



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2. IA/1331/2025 C.P. (IB)/1022(MB)2024

IN THE MATTER OF

Canara Bank

VS

M/s Elegant Forge & Equipments
Private Limited

Section 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 11.07.2025

CORAM:

SH. SUSHIL MAHADEORAO KOCHEY
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the FC: - Adv. Mily Ghoshal (Ph)

For the Respondent:-

ORDER

IA/1331/2025 C.P. (IB)/1022(MB)2024:- The above IA and CP are listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)
/Anmol/

Sd/-
SUSHIL MAHADEORAO KOCHEY
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 1022/MB/2024

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Canara Bank

Office Address at Stressed Assets Management Branch, Canara Bank Building, 'B' Wing, 8th Floor, C-14, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051

...Petitioners/Financial Creditor

Vs

M/s Elegant Forge & Equipment Private Limited,

Flat No. 701, 7th Floor, A wing, Meenaxi Apartment, Gokuldham Krishna Vatika Marg. Opp. Gen. A K Vaidya Marg, House No. 2, I (P), Vill. Dindosh Taluka Borivali Goregaon East, Mumbai - 400063

... Respondent/Corporate Debtor

Order Dated: 11.07.2025

Coram:

Sh. Sushil Mahadeorao Kochey, Hon'ble Member (Judicial)
Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Mily Ghoshal (PH)



For the Respondent: Adv. Manoj Harit (VC)

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ORDER

I. This Company Petition is filed by **Canara Bank** (hereinafter referred as “**Petitioners/Financial Creditor**”) on 17.12.2024 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **M/s Elegant Forge & Equipment Private Limited** (hereinafter called “**Respondent/Corporate Debtor**”) by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Default amount of **Rs. 81,60,32,532.77/-** and the date of default being **31.07.2021**.

II. **Facts of the Petitioner, in brief-**

1. The Petitioner vide sanction letter dated 06.10.2018 granted fund based working capital for an amount of Rs. 23 crores for the year 2018-2019 and Rs. 40 Crores for the year 2019-20 and Term loan of Rs. 50 crores to the Respondent.
2. The South Indian Bank Limited (one of the consortium members) vide sanction letter dated 18.01.2019 granted a loan to the Respondent as Cash Credit Overdraft Limit (CCOL-1) for an amount of Rs. 5,00,000.00 and TL (Project 1) for an amount of Rs. 10,00,000/-. The Respondent secured the said loan by creating a hypothecation of the entire current assets of the company.
3. Further, Bank of Maharashtra (one of the members of the consortium) also granted a term loan to the Respondent vide sanction letter dated 28.02.2019 for an amount of Rs. 20 Crores.
4. On 02.03.2019, the Directors of the Corporate Debtor, being the principal borrower, along with Jayshree Limbani, Mrs. Manilal Limbani

and M/s Elegant Creation (P) Ltd executed a deed of guarantee for an amount of Rs. 115,00,00,000/-.

5. The Respondent failed to keep up with the terms of the agreement in clearing the dues of the Petitioner and thus the account of the Corporate Debtor was declared NPA on 30.11.2021.
6. On 01.12.2021 the Petitioner addressed a notice under section 13(2) of the SARFAESI Act, 2002, calling upon the Respondent to repay the entire amount within 60 days. Further, on 06.07.2024, the Petitioner published a note for e-auction for sale of the immovable property under section 13(4) of SARFAESI Act, 2002.
7. In the light of the aforementioned, the Petitioner preferred the present Petition before this Tribunal for initiating CIRP against the Respondent.

III. Facts and submissions of the Corporate Debtor, in brief:

8. At the outset, the Corporate Debtor denied all statements, averments, contentions, and allegations made by the Petitioner. The Corporate Debtor is a company engaged in the business of manufacturing forged components. The Directors of the Corporate Debtor had envisaged setting up a green-field forging plant with a capacity of 72000 MT of material production per annum of forged weight components at Wada, Palghar District, intended to cater to the specialized needs of auto, power, oil and gas, defence, aerospace, railway, earthmoving and general engineering industries.
9. The Applicant Canara Bank being the lead bank in the consortium of 3 banks assessed the Business proposal submitted by the Corporate Debtor for setting up a Forging Plant with the capacity of 72000 tons per annum on forged weight at an estimated cost of Rs.148.92 Crore.

- 10.** Upon such Appraisal by the team of the Bankers, the Applicant bank sanctioned the credit facility of Rs.50.00 Crore as Term Loan and Rs.25.00 Crore as Working Capital.
- 11.** The Applicant bank issued Sanction letter dated 06.10.2018, which envisaged the repayment of the loan in 72 EMI after a 17-month moratorium period starting from the first date of disbursement (which was assumed as November, 2018).
- 12.** The second member of the consortium, Bank of Maharashtra vide the Sanction letter dated 05.12.2018 sanctioned the Term loan of Rs.20.00 Crore and Working Capital of Rs.5.00 Crore.
- 13.** The third member of the consortium, the South Indian Bank vide Sanction Letter dated 18.01.2019 sanctioned the Term Loan of Rs.10.00 Crore and Working Capital of Rs.5.00 Crore.
- 14.** It is submitted that when the unit had achieved DCCO, none of the lenders disbursed the sanctioned working capital loans in breach of the sanction terms thereby disentitling them from initiating any recovery measures or claiming 'default' as understood in development banking norms.
- 15.** The Corporate Debtor has preferred an Interlocutory Application No. 1331/2025 challenging the maintainability of the Company Petition No. 1022/2024 under Section 60(5) read with Section 10A of IBC, 2016. The admitted position of the Petitioner is that the said account was irregular since 20.03.2021 i.e. within the 10A period. Thus, rendering the present Petition not maintainable.
- 16.** The Company Petition is filed by Mr. Pranay Somkuwar claiming to be the Authorized Representative of the Applicant Bank. However, there is no board resolution authorizing the said person attached with the Company Petition. The document attached with the Company Petition is not a board resolution but only a Letter of Authority.

- 17.** Vide S.O. 1091 (E) dated 27.02.2019, the Central Government has inter alia notified "a person duly authorized by the Board of Directors of a Company" as competent to file an application under Section 7 of the Code against a corporate debtor.
- 18.** The present Petition suffers from several defects and is incomplete. No working computation is attached. The Petitioner has failed to aver/mention and demonstrate the amount of the alleged disbursement, the dates on which the amounts allegedly fell due, the rate of interest charged, the rate of penal interest, if any, charged and the working in support of the alleged defaulted amount.
- 19.** The document annexed simply shows bifurcation of alleged amount of default into Limit sanctioned, Book Liability as on 31.07.2024, outgoings, Principal, Interest, & Expenses. No workings /computation /tables etc. are provided. The mere mention of ad hoc alleged figures under Part IV of the present Petition does not amount to a "debt" and "default" in the absence of evidence/material to support the same.
- 20.** The date of the alleged default as stated in Part-IV, Tab 2 is incorrect as the date of default is taken as the date of 31.07.2021 without giving any explanation or substantiating the same. There is no evidence to substantiate the alleged default on 31.07.2021; whereas, the Petitioner's own documents contradict the contention.
- 21.** Further, an applicant under Section 7 of the Code is required to file Statements of Account backed by a valid Certificate as per the Bankers' Books Evidence Act, 1891. Any entry in a banker's books to be taken as prima facie evidence of the existence of such entry, and to be admitted as evidence of the matters reflected therein, should strictly comply with the provisions of the BBE Act.
- 22.** The BBE Act provides that any entry to be admitted as evidence of the matters reflected therein should be furnished as a certified copy. Furthermore, such certified copies of bankers' books should meet the

requirements laid down in Section 2A of the BBE Act. The Petitioner has not met the requirements of the BBE Act. The purported Statements of Account cannot be taken into evidence or be treated as proof of any transaction set out therein whether or not the same proves debt, disbursement or default.

- 23.** The Petitioner has attached an Overdraft Agreement for an amount of Rs.25 Lakhs and a promissory note for an amount of Rs.35 lakhs. The Petitioner has not produced any loan agreement to substantiate its claim of sanction, disbursement, dues or default.
- 24.** The Corporate Debtor assails the Record of Default dated 16.07.2024 annexed by the Petitioner along with the Company Petition inter-alia on the ground of being vague and opaque. The Corporate Debtor as on date does not have an account with the NESL, 2 earlier attempts to create an account at NESL has been unsuccessful due to myriad reasons.
- 25.** The Corporate Debtor disputes the submission made by the Petitioner in NESL and all subsequent actions done by NESL. There is no independent procedure to ensure the genuineness or validity of the data or documents submitted by a creditor. The Corporate Debtor could not find any manual or mechanism or explanation on the website of NESL as to how NESL verifies the data submitted by the Creditor.
- 26.** The present petition is liable to be dismissed in view of the fact that there is no debt due as on the date of filing the Section 7 petition in as much as Securitisation Application No. 200 of 2024 is pending before the Hon'ble MDRT III, Vashi wherein the Corporate Debtor has raised a counter-claim of a sum of Rs.403.43 Crores for the loss and damages suffered by it due to the acts of nonfeasance, misfeasance, malfeasance and wilful failure to honour the duty of care on the part of the Authorised Officer of the Applicant bank and its Officers.
- 27.** The present Petition lacks bona fide, proof, is devoid of merits and a clear and blatant attempt to surreptitiously obtain orders from this

Tribunal. There is no default as alleged by the Petitioner. Moreover, there is 'no debt due'. The present petition is an abuse of process of law and a mala fide attempt by the Petitioner to arm twist the Corporate Debtor.

IV. Analysis and Findings:

28. We have heard the Ld. Counsels for the parties and perused the documents available on record. The case of the Financial Creditor is that it had sanctioned various credit facilities to the Corporate Debtor through consortium arrangements, including fund-based working capital facilities and term loans. The Financial Creditor contends that the Corporate Debtor has committed default in payment of financial debt amounting to Rs. 81,60,32,532.77/- with the date of default being 31.07.2021, and seeks initiation of CIRP under Section 7 of the Code. On the other hand, the case of the Corporate Debtor is that the present petition is not maintainable under Section 10A of the Code as the account became irregular from 20.03.2021 which falls within the 10A period, further there are procedural defects in the petition, and the Financial Creditor has failed to establish the existence of financial debt and default.

29. The first issue that arises for consideration is whether the present petition is maintainable in view of Section 10A of the Code. The Corporate Debtor has filed Interlocutory Application No. 1331/2025 contending that the date of default mentioned in the Company Petition falls within the 10A period as the account became irregular from 20.03.2021. However, it is pertinent to note that mere irregularity in account operations does not constitute "default" as contemplated under Section 3(12) of the Code. The Hon'ble Supreme Court in Ramesh Kymal vs. Siemens Gamesa Renewable Power Pvt. Ltd. has clarified that Section 10A bars initiation of CIRP only for defaults that occur during the suspension period, i.e., between 25.03.2020 to 25.03.2021.

30. Furthermore, the Hon'ble Supreme Court in *Laxmi Pat Surana vs. Union of India & Anr.* has held that "Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 consciously uses the expression 'default' - not the date of notifying the loan account of the corporate person as NPA." In the present case, the notice issued under Section 13(2) of the SARFAESI Act, 2002 dated 01.12.2021 clearly establishes that while the account operations became irregular from 20.03.2021, the account was classified as NPA on 30.11.2021. The complete paragraph of the said notice categorically records that "the secured creditor was constrained to classify the debt as Non Performing Asset (NPA) as on: 30/11/2021 in accordance with the directives/guidelines relating to the asset classification issued by the Reserve Bank of India". In light of the account being classified as NPA on 30.11.2021, the date of default, determined as per the prevailing RBI guidelines, shall be considered as 30.08.2021, which marks the point when the payment obligations first remained overdue for a continuous period of 90 days. This date falls well beyond the period prescribed under Section 10A of the Code.

31. The next issue that arises for consideration is whether there exists a 'Financial Debt' as defined under Section 5(8) of the Code and whether default has occurred. The Corporate Debtor has contended that there are procedural defects in the petition and that the Financial Creditor has failed to establish the existence of financial debt. However, the Financial Creditor has established the existence of financial debt through comprehensive documentation including sanction letters dated 06.10.2018 granting fund-based working capital facilities and term loans, copy of sanction letter from South Indian Bank Limited dated 18.01.2019 and copy of sanction letter from Bank of Maharashtra, deed of guarantee dated 02.03.2019, and detailed statements of accounts. The Corporate Debtor has not disputed the receipt of credit facilities but

has raised technical objections regarding computation and procedural compliance.

- 32.** Regarding the procedural objections raised by the Corporate Debtor, we find that the Financial Creditor has complied with the requirements under Section 7 of the Code. The Authority Letter dated 25.07.2024 annexed at Exhibit A authorizes Mr. Pranay Somkuwar to act as the authorized representative. The detailed computation and statement of outstanding debts have been annexed at Exhibit F. The required certificate under the Bankers' Books Evidence Act, 1891 has been provided at Exhibit M. The updated Statement of Accounts until 31.07.2024 has been furnished at Exhibit D, and the NESL Certificate dated 16.07.2024 has been annexed at Exhibit I. These documents collectively establish the existence of financial debt and compliance with procedural requirements.
- 33.** The Corporate Debtor has also raised a counter-claim of Rs. 403.43 crores in Securitisation Application No. 200 of 2024 pending before MDRT III, Vashi. However, the existence of a counter-claim or pending proceedings does not ipso facto bar the initiation of CIRP under Section 7 of the Code, provided the Financial Creditor has established the existence of financial debt and default.
- 34.** In light of the aforementioned discussion, we are of the considered view that the Financial Creditor has fulfilled all the requirements under Section 7 of the Code. The Petitioner is a 'Financial Creditor' as defined under Section 5(7) of the Code, there exists a 'Financial Debt' of Rs. 81,60,32,532.77/- as defined under Section 5(8) of the Code, there is a 'Default' as defined under Section 3(12) of the Code occurring on 31.07.2021 (as mentioned in part IV of the Petition) or 30.08.2021 (worked back from the date of NPA), both falls well beyond the Section 10A period. Further, the amount stated to be due in this case is above the threshold limit as stipulated under Section 4(1) and the present Petition has been filed well within the limitation period. Thus, in view

of the settled law wherein the Hon'ble Supreme Court in the matter of **M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407**, has been pleased to hold as under-

"28. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority."

35. Therefore, the present petition is hereby **admitted** by passing the following order:

ORDER

- a)** The above Company Petition No. 1022/IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Elegant Forge & Equipment Private Limited.**
- b)** The Petitioner has proposed the name of **Mr. Dinesh Kumar Aggarwal**, having Registration No. **IBBI/IPA-002/IP-N00890/2019-2020/12843** and email Id: **dinesh.aggarwal31@gmail.com** as Interim Resolution Professional. The IRP as proposed by the Petitioner is hereby appointed as the IRP to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c)** The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d)** That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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)** That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- f)** That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g)** That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h)** That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i)** During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all

documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j)** Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k)** Accordingly, C.P. No. 1022/IBC/MB/2024 is **admitted**.
- l)** The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

sd/-

SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)

/Jhanvi, LRA/



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

**I.A. No. 1331 of 2025
IN
C.P. (I.B) 1022/MB/2024**

[Under Section 60(5) read with Section 10A of
the Insolvency and Bankruptcy Code, 2016]

Elegant Forge & Equipments Private Limited

Flat No. 701, 7th Floor, A wing, Meenaxi
Apartment, Gokuldham Krishna Vatika Marg.
Opp. Gen. A K Vaidya Marg, House No. 2, I (P),
Vill. Dindosh Taluka Borivali Goregaon East,
Mumbai - 400063

...Applicant

Versus

Canara Bank

Office Address at Stressed Assets Management
Branch, Canara Bank Building, 'B' Wing, 8th
Floor, C-14, G-Block, Bandra Kurla Complex,
Bandra (E), Mumbai - 400051

...Respondent

In the matter of

Canara Bank

...Financial Creditor

Versus

Elegant Forge & Equipments Private Limited

... Corporate Debtor

Order Dated: 11.07.2025

**Coram:**

Sh. Sushil Mahadeorao Kochey, Hon'ble Member (Judicial)

Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Mily Ghoshal (PH)

For the Respondent: Adv. Manoj Harit (VC)

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ORDER

1. The present **I.A. No. 1331 of 2025** has been filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**Code**') by **Elegant Forge & Equipments Private Limited** (hereinafter referred to as '**Applicant**'), seeking following reliefs:

a. Be pleased to allow this Application and hold that the Company Petition No. 1022 of 2024 is barred under Section 10A of the IBC, 2016;

b. Any other order as the Court deems fit.

I. Facts and submissions of the Applicant, in brief:

2. The Applicant states that the Company Petition No. 1022 of 2024 is filed by the Canara Bank seeking to initiate CIRP against the Applicant/Corporate Debtor.
3. In Part IV of the said Petition, the Respondent Bank has claimed that the Date of Default by the Corporate Debtor is 31.07.2021, without there being any substantiation thereof. As is evident from Part IV, the Respondent Bank has contended that 'Exhibit-F' provides the substantiation of the date of default as mentioned therein. But, a perusal of the said Exhibit-F provides no support to the contention in as much as the Table does not even mention the word - "date of default". Thus, it is demonstrable that the date of default is unsubstantiated.



4. Admittedly, the Respondent bank has failed and neglected to issue a notice under the provisions of the IBC, 2016. Instead, a demand notice u/s 13(2) of the SARFAESI Act, 2002 has been relied upon for the purpose of bringing this insolvency action before this Tribunal. A scrutiny of the said notice reveals that at Paragraph No.5 it is stated - "*That the Payment of the loan became irregular from 30.11.2021*".
5. Further, the Notice under section 13(2) of the SARFAESI Act, 2002 by which the Bank has categorized the Loan account as NPA as on 30.11.2021 mentions the following: "*However, from 20.03.2021 (month/year), the operation and conduct of the said financial assistance / credit facilities have become Irregular.*"
6. From the aforementioned, it becomes apparent that as per the Demand Notice u/s 13(2) of the SARFAESI Act, 2002, the default has occurred on 20.03.2021 and to escape the bar under Section 10A of the IBC, 2016, the Respondent Bank has improved upon and deliberately changed the date of default from 20.03.2021 as mentioned in the 13(2) SARFAESI Notice to 30.11.2021 as mentioned in the Section 7 Petition.
7. It is a settled principle that a Financial Creditor cannot be allowed to shift the Date of Default to come out of the purview of Section 10A of the IBC, 2016, which was introduced precisely to avoid and to prevent such onerous actions to mitigate the adversities faced by businesses and industry due to the Covid-19 induced nation-wide lockdowns.
8. Moreover, it is clear from the perusal of the Reply to the said 13(2) Notice sent by the Corporate Debtor that despite repeated requests, spanning over a period of 8-9 months, the working capital funds were not disbursed citing the defaults and irregular position of the loan account. The commercial production of the green-field forging unit could not commence due to the said reason. It was indeed during the 10A Covid-19 period that the account became irregular.
9. The Corporate Debtor was sanctioned 2 types of credit facility, one being Term loan for construction of the forging unit, procurement of machinery and the second being Working Capital Limit. The Working Capital Limit was to be disbursed on achievement of DCCO-I. But the Financial Creditor and



other consortium members did not disburse the Working Capital Limit, because of which the commercial production of the Unit could not commence. There were various other acts which amount to breach of contractual terms and violation of the RBI Master Circular and guidelines like imposing penal charges from the 2nd day of disbursal.

- 10.** The record of financial debt uploaded on NESL by the FC dated 29.03.2021, shows that the dues of Rs.2,04,65,975/- is overdue. The Corporate Debtor did not have access to the NESL portal on the date FORM C was uploaded by the Financial Creditor, it has 2 separate columns. *I. Date of Submissions and II. Information as on.* In the said Form C, *Information as on* date is 26.03.2021. Further looking at the column for overdue amount and overdue days. It can be seen that an amount of Rs.2,04,65,975/- was overdue for 70 days as on 26.03.2021. Thus, it can be ascertained from the submission of the FC on NESL that an amount of Rs.2,04,65,975/- was due since 15.01.2021 i.e. within the 10A period.
- 11.** A bare perusal of Part B (History of all filing information received by the IU for same UDI), Financial Creditor has filed the record starting from 22.11.2019. The records of information filed on 22.11.2019, 25.02.2020, 05.03.2020, show overdue amount as 0. It is for the 1st time on 14.05.2020 that the overdue amount is shown as Rs.1,80,39,656.38/-. Thereby establishing that the default due to overdue amount occurred within the period for which CIRP cannot be initiated against the CD.
- 12.** Further in the record of information filed on 29.07.2020, the overdue amount is shown as 0, reflecting the stance of the Corporate Debtor that it tried to pay the Interest even during Covid-19 from the funds infused by the Directors of the Corporate Debtor.
- 13.** The next record of information is filed only on 29.03.2021, which shows an overdue amount of Rs.2,04,65,975.00/-. If the record of information filed near the alleged date of default of 31.07.2021 is seen, the record of information is dated 11.08.2021. In that submission overdue amount is Rs.40,59,838/-. By no means can 31.07.2021 be a date of default where debt of more than 1 crore was due.



14. Since the Corporate Debtor did not have access to the NESL account at the time of filing reply and after pursuing for some time, finally got ID and password on 27.05.2025. It is only after the hearing of the matter, that the Form C uploaded by the Financial Creditor on NESL dated 29.03.2021 became available for perusal to the Corporate Debtor. The said Form C dated 29.03.2021 shows that the data as submitted by the Financial Creditor with the NESL demonstrates that the overdue amount of Rs.2,04,65,975/- as on the date of filing had remained overdue for 70 days. Hence, this clearly establishes that the default of more than 1 crore occurred during the Section 10A period.
15. Therefore, in light of the aforementioned, it is submitted that the Company Petition (IB) No. 1022 of 2024 filed by the Canara Bank is not maintainable as the Date of Default is within the Section 10A period i.e., 25.03.2020 to 25.03.2021 and thus no CIRP application can ever be filed for the said default. The Respondent Bank cannot be permitted to take advantage of its own wrong and chose any date as date of default to circumvent this statutory provision.
16. The Financial Creditor, who is the Respondent in the IA, has not filed any reply to refute the contentions of the Applicant, hence for want of denial, all that is mentioned in the IA is deemed to be admitted.

II. Analysis and Findings:

17. Heard the Ld. Counsel for the Applicant and perused the pleadings and documents on record.
18. The case of the Applicant is that the Company Petition No. 1022 of 2024 filed by the Respondent Bank is barred under Section 10A of the IBC, 2016 as the date of default falls within the period from 25.03.2020 to 25.03.2021. The Applicant contends that while the Respondent Bank has claimed the date of default as 31.07.2021 in Part IV of the Petition, the actual default occurred much earlier, specifically on 20.03.2021 as mentioned in the SARFAESI Notice under Section 13(2), and further substantiated by the NESL records which show overdue amounts during the Section 10A period.



19. In the light of facts of the case and pleadings as stated above, the issue for consideration in this Application is as to whether the default occurred during the period covered under Section 10A of the IBC, 2016, which forms the basis of this I.A. No. 1331 of 2025.
20. In order to adjudicate of the aforesaid issue, it is pertinent to go through the provision of Section 10A of the IBC, 2016, which is as follows:

"Section 10A:

Suspension of initiation of Corporate Insolvency Resolution Process:

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 25th March 2020."

21. The period specified in Section 10A of the Code was subsequently extended by Government Notification up to 24.03.2021 vide Notification number S.O 4638 (E) dated 22.12.2020. Therefore, in accordance with this Section, no proceedings under Section 7, 9 and 10 of the IBC can be initiated against the Corporate Debtor for the default which has occurred between the period from 25.03.2020 till 24.03.2021. The legislative intent is reflected in the Proviso to Section 10A of the Code which stipulates that "*no application*



shall ever be filed....." for initiation of the CIRP *"for the said default occurring during the said period"*. It is abundantly clear that the intention of the legislature is to completely bar the institution of any application ever for initiation of CIRP for the default having occurred during the period 25.03.2020 till 24.03.2021.

- 22.** In the present case, a careful perusal of the SARFAESI Notice under Section 13(2) dated 01.12.2021 reveals that while the account operations became irregular from 20.03.2021, the account was classified as NPA on 30.11.2021. The complete paragraph of the said notice categorically records that *"the secured creditor was constrained to classify the debt as Non-Performing Asset (NPA) as on: 30/11/2021 in accordance with the directives/guidelines relating to the asset classification issued by the Reserve Bank of India"*.
- 23.** Further, it is relevant to examine the significance of classification of a debt as NPA. A perusal of the Reserve Bank of India Master Circular on Prudential norms on Income Recognition Asset Classification and Provisioning pertaining to Advances, reveals that the definition of NPA is given as under:

"2.1.2 A non-performing assets (NPA) is a loan or an advance where;

- i. Interest and/or instalment of principal remains overdue for a period of more than 90 days in respect of a term loan*
- ii. The account remains 'out of order' as indicated at Paragraph 2.2 below, in respect of an Overdraft/ Cash Credit (OD/CC),*
- iii. The bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted."*

Further, in Para 2.2 of the Master Circular, it is stated that an account could be treated as 'out of order' if the outstanding balance remains



continuously in excess of the sanctioned limit/drawing power for 90 days, or there are continuously no credits for 90 days etc. Therefore, it is clear that as per the RBI Guidelines, when the interest or the principal remains unpaid or overdue for a period of 90 days in respect of the term loans, it becomes NPA and thus the Date of declaration as NPA is determined. In other words, the 'date of default' for the Principal and Interest would be 90 days prior to the Date of NPA and if it remains unpaid for 90 days, it is declared as NPA.

- 24.** In view of the classification of the account as NPA on 30.11.2021, the date of default, as determined in accordance with the RBI guidelines, would relate back to 30.08.2021, which marks the point when the payment obligations first remained unpaid and thereafter remained overdue for a continuous period of 90 days. This date falls well beyond the period prescribed under Section 10A of the Code.
- 25.** The legislative intent behind Section 10A was to provide temporary relief to corporate debtors during the COVID-19 pandemic. However, this relief cannot be extended indefinitely or applied to situations where the actual default, as defined under the Code, occurred outside the Section 10A period. The mere existence of account irregularities or operational difficulties during the Section 10A period does not automatically bring a case within the ambit of Section 10A.
- 26.** Furthermore, it is pertinent to note that as observed from the NESL records, while the overdue amount was shown as Rs.1,80,39,656.38/- on 14.05.2020, the subsequent record of information filed on 29.07.2020 shows the overdue amount as '0', clearly indicating that the account was regularized during the Section 10A period. This regularization demonstrates that the Corporate Debtor made efforts to service its debt obligations during the COVID-19 period. The fact that the overdue amount was reduced to zero in July 2020 and remained so until the next filing on 29.03.2021 further supports the conclusion that there was irregularity and



not a 'default' during the Section 10A period and the same was subsequently cured.

- 27.** For the aforesaid reasons and in view of the settled position of law, we are of the considered opinion that the default in the present case occurred well outside the Section 10A period. The mere irregularity in account operations from 20.03.2021 does not constitute "default" within the meaning of Section 3(12) of the Code. Therefore, **I.A. No. 1331 of 2025** in **C.P. (IB) 1022/MB/2024** is **dismissed**.

sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

sd/-

SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)

/LRA, Jhanvi.