, Shri Abhijeet Sinha, Ld. Senior Advocate for Respondent No.1- Financial Creditor submitted that the sole defence of the Appellant is that the Section 7 application was barred by Section 10A which is a misplaced contention. The contention of the Corporate Debtor that the Section 7 petition was barred by Section 10A on the ground that the Financial Creditor had issued a recall notice on 16.09.2020 which fell during the Section 10A period is misconceived. The Corporate guarantee executed by the Corporate Debtor was a continuing guarantee in terms of the Guarantee Deed which stood reaffirmed by the Restructure Letter on 27.12.2022. It was pointed out that the ***Syndicate Bank judgment supra,*** the Hon'ble Apex Court had drawn a distinction between the standard guarantee and a continuing guarantee. The Adjudicating Authority had rightly recorded that the Corporate Guarantor had undertaken continuing obligations to cover defaults by the Principal Borrower until full payment of dues under the DTD. In the present case since the Appellant has expressly admitted debt and default and the guarantee was continuing as can be deciphered from the terms of the Guarantee Deed, the date of default was not covered by the Section 10A period.

7. It was strenuously contended that the Corporate Debtor's contention that the restructure letter was designed to circumvent Section 10A is baseless since this restructuring was done at the instance of the Corporate Debtor which had acknowledged the debt and reaffirmed the corporate guarantee and had agreed to the consequences of non-payment under new terms. Thus, when the

Corporate Debtor had voluntarily participated in the restructuring, they cannot seek to renege on their commitments.

8. It was also pointed out that Section 10A does not apply to any default that occurs subsequent to the expiry of the suspension period. In the present case, the relevant default occurred on 25.03.2023 which was beyond the outer limit of Section 10A period. In support of their contention, reliance was placed on the judgment of this Tribunal in ***Vinod Kumar vs. Omkara Asset Reconstruction Pvt. Ltd. in CA (AT) (Ins) No. 2265 of 2024.*** Hence the invocation of guarantee by the Financial Creditor on 23.01.2024 stems directly from a fresh, actual and admitted default under the restructured terms as contained under the Restructure Letter.

9. It was submitted by Shri Ayush J. Rajani, Ld. Advocates representing Respondent No.2-IRP that it was a baseless allegation that the IRP would act in a biased manner as it was an erstwhile employee of the Financial Creditor. In any case, there is no such embargo for any ex-employee from being appointed as IRP as long as the IRP has no connections with the parties *in praesenti.* Reliance was placed on the judgment of Hon'ble Supreme Court in the case of ***State Bank of India vs. M/s Metenere Ltd. in Civil Appeal No. 2570 of 2020*** wherein it was clearly held that any past employment with the Financial Creditor would not be a cause for dis-entitlement on any person from acting as a Resolution Professional. It was also added that the IRP was appointed after the initiation of Section 7 proceedings by the Adjudicating Authority and cannot be held in any manner to have been instrumental in the admission of Corporate

Debtor into CIRP. Hence it is a frivolous charge made by the Appellant that the IRP would be unfair and biased in the conduct of CIRP.

10. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

11. The primary limb of argument of the Appellant is that the Respondent No.1-Financial Creditor had admitted that the first default notice was issued on 16.06.2020. In the said default notice, the Respondent No.1 had clearly indicated that the default on the part of Principal Borrower and the declaration on the accounts of Principal Borrower as NPA happened on 16.06.2020 which fell under the Section 10A period. The liability of the Corporate Debtor as Corporate Guarantor was however to arise only when the demand was made under the terms of Contract of Guarantee. This demand was made by the Respondent No.1-Financial Creditor by issue of another notice on 16.09.2020 by which the corporate guarantee was invoked. This date of guarantee invocation also fell squarely within the Section 10A period. It was asserted that in terms of proviso to Section 10A of IBC, no insolvency proceeding can ever be instituted against any entity including the Corporate guarantor for any default arising on or after 25.03.2020 till one year from such date. The first Section 7 application stood barred both against the Principal Borrower and the Corporate Debtor having been based on a default which date was hit by the Section 10A embargo.

12. It was contended that the Respondent No.1-Financial Creditor with the intention to overcome this statutory bar under Section 10A has cleverly placed reliance on the Restructuring Agreement of 27.12.2022 to assert that the date of default was 25.03.2023 and not the original date of default of 16.09.2020. It

was pointed out that the Financial Creditor in their letter of 23.01.2024 have admitted that the Restructuring Agreement of 27.12.2022 was categorically revoked. Since the Restructuring Agreement had already been revoked by the Financial Creditor, the date of default goes back to the date of original default i.e. 16.09.2020 which fell in the Section 10A period. It was pointed out that subsequent restructuring/OTS cannot alter the crystallized date of default. Moreover, once a guarantee is invoked, the guarantee cannot be repeatedly invoked to create a new cause of action. Further, the Adjudicating Authority could not have ignored the fact that while computing the default amount including the interest component, the default date has been taken to be 16.09.2020 which fell within Section 10A period. Thus, there is clear contradiction in the date of default relied upon by the Respondent No.1. The second Section 7 application could not have been filed with a different date of default.

13. Per contra, it is the contention of the Respondent No.1 that the Corporate Debtor being a group company of the Principal Borrower and an obligor under the financing restructure had voluntarily executed the Restructure Agreement of 27.12.2022. The restructuring of the debt was carried out with the mutual consent of all parties. Hence the Corporate Debtor after taking benefit from the concessions under the Restructure Letter and then defaulting on its obligations cannot seek to disregard or question the very basis of the Restructure Letter. The impugned order is therefore correct in holding that when the Financial Creditor issued the Recall-cum-Invocation of Guarantee Notice on 23.01.2024 to the Corporate Debtor, the cause of action for initiating Section 7 petition arose

not from 16.09.2020 recall notice but from the default which arose on 25.03.2023.

14. The moot issue before us for our consideration is whether the Adjudicating Authority was correct in holding that the guarantee invocation notice of 16.09.2020 did not get revived after withdrawal/revocation of the restructuring agreement by the Respondent No.1.

15. For a proper appreciation of the issue at hand as to whether the withdrawal/revocation of restructuring agreement automatically revived the guarantee invoked on 16.09.2020 or not, we first proceed to peruse the relevant terms and conditions of the Guarantee Agreement which are as extracted below:

> *"5.3. The Guarantor shall not revoke this Guarantee and this Guarantee shall remain in force until all the outstanding amounts have been finally paid in full regardless of any intermediate payment or discharge;*
> *26. This Guarantee is a continuing guarantee and is without prejudice to and in addition to any other security or security documents already held of which the Debenture Trustee may hold hereafter on account or in relation to the redemption of Debentures in terms of Debenture Documents, as amended from time to time. Notwithstanding anything contained in these presents, this Guarantee shall remain in force till all the outstanding amounts under the Debenture Documents have been finally paid in full.*
> *31. This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Debenture Trustee by any Obligor and shall be valid and binding on the Guarantor and operative until the Final Settlement Date.*
> *33.The Guarantor makes and repeals the representations and warranties set out in the Debenture Trust Deed and the other Debenture Documents, including those specified in the Fourth schedule of the Debenture Trust Deed(which are incorporated herein by reference and shall apply mutatis mutandis, as if set out in full in this Guarantee) to the Debenture Trustee as of the date hereof and as of each date till the Final Settlement Date.*
>
> *(Emphasis supplied)*

16. A perusal of Clauses 5.3, 26, 31 and 33 above of this validly executed Guarantee Agreement clearly shows that it was a continuing guarantee which

was to survive until full payment of the dues under the DTD was made. The language of the Guarantee Deed leaves no room for doubt that it is continuing in nature and remains valid until all dues are paid. In other words, the Corporate Guarantee was to also continue to remain binding and legally enforceable against the Corporate Debtor until full repayment of the restructured amount.

17. Having noticed the continuing nature of the guarantee as contemplated in the Guarantee Agreement, it may also be useful to peruse certain salient aspects of the Restructure Letter of 27.12.2022. The Restructure Letter of 27.12.2022 at page 360 of Appeal Paper Book ('**APB**') expressly states:

> *"2. This letter supersedes all previous amendments / modifications/ communications as the context may deem fit as also any amount(s)/part payment(s) received towards the NCDs. In this regard, we are agreeable to restructure the NCDs on the broad contours enunciated herein below and subject to the terms and conditions as contained in Annexure hereto (hereinafter referred to as "Restructuring Letter").*
>
> *(Emphasis supplied)*

The 'Events of Default' clause at page 368 of APB in the Restructuring Letter further states as under:

> "*Each of the following events shall constitute an independent event of default for the purpose of this Restructuring letter.*
> *(a) Failure to make payments as per Restructuring schedule above."*
>
> *(Emphasis supplied)*

Further the provisions dealing with '*Consequences of Event of Default*' at page 368 of APB contemplates that the Respondent No.1-Financial Creditor on the occurrence of any default can either revive the insolvency application vide CP No. 629 of 2022 or file a fresh insolvency application and exercise any other right or remedy as deemed fit. In the present facts of the case, the Respondent No.1-Financial Creditor filed a fresh second Section 7 application on failure to make

payments by 25.03.2023 as per the restructure schedule from the second instalment onwards.

18. Before we proceed further, we may notice Part IV of the Section 7 application with regard to the amount claimed in default and the date of default which is to the following effect as extracted hereinbelow:

PART-IV

<table>
<tr><td colspan="3">PARTICULARS OF FINANCIAL DEBT</td></tr>
<tr><td></td><td>TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT</td><td>
<u>Total Amount of Debt Granted:</u>
The total amount of debt availed by Principal Borrower, being the Issuer of 1700 NCDs / Debentures of face value of INR 10,00,000/- (Indian Rupees Ten Lakh Only) each, totally aggregating to INR 170,00,00,000/- (Indian Rupees One Hundred and Seventy Crore only) issued to ECL Finance Limited (“ECLFL") oh private placement basis. The Corporate Debtor, which is a group company of the Principal Borrower, is the corporate guarantor for the NCDs / Debentures issued by the Principal Borrower and the Corporate Debtor stood as Corporate Guarantor and executed a Guarantee Agreement dated October 14, 2017 (“Corporate Guarantee”).
Date(s) of Disbursement:
<table>
<tr><td>Particulars</td><td>Amount disbursed (In Rs.)</td><td>Date of Disbursement</td><td></td></tr>
<tr><td rowspan="5">NCDs</td><td>55,00,00,000</td><td>Oct 25, 2017</td><td></td></tr>
<tr><td>20,00,00,000</td><td>Nov 07, 2017</td><td></td></tr>
<tr><td>20,00,00,000</td><td>Nov 20, 2017</td><td></td></tr>
<tr><td>40,00,00,000</td><td>Nov 27, 2Q17</td><td></td></tr>
<tr><td>35,00,00,000</td><td>Nov 30, 2017</td><td></td></tr>
<tr><td>Total</td><td colspan="2">INR 170,00,00,000/- * (Indian Rupees One Hundred and Seventy Crore only)</td><td></td></tr>
</table>
*Subscribed by ECL Finance Limited.
On, August 14, 2020, the said NCDs along with all underlying securities interest / rights were assigned by the ECLFL to CFM Asset Reconstruction Private Limited, acting in its
</td></tr>
</table>

capacity as trustee of the CFMARC Trust-1) (CFM ARC) under the Assignment Agreement dated August 14, 2020, A copy of the Assignment Agreement dated August 14, 2020, is annexed herewith as Annexure 7.

Thereafter, on December 23, 2022, the said NCDs along with all underlying securities interest / rights were assigned by CFM ARC to Edelweiss Asset; Reconstruction Company. Limited (EARC) acting in its capacity of Trustee of EARC Trust - SC 462 (Debenture Holder / EARC). A copy of the Assignment Agreement dated December 23, 2022, is annexed herewith as Annexure 8.

Thereafter, on December 27, 2022, at the request of the Principal Borrower, Debenture Holder restructured the face value of NCDs to the extent of Rs. 162.50 Crore (Rupees One Hundred Sixty-two Crore Fifty Lakh only) payable in instalments as mentioned in the table below, subject to terms and conditions as contained in the Annexure thereto of the letter bearing no. EdelARC/3719/2022-23 dated December 27, 2022 (Restructuring Letter):

Instalment	*Due Date*	*Amount (Rs. in Crore)*
1.	*5 days from date of the Restructuring Letter*	*5.00*
2.	*On or before 25.03.2023*	*20.00*
3.	*On or before 25.06.2023*	*50.00*
4.	*On or before 30.06.2023*	*5.00*
5.	*On or before 15.05.2024*	*12.50*
Total		*162.50*

A copy of the Restructuring Letter bearing no. EdelARC/3719/2022-23 dated December 27, 2022 is annexed herewith as Annexure 9.

	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS DEFAULT IN TABULAR FORM)	*Date of Default: March 25, 2023* *Total outstanding amount claimed to be in default as on April 30, 2024 is as per table below:*

Particulars	*0/S Amount*	
Principal Outstanding	*1,61,50,00,000*	
Interest Due	*90,77,13,662*	
Redemption Premium	*32,11,91.740*	
Default Interest	*8,87,46,420*	
Total	*2,93,26,51,822*	

It is pertinent to mention that the Principal Borrower only made an upfront payment of Rs.5,00,00,000/- (Rupees Five Crore only) on January 5, 2023. However, failed to repay the second instalment as per the agreed timeline therefore, the Debenture Holder vide its letter bearing reference no. EdelARC/1292/2023-24 dated June 20, 2023 intimated the obligors including the Corporate Debtor and Principal Borrower regarding the default in payment of the second Instalment of INR 20,00,00,000/- (Indian Rupees Twenty Crore only) of restructured debt which was due on March 25, 2023, as per the restructuring schedule under the Restructuring Letter dated December 27, 2022 and requested to cure the same within a period of 5 (five) working days on or before June 26. 2023, failing which Debenture Holder will be constrained to cancel the Restructuring Letter dated December 27, 2022. Copy of the letter dated June 20,2023 issued by Debenture Holder is annexed herewith as Annexure 10. Thereafter. the Financial Creditor vide its letter bearing no. CTL/23-24/RSL/05028 dated January 23, 2024 addressed to obligors including Corporate Debtor, the Financial Creditor issued a recall cum Invocation of Guarantee for the NCD Facility (Notice of Recall cum Invocation of Guarantee) whereby the Financial

		Creditor provided a detail of defaulted instalments respectively and revoked the Restructuring Letter. Copy of the Notice of Recall cum Invocation of Guarantee dated January 23, 2024 is annexed herewith as Annexure 11. *Thereafter, no response was received from Corporate Debtor.*

19. Now capturing the entire chain and sequence of events, we find that the Principal Borrower had breached the DTD in November 2019 for which the account of the Principal Borrower was declared NPA on 16.06.2020. This led to issue of recall cum invocation of guarantee notice by Respondent No.1-Financial Creditor on the Corporate Debtor on 16.09.2020 and subsequent filing of the first Section 7 application before the Adjudicating Authority. Meanwhile, a proposal to restructure the dues cropped up which led to the mutually agreed Restructuring Agreement by the Respondent No.1-Financial Creditor with the Principal Borrower and Corporate Debtor on 27.12.2022 which superseded all previous communications between them. The Corporate Debtor in the said Restructure Letter at Annexure-I thereof, as may be seen at page 363 of the APB, expressly acknowledged that Rs. 252.37 Cr was jointly and severally due and payable by the Principal Borrower and other obligors including the Corporate Debtor as on 15.11.2022. The Restructure Letter restructured the outstanding amount to Rs. 162.50 Cr. and the Financial Creditor-Respondent No.1 agreed to withdraw the first Section 7 petition in terms of this Restructure Letter with liberty to file Section 7 afresh in case of default. Since the Principal Borrower defaulted in payment of second instalment of Rs 20 Cr. which had become due on 25.03.2023, clearly a default under the Restructure Letter got triggered. A Cure Notice was issued on 20.06.2023 by the Financial Creditor to Principal

Borrower and Corporate Debtor. Since there was no response from either of them, a Recall-cum-Invocation of Guarantee Notice was admittedly issued on 23.01.2024 to the Principal Borrower and Corporate Debtor. As there was no response to the Recall-cum-Invocation of Guarantee Notice, the Respondent No.1 filed the second Section 7 petition in terms of the restructure letter for an outstanding amount of Rs. 293.26 cr on account of default dated 25.03.2023. The restructure letter envisaged that any failure on the part of Principal Borrower or Corporate Debtor to adhere to the payment schedule of the restructured instalments was to constitute an event of default resulting in termination of the Restructure Letter and resultant reinstatement of original obligations subject to adjustment of payments already made. However, the liability for payment as claimed by the Respondent No.1-Financial Creditor in the second Section 7 application arises basis the default committed by the Corporate Debtor on 25.03.2023. From the particulars depicted at Part IV above, it is clear that the debt amount stood modified from the first Section 7 petition and a separate invocation was made for this amount.

20. To answer the question as to whether the guarantee invocation notice of 16.09.2020 got revived or not upon the withdrawal/revocation of the restructuring agreement, we are of the view that the Adjudicating Authority has correctly taken notice of the contractual arrangement recorded in the Restructure Letter to hold that the cause of action for initiating legal action arose both from default of the restructuring terms or from withdrawal/ termination of the restructuring agreement. In the present facts of the case, the termination of restructuring was not automatic but was dependent on the exercise of this choice

by the Respondent No.1-Financial Creditor to revoke the restructuring in the event of failure to comply with the restructure terms. The restructure terms provided for independent events of default and such a default having undisputedly occurred, we are of the view that the Financial Creditor-Respondent No.1 had exercised the option clearly available to them to file a fresh Section 7 petition with the amount of debt modified from the first Section 7 petition and a fresh date of default. The Adjudicating Authority therefore did not commit any infirmity in holding that the invocation of the guarantee by the Respondent No. 1-Financial Creditor on 23.01.2024 stemmed directly from a default under the restructured terms.

21. The reliance placed by the Corporate Debtor on the judgment of this Tribunal in ***IDBI Trusteeship Services Limited vs. Direct Media Distribution Ventures Pvt. Ltd.*** in ***CA(AT)(Ins) No. 850 of 2023*** to contend that the Demand Notice of the Respondent No.1-Financial Creditor could not postpone or override the original date of default is also misplaced. That decision does not apply in the present case since in this case the Corporate Debtor by express consent had restructured its liability under the Restructure Letter and the default arose upon the failure of the Corporate Debtor to comply to the terms of the Restructure Letter of making good the payment of the second tranche which was due on 25 March 2023 in terms of the Restructure Letter. Moreover, the terms and condition of the Guarantee Agreement which has been captured above already makes it clear that it was in the nature of a continuing guarantee and covered every default till all the outstanding amounts under the DTD have been paid in full. Accordingly, the invocation of the guarantee by the Respondent No. 1-

Financial Creditor on 23.01.2024 stemmed directly from a default under the restructured terms. There was no infirmity in the second Section 7 application not going back to the original date of default. The Adjudicating Authority has also correctly held that the factual matrix of the ***Maneesh judgment supra*** relied upon by the Corporate Debtor does not come to their aid since in that case cancellation of restructuring was automatic with no scope for a fresh cause of action. The above judgement was in its own facts and does not render any help to the Appellant in the present case.

22. This brings us to the second limb of argument of the Appellant that the original invocation of the guarantee was never nullified/terminated and there was no interdiction of the invocation of the guarantee. It was therefore contended that on the default in the Restructuring Agreement, the date of default automatically goes back to the original date of default. In other words, the invocation of guarantee which was done during Section 10-A period continued even if the debt was restructured and certain payments/adjustments made with respect to restructured debts. Therefore, the second Section 7 application continued to relate to the original default and therefore hit by the embargo of Section 10-A.

23. Per contra, it is the contention of the Respondent No.1 that it is misconceived on the part of the Appellant to claim that once invocation was done during the Section 10A period and was hit by the statutory embargo, then the entire debt gets wiped out. It was vehemently contended that for subsequent defaults after Section 10A, the debt liability can always be invoked again. It is also well settled that the bar under Section 10A does not extend to defaults that

occur after 25 March 2021. Reliance was placed on the judgement of this Tribunal in ***Vinod Kumar v. Omkara Asset Reconstruction Private Limited*** in ***(CA)(AT)(Ins)No. 2265 of 2024*** wherein it was held that Section 10A does not apply to any default that occurs subsequent to the expiry of the suspension period. In the present case, it was contended that the original debt was modified and the guarantee being a continuing one, the guarantee could always be re-invoked without attracting Section 10A.

24. Coming to our analysis and findings, we are inclined to agree with the Adjudicating Authority that there is no provision under Section 10A of the IBC that prohibits parties from entering into a valid debt restructuring arrangement during or after the Section 10A suspension period. The impugned order has correctly noted at paragraph 4.9 that Section 10A was introduced to provide temporary relief during the COVID-19 pandemic which did not curtail the substantive contractual rights of parties to restructure their debts. From a reading of the Part-IV, it becomes clear that this was not a case of invocation of debt during Section 10A period. In the present case, the relevant default occurred on 25 March 2023 which was well beyond the outer limit of Section 10A, which squarely brings the claim within the permissible scope of Section 7 of the IBC. The Appellant has expressly admitted debt and default in their pleadings at page 21-22 of APB and the guarantee being a continuing nature, admission of the Section 7 application by the Adjudicating Authority is well justified.

25. In view of the foregoing discussions, we do not find substance in the Appeal. The Appeal is dismissed. We do not find any good reason to interfere with the impugned order. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi

Date: 09.07.2025

Harleen/ Abdul