NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 139 of 2024

(Arising against the impugned order dated 09.01.2024 passed by the National Company Law Tribunal, Mumbai Bench in C.P.(IB)/280 (MB) 2023)

IN THE MATTER OF:

Puneet P. Bhatia
(Suspended Director of Barracks Retail
India Pvt. Ltd.)
Add:- Flat No103, Building No 27,
Evershine Millenium Paradise,
Thakur Village, Kandivali East, Mumbai City,
Mumbai, Maharashtra, India, 400101. **...Appellant**

Versus

ASREC (India) Ltd.
Add:- Ground Floor, Build No.2, Solitaire Corporate Park,
Andheri, Ghatkopar Link Road Chakala Andheri (E),
Mumbai, Maharashtra – 400093.
E-mail: asrec@asrec.co.in **...Respondent No. 1**

Mr. Ganesh Venkata Siva Rama Krishna Remani
Interim Resolution Professional of Barracks Retail India
Pvt. Ltd.
Add:- 302, Nahar Business Center Chandivali,
Mumbai Suburban, Maharashtra – 400076.
E-mail: ganesh.remani@nliten.in **...Respondent No. 2**

Present:

For Appellant : Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Mr. Rishabh Dua, Advocates.

For Respondents : Mr. Sachin Daga, Advocate for R-1.
Mr. Ganesh Remani for IRP.

Cont'd..../

J U D G M E N T
(9th December, 2024)

INDEVAR PANDEY, MEMBER (T)

This appeal arises from an order dated 09.01.2024 by the National Company Law Tribunal (NCLT), Mumbai Bench-I, (**Adjudicating Authority**) in Company Petition (IB)/280(MB)2023. The **Appellant**, Mr. Puneet P. Bhatia, a suspended director of **Barracks Retail India Pvt. Ltd.,** the **Corporate Debtor** (in short "CD"), has challenged the Adjudicating Authority's (in short "AA") decision to admit an application for Corporate Insolvency Resolution Process (**CIRP**) initiated by **ASREC (India) Limited, Respondent No. 1/ Financial Creditor** under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, the "Code").

2. The CIRP application was filed before the Adjudicating Authority (in short, the "AA") on the ground that the CD has defaulted to repay the Financial Creditor an amount of Rs. 21,37,94,606/- (Rupees Twenty-One Crore Thirty-Seven Lakhs Ninety-Four Thousand Six Hundred Six only) as on 30.09.2022.

3. The brief facts of the case are as follows:

(i) Barracks Retail India Pvt. Ltd./CD was incorporated on 25.01.2016, under the Companies Act, 2013, with its registered office in Mumbai, focusing on garment manufacturing. In early 2017, CD sought funding from Bharat Co-operative Bank (Mumbai) Limited (in short the "**Bank**") to support its operations. On 21.03.2017, the bank sanctioned a Term

Loan of Rs. 5 crores for capital expenses, repayable through monthly EMIs, along with a Rs. 25 lakh Cash Credit limit for working capital. To secure these facilities, the CD pledged assets, including 41 non-agricultural plots in Vikramgarh, Maharashtra, on 30.03.2017, and executed a series of security documents, including a Deed of Mortgage, hypothecation agreements, and personal guarantees.

(ii) On 08.06.2018, the Bank reviewed the existing loans, renewing them and, on 14.08.2018, approving an additional loan of Rs.1.91 crore to facilitate Barracks Retail's acquisition of Eye Catch Fashions Pvt. Ltd., a financially distressed garment company. The Bank advised the CD to invest 25% of Eye Catch's asset value to prevent an NPA classification. The bank arranged a transfer of Rs. 5.25 crore directly to Eye Catch from Barracks Retail's account to avoid NPA status. Subsequently, another Rs. 2.5 crore was transferred based on a verbal understanding and an unregistered sale deed, yet Eye Catch's promoters abandoned the business, leaving the CD liable for the Rs. 5.25 crore without gaining ownership of Eye Catch's assets, adding to CD's debt burden without the intended business advantage.

(iii) On the request of CD dated 20.12.2019 the Bank sanctioned revised financial facilities to the CD vide sanction letter dated 17.03.2020 as detailed below:

Facilities	**Amount in lacs**	**Sanction letter**
Cash Credit	300	BCB/NSW/327/2020 dated 17.03.2020
WCTL-1	800	
FITL of WCTL-1	122.90	
WCTL-2	15.41	
FITL of WCTL-2	1.65	
Term loan	505.40	

FITL of existing term loan	74.65	
WCTL-3	19.97	
FITL of WCTL-3	2.13	

(iv) With the onset of COVID-19, as per RBI Guidelines the Bharat Co-operative Bank provided temporary relief, including an additional facility of Rs. 9,48,531/- on 01.09.2020 to cover interest costs, and allowing CD to defer payments. The CD through its letter of acknowledgement of debts, documents and securities and consent of borrowers, joint borrowers and sureties dated 01.09.2020 had acknowledged the availing of credit facilities.

(v) The Bank vide a letter dated 07.12.2020 issued a notice to CD recalling the entire outstanding along with further interest @10% from 01.01.2021 till clearance of entire outstanding loan amount within 7 days from the receipt of the notice. The Bank further informed the CD that failing payment of entire outstanding the bank shall be constrained to initiate recovery action under SARFAESI Act and/or under Section 84 of Multi-State Co-Operative Societies Act, 2002 or under any law under force.

(vi) The bank further informed the CD vide the aforesaid letter that Inspecting officials of RBI on 31.10.2020, had classified CD's account as NPA as on 01.11.2019, as the restructuring of loan account was done by the Bank, without getting cleared the entire outstanding Interest/ Overdue Principal amount. As on date of declaration of the NPA i.e. 01.11.2019 the aggregate principal outstanding amount of the CD was Rs 16,21,73,514/-.

(vii) The Bank issued a notice to recall the facilities on 19.03.2021 under Section 13(2) of SARFAESI Act 2002 requiring the CD to pay all the outstanding under all credit facility accounts within 60 days from the date of receipt of the said notice.

(viii) The Bank vide assignment agreement dated 25.03.2021, assigned CD's loans in favour of ASREC (India) Limited / Respondent-1, which assumed debt recovery rights including all agreements, deeds and documents thereto and all collateral and underlying security Interests and or pledges created to secure and /or guarantees issued in respect of, the repayment of loans.

(ix) Thereafter, the Respondent-1 filed an application under Section 7 of the Code on 18.02.2023, for initiating CIRP against the CD, citing a default date of 31.10.2020. The CD objected to the said petition invoking Section 10A of the Code, which prohibits CIRP for defaults during the COVID relief period. ASREC/R-1 amended its application, changing the default date to 02.08.2019, arguing it predates the COVID exemption. The Adjudicating Authority allowed the application of Respondent-1 and allowed necessary amendments to CIRP petition vide their orders dated 13.10.2023 and 24.11.2023.

(x) On 09.01.2024, the Adjudicating Authority admitted the CIRP application of Respondent-1, accepting the amended default date of 02.08.2019.

(xi) The Appellant contends that the NCLT disregarded evidence and failed to consider objections, particularly the Section 10A exemption and

conflicting default dates, and hence has filed this appeal for setting aside the AA's order on procedural and legal grounds.

Submissions of the Appellant

4. Ld. Counsel for the appellant submits that this appeal is filed by Mr. Puneet P. Bhatia, the suspended director of Barracks Retail India Private Limited, under Section 61 of the Insolvency & Bankruptcy Code, 2016 (IBC). The appellant contends that the Impugned Order should be set aside due to significant errors in fact and law.

5. The counsel for the appellant argues that the default date cited by the respondent falls within the period protected under the IBC's "10A" provision, which shields certain defaults occurring during the COVID-19 pandemic from CIRP proceedings. This period, introduced as a regulatory relief measure by the Government of India, was aimed at alleviating the financial distress, businesses faced due to the pandemic and was enacted specifically to prevent companies from being pushed into insolvency. As the alleged default falls within this "10A" period, the appellant asserts that the petition under Section 7 of the IBC is not maintainable.

6. It is further submitted by the counsel for the appellant that the Bank sanctioned two distinct credit facilities for CD. The first facility was granted on 21.03.2017, comprising a fresh term loan of INR 10 crores and a new cash credit limit of INR 8 crores. Subsequently, on 18.08.2018, the second facility was sanctioned, involving a renewal of the INR 8 crore cash credit limit and the cancellation of an undisbursed loan amount of INR 389.40 lakhs. Both

facilities were restructured once again on 17.03.2020, when the Bank sanctioned an additional cash credit limit of INR 3 crores, along with a restructuring of the existing cash credit and term loan facilities. This restructuring was conducted to adapt to the evolving financial needs of the CD.

7. The counsel for the appellant highlights that the Bank deferred interest payments for the period from 01.03.2020 to 31.08.2020 in compliance with the Reserve Bank of India's (RBI) COVID-19 Regulatory Package. This deferment aimed to provide relief to borrowers during the pandemic. Since the original date of default cited by the respondent allegedly arose post-17.03.2020, during the moratorium period, the appellant contends that it should be exempt from CIRP initiation as per Section 10A of the IBC. The protective provisions of Section 10A explicitly cover defaults occurring during the pandemic, rendering the initiation of CIRP against CD unwarranted under law.

8. The counsel for the appellant stated that different dates of default have been shown in different documents. In the notice dated 19.03.2021 under Section 13(2) of SARFAESI Act, the date of NPA is mentioned as 31.03.2020. In the Assignment of Debt documents, the date of Default as accepted by the Respondent is mentioned as 31.10.2020. Further, the counsel for the appellant asserted that the respondent has attempted to substantiate its claims by referencing a recall notice issued on 07.12.2020, as well as the date of default (31.10.2020) recorded in the National E-Governance Services Limited (NESL) database.

9. It is vehement submission of the Appellant that all these dates fall within the protective "10A" period established under the IBC. Consequently, any attempt to proceed with the CIRP based on these dates contradicts the specific protections provided by the IBC during the pandemic. The appellant further relies upon the ***Plus Corporate Ventures Private Limited v. Transnational Growth Fund Limited*** **Company Appeal (AT) (Insolvency) No. 1270 of 2022**, wherein this Appellate Tribunal ruled that defaults within the Section 10A period could not justify initiating CIRP under the IBC.

10. The appellant's counsel states that the respondent unilaterally altered the date of default from 31.10.2020 to 02.08.2019 during the proceedings, intending to bypass the protections of the 10A period. This unilateral alteration is both inappropriate and inconsistent with the terms of the restructuring facility dated 17.03.2020, which included a fresh credit limit and a distinct date of default. By introducing a new date of default without the appellant's agreement, the respondent disregarded the contractual obligations binding on both parties. The appellant cites the judgement of this Appellate Tribunal in ***Pradeep Madhukar More v. Central Bank of India*** **Company Appeal (AT) (Insolvency) No. 837 of 2023**, which holds that restructuring dates, once established, remain legally binding on both parties and any subsequent change must follow due legal process.

11. Furthermore, counsel for the appellant stated that the respondent's attempt to justify its claims by relying on the recall letter dated 07.12.2020 is legally flawed. The RBI guidelines stipulate that it is the lending bank that has the authority to classify accounts as Non-Performing Assets (NPA), rather

than the RBI. The language within the recall letter acknowledges the restructuring/rescheduling that occurred, thereby binding both parties to the restructured terms. Thus, the appellant argues that the date of default could not reasonably predate the formal restructuring. Consequently, the respondent's claims regarding the default date of 02.08.2019 lack legal validity in light of the binding nature of the restructuring terms agreed upon by both parties.

12. The counsel for the appellant submits that the Impugned Order issued by the Ld. Adjudicating Authority is fundamentally flawed due to the omission of critical evidence, notably the recall notice dated 07.12.2020, from its findings. This omission, coupled with the incorrect reliance on the alleged default date of 02.08.2019, undermines the integrity of the Impugned Order and suggests a misinterpretation of the facts presented. The appellant contends that the failure to consider this key evidence has resulted in a legally untenable decision, and therefore, requests the Hon'ble Tribunal to set aside the Impugned Order on this ground.

13. The counsel also submitted that the RBI Circular dated 01.07.2019 clarifies that it is the bank which declares the account as NPA and not the RBI, in this regard he invited the attention to para 2.2.10 of the aforesaid circular, which is reproduced below:

> *"2.2.10 <u>NPA Reporting to Reserve Bank</u>*
>
> *Banks should report the figures of NPAs to the Regional Office of the Reserve Bank at the end of each year within two months from the close of the year in the prescribed proforma given in the Annex-2."*

14. Finally, summing up his arguments counsel for the appellant stated that the Ld. Adjudicating Authority has disregarded the impact of the RBI's COVID-19 Regulatory Packages and Section 10A of the IBC, which were designed to provide temporary relief to businesses facing unprecedented economic hardships due to the pandemic. The protections afforded by Section 10A should have precluded the initiation of CIRP based on any defaults falling within this period. The omission of these protections in the Impugned Order amounts to a substantive misinterpretation of both regulatory intent and statutory protections. Therefore, the appellant submits that the Impugned Order should be set aside in the interest of justice.

Submissions of the Respondent

15. The counsel for respondent submits that first issue to be determined is whether date of default falls during 10A exemption period or not? In this regard he mentioned the following:

i. The CD was irregular in making payments and made an application to the Bank on 21.12.2019 for restructuring of their loan facilities. The Bank issued Sanction Letter dated 17.03.2020 to restructure the loan accounts subject to CD satisfying the terms and conditions of the sanction letter.

ii. The terms and conditions of the Sanction Letter dated 17.03.2020 provided authority to the Bank to revoke said sanction letter dated 17.03.2020 and facilities granted thereunder, at any time, if the CD

defaulted in fulfilling the terms and conditions of the said sanction letter. The para 2 of the bank sanction letter is extracted below:

> *2. The Bank without assuming any liability, shall be entitled to:*
>
> *i. withhold or cancel or revoke the credit facility/ies at once, if it is found hereafter that any information documents/ particulars furnished is /are incorrect, forged/misleading. Likewise, the Bank shall be entitled to discontinue the facilities in case of material changes in the circumstances/conditions which in the opinion of Bank will be / likely to be prejudicial to the interest of the bank.*
>
> *ii. discontinue the facility/ies and/or withhold further disbursement without assigning any reason, if there is a breach of any of the terms and conditions stipulated or the terms and conditions on which the facility/ies is/are sanctioned are not complied.*
>
> iii. *revoke, cancel, alter, modify or change at any time any of the facility/ies sanctioned at its sole discretion without assigning any reasons for the same. Likewise the Bank shall also be entitled to alter, modify or change at any time any of the terms and conditions of the sanction at its sole discretion without assigning any reasons."*

16. One of the mandatory terms of the sanction letter is the promoters of CD were supposed to bring in Promoter's contribution i.e. 15% of the Bank's sacrifice. This is a mandatory condition as prescribed under the RBI IRAC guidelines.

17. The counsel submitted that the Covid 19 epidemic started from March 2020 onwards. The RBI conducted inspection of the FC in September 2020-October 2020 for the financial year FY 2019-20. During the inspection by RBI, it was found that Promoter of CD never brought in his contribution in furtherance of the restructuring as mentioned in the Sanction Letter dated 17.03.2020 and hence, RBI found CD ineligible for any restructuring of their loan facilities.

18. Pursuant to inspection, Bank issued letter dated 07.12.2020 to the CD and its promoters communicating that the CD was ineligible for restructuring of their loan facilities and Bank recalled all the loan facilities granted to CD. The promoters of CD never responded to the said letter dated 07.12.2020.

19. The counsel further stated that the Bank had to necessarily abide by the findings and observations of the regulatory authority ie. RBI and hence the loan account of CD was declared as NPA on 01.11.2019, as determined by RBI. The date of default is 90 days prior to date of NPA, accordingly date of default was fixed as 02.08.2019.

20. The counsel argued that the promoter was well acquainted with all these communications, but he is trying to take advantage of the exemption period, despite being in default all the time. Since the promoter did not fulfill the terms and conditions of the Sanction letter dated 17.03.2020, the same did not survive and stood revoked and cancelled vide letter dated 07.12.2020. Therefore, the date of NPA was restored back to 01.11.2019 and consequently the date of default restored to 02.08.2019 i.e. original date of default.

21. In regard to the issue about the amendment of date of default mentioned in application under Section 7 of the Code, the counsel for Respondent No. 1 made the following submissions:

i. The counsel stated that RBI conducted inspection of all the loan accounts maintained with FC for financial year 2019-20 taking into consideration financials till 31.03.2020. Upon inspection, the loan

accounts of Appellant CD were classified as "Doubtful Asset" as on 31.03.2020.

ii. Doubtful Asset as defined in RBI Master Circular on Asset Classification are the loan accounts which have remained Non-Performing Asset for more than 12 months from the date of declaration of loan accounts as NPA. The relevant para is extracted below:

"3.2.3 Doubtful Assets

With effect from March 31, 2005, an asset is required to be classified as doubtful, if it has remained NPA for more than 12 months. For Tier I banks, the 12-month period of classification of a substandard asset in doubtful category is effective from April 1, 2009. As in the case of sub- standard assets, rescheduling does not entitle the bank to upgrade the quality of an advance automatically. A loan classified as doubtful has all the weaknesses inherent as that classified as sub-standard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently known facts, conditions and values, highly questionable and improbable."

iii. He submitted that the Bank issued letter dated 07.12.2020 to CD informing that their loan accounts have been classified as NPA by RBI officials on 31.10.2020 as of 01.11.2019. Since the date of default is calculated from 90 days prior to the date of NPA ie. 01.11.2019, the actual date of default committed by CD was on 02.08.2019.

iv. The counsel further stated that it is most important to note that RBI had declared the loan accounts of CD as NPA as of 01.11.2019 during inspection and risk assessment of Bharat Co-operative Bank Limited

and the same will prevail over other dates mentioned in the present appeal as the date of NPA.

v. The counsel further invited our attention to the Hon'ble Supreme Court's judgment in Laxmi Pat Sunara vs. Union Bank of India & Another (2021) 8 SCC 481 wherein in Paragraph – 43 the Court has held that original date of default does not change merely because of human error. It has been further held by the Hon'ble Supreme Court in the said judgment that the period of limitation would be attracted from the date when the default occurs and not from the date of declaration of NPA. Therefore, the date of NPA cannot be taken to be the date of default for the purpose of limitation. The extract of Para 43 of Laxmipat Surana (supra) is extracted below:

> *"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 IBC. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default"- not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor),*

would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC ensures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC."

22. The counsel for respondent then argued on the issue, whether date of NPA determined by the RBI can be overturned merely because of inadvertent misrepresentation of an officer. In this regard he made the following submissions:

i. The counsel stated that Point 2.2.7.29 of RBI IRAC guidelines sets out certain conditions which are to be complied with for restructuring of loan accounts. The same is extracted below:

"2.2.7.29:-However, these benefits will be available subject to compliance with the following conditions:

(v) Promoters' sacrifice and additional funds brought by them should be a minimum of 15% of banks' sacrifice."

ii. The counsel submitted that RBI being a regulatory authority determined that compliance to the sanction letters were not met and hence the CD was ineligible for restructuring and to that extent sanction letter dated 17.03.2020 became void ab-initio and the same was not tenable in the eyes of law. Therefore, the date of NPA became 01.11.2019 and the original date of default would be 02.08.2019 i.e. 90 days prior the date of NPA as per RBI IRAC Guidelines.

23. The counsel further stated that the Corporate Debtor neither objected to the amendment sought by Respondent No. 1 in date of default nor they preferred any appeal before the Hon'ble NCLAT against the amendment orders. Pursuant to filing of reply by the Corporate Debtor before Ld. Adjudicating Authority in original C.P. (IB) No. 280/2023, Respondent No. 1 sought liberty from the Ld. Adjudicating Authority to amend the company petition and the same was granted to Respondent No. 1. The Corporate Debtor was also granted liberty to contest the amendment, however, the Corporate Debtor never filed a reply or formally objected to the amendment application. The relevant orders of the AA dated 13.10.2023 and 24.11.2023 passed in C.P. (IB) No. 280 of 2023 are extracted below:

"ORDER dated 13.10.2023

C.P. (IB)/280(MB)2023

1) Mr. Sachin Daga, Ld. Counsel for the Financial Creditor and Mr. Sandeep Bajaj, Ld. Counsel for the Corporate Debtor are present.

2) Counsel for the Financial Creditor submits that Affidavit in Rejoinder has been filed and placed on record; however, Ld. Counsel for the Corporate Debtor takes objection contending that the Financial Creditor is attempting to modify its Original case by way of Affidavit in Rejoinder.

3) Accordingly, Counsel for the Financial Creditor seeks leave of this Bench to amend the Company Petition thereby amending Form 1 Part IV, to deal with the objections. Leave as prayed is allowed. The Respondent shall be at liberty to contest the amendment, on merits.

4) Financial Creditor is directed to carry out the necessary amendment forthwith and the amended copies be served on the other side and parties concerned, well before the adjourned date.

5) Corporate Debtor shall file and place on record Affidavit in Reply, if they so desire, by duly serving a copy to the other side well in advance.

6) Stand over to 24.11.2023, for further consideration and hearing."

24.11.2023:- *Both the parties are present.*

2. This bench permits Financial Creditor to file an amendment affidavit, the Corporate Debtor seek one (1) week time which is granted to file reply.

3. Listed on 08.12.2023."

(Emphasis Supplied)

24. The counsel for respondents submitted that Appellant's had ample opportunity to object to the amendment application on further hearings, however, they did not object or formally file reply to the amendment

application of Respondent No. 1. Furthermore, the Ld. Adjudicating Authority while passing the impugned judgment dated 09.01.2024 has considerably dealt with the arguments of both parties on amendment carried out by Respondent No. 1 and has upheld the same.

25. The counsel submitted that, when the Appellant's company never objected when the permission to carry out amendment was sought initially, then the Appellant is barred from raising objections regarding such amendments at the stage of Appeal. He submitted that in light of the abovementioned submissions, the present company appeal filed before the Hon'ble Court deserves to be dismissed with costs.

Analysis and Findings

26. We have heard the parties in detail and perused the records. Parties have also filed their written submissions which has been taken on record.

27. Upon careful examination of the facts, evidence, and submissions presented in this appeal, it is evident that the core issue revolves around the validity of the amended default date cited by the respondent and the applicability of Section 10A of the Code. The appellant has challenged the order of the Adjudicating Authority, which admitted the Corporate Insolvency Resolution Process (CIRP) application filed by the respondent. The appellant contends that the initial default date of 31.10.2020 falls within the moratorium period under Section 10A, rendering the CIRP application invalid. The respondent, however, argues that the default date was subsequently

amended to 02.08.2019, predating the Section 10A period, and thus the CIRP application is maintainable.

28. There are two issues involved for the determination in the present appeal: -

a) Whether the Date of Default can be changed after filing the petition under Section 7 of the Code?

b) Whether in the present case the date of default has been correctly identified?

We examine both these issues in detail in subsequent paras.

29. The Corporate Debtor had availed various credit facilities from Bharat Cooperative Bank through successive sanction letters dated 21.03.2017, 14.08.2018, and 11.03.2020. Despite these agreements and restructuring efforts, the CD failed to meet payment deadlines, resulting in the debt claimed by ASREC.

30. ASREC (India) Limited/R-1 initially filed its Section 7 petition stating a default date of 31.10.2020, which was later amended to 02.08.2019. The tribunal permitted this amendment on 13.10.2023. The revised date is crucial as it aims to establish that the default occurred outside the Section 10A exemption period (introduced to protect defaults during the COVID-19 pandemic).

31. In interpreting whether the National Company Law Tribunal (NCLT) can allow amendments to the date of default in applications filed under Section 7

of the Insolvency and Bankruptcy Code (IBC), we have seen the Judgement of Hon'ble Supreme Court in **Dena Bank v. C. Shivakumar Reddy and Another [Citation: (2021) 10 SCC 330].** The relevant paragraphs 26, 73, 74, 75, 76, 77, 91, 93 and 144 are extracted below:

> *"26. A third issue which arises for adjudication of this Court is, whether there is any bar in law to the amendment of pleadings, in a Petition under Section 7 of the IBC, or to the filing of additional documents, apart from those filed initially, along with the Petition under Section 7 of the IBC in Form-1.*
>
> *73. Since a Financial Creditor is required to apply under Section 7 of the IBC, in statutory Form 1, the Financial Creditor can only fill in particulars as specified in the various columns of the Form. There is no scope for elaborate pleadings. An application to the Adjudicating Authority (NCLT) under Section 7 of the IBC in the prescribed form, cannot therefore, be compared with the plaint in a suit. Such application cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a Court of law.*
>
> *74. Section 7(3) requires a financial creditor making an application under Section 7(1) to furnish records of the default recorded with the information utility or such other record or evidence of default as may be specified; the name of the resolution professional proposed to act as an Interim Resolution Professional and any other information as may be specified by the Insolvency and Bankruptcy Board of India.*

75. Section 7(4) of the IBC casts an obligation on the Adjudicating Authority to ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor within fourteen days of the receipt of the application under Section 7. As per the proviso to Section 7(4) of the IBC, inserted by amendment, by Act 26 of 2019, if the Adjudicating Authority has not ascertained the existence of default and passed an order within the stipulated period of time of fourteen days, it shall record its reasons for the same in writing. The application does not lapse for non-compliance of the time schedule. Nor is the Adjudicating Authority obliged to dismiss the application. On the other hand, the application cannot be dismissed, without compliance with the requisites of the Proviso to Section 7(5) of the IBC.

76. Section 7(5)(a) provides that when the Adjudicating Authority is satisfied that a default has occurred, and the application under sub- section (2) of Section 7 is complete and there is no disciplinary proceeding pending against the proposed resolution professional, it may by order admit such application. As per Section 7(5)(b), if the Adjudicating Authority is satisfied that default has not occurred or the application under sub-Section (2) of Section 7 is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application, provided that the Adjudicating Authority shall, before rejecting

the application under sub- section (b) of Section 5, give notice to the applicant, to rectify the defects in his application, within 7 days of receipt of such notice from the Adjudicating Authority.

77. The Corporate Insolvency Resolution Process commences on the date of admission of the application under sub-section (5) of Section 7 of the IBC. Section 7(7) casts an obligation on the Adjudicating Authority to communicate an order under clause (a) of sub-section (5) of Section 7 to the financial creditor and the corporate debtor and to communicate an order under clause (b) of sub-section (5) of Section 7 to the financial creditor within seven days of admission or rejection of such application, as the case may be. Sections 8 and 9 of IBC pertain to Insolvency Resolution by an operational creditor and are not attracted in the facts and circumstances of this case. Section 10 pertains to initiation of Corporate Insolvency Resolution Process by the Corporate Debtor itself, and is also not attracted in the facts and circumstances of the case.

91. On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules <u>there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.</u>

93. Furthermore, the proviso to Section 7(5)(b) of the IBC obliges the Adjudicating Authority to give notice to an applicant,

to rectify the defect in its application within seven days of receipt of such notice from the Adjudicating Authority, before rejecting its application under Clause (b) of sub-section (5) of Section 7 of the IBC. When the Adjudicating Authority calls upon the applicant to cure some defects that defect has to be rectified within seven days. There is no penalty prescribed for inability to cure the defects in an application within seven days from the date of receipt of notice, and in an appropriate case, the Adjudicating Authority may accept the cured application, even after expiry of seven days, for the ends of justice.

144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to

consider such documents and pleadings did not call for interference in appeal."

(Emphasis Supplied)

32. In the aforesaid case, Dena Bank sought to initiate insolvency proceedings against a corporate debtor by filing a Section 7 application with the NCLT. The bank' s petition was based on the default date related to a Non-Performing Asset (NPA) declared years earlier. Dena Bank later sought to rely on new documents and amendments. Hon'ble Supreme Court vide judgement (supra) ruled that amendments to the application or submission of additional documents could be made before the final order admitting or rejecting the petition under Section 7. The Court clarified that the law does not explicitly bar such amendments, as they support the IBC's goal of comprehensive debt recovery. However, the Court noted that such amendments should not manipulate the limitation period, but may reflect new acknowledgments of debt or judgments creating a fresh cause of action.

33. The Dena Bank judgment (supra) explicitly states that in the proceedings under the CIRP before the NCLT, there is no scope for elaborate pleadings. An application to the Adjudicating Authority (NCLT) under Section 7 of the IBC in the prescribed form, cannot be compared with the plaint in a suit. Such application cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a Court of law. It further clarifies that under the provisions of Section 7 of the Code, NCLT can allow amendments to pleadings under the CIPR proceedings before the final order is passed.

34. We observe that in the present case also, the Tribunal noted the updated date of default as 02.08.2019, and relied on the financial records, sanction letters, and debt assignment documents provided by ASREC to substantiate the grounds for default and validate the claim. The amendment of pleadings in this case was allowed by the AA, which provided for the date of default as 02.08.2019.

35. The appellant has cited the judgement of this Appellate tribunal in *Plus Corporate Ventures Private Limited vs. Transnational Growth Fund Limited*, Company Appeal (AT) (Insolvency) No. 1270 of 2022, wherein it was held that defaults occurring during the COVID-19 moratorium period, covered under Section 10A of the Code are protected from Corporate Insolvency Resolution Process (CIRP) initiation. The appellant argues that their default should also fall within this COVID-19 moratorium and be protected by Section 10A. They assert that the default occurred within the period specified under Section 10A, thus rendering the initiation of CIRP legally barred.

36. However, in the present case, *Unlike Plus Corporate Ventures (Supra)*, where the default date clearly fell within the Section 10A period, there is dispute in the current case, over whether the default indeed occurred during this period. The respondent asserts that the default date was August 2, 2019, which predates the Section 10A moratorium period. This amended default date, places the present case outside the protective scope of Section 10A. As such, the ratio of *Plus Corporate Ventures* to this case does not apply.

37. The appellant has also placed reliance on this Appellate Tribunal's judgement in *Pradeep Madhukar More vs. Central Bank of India*, Company

Appeal (AT) (Insolvency) No. 837 of 2023, decided on September 26, 2023, to support their argument that a new default date should be considered following any loan restructuring. In *Pradeep Madhukar More* (Supra) it was held that a restructuring agreement creates a new set of obligations that supersede the original terms, setting a fresh default timeline based on the restructured agreement. The appellant argues that this principle should apply in their case, as the loan facilities were restructured in March 2020, and therefore any default date prior to this restructuring should be rendered irrelevant.

38. In contrast to *Pradeep Madhukar More*, where it was held that the restructuring agreement as the authoritative source for establishing default, the present case presents a different scenario. The respondent claims that the original default date was August 2, 2019, before the restructuring agreement. Their contention is that restructuring does not reset the default timeline, but merely acknowledges a pre-existing default. We observe that the documentary evidence cited in *Pradeep Madhukar More* clearly supported the restructuring date as a new timeline for default. However, we observe that in the present case, there were repeated restructuring of the loan and the appellant failed to fulfil its obligations under the restructuring, which was the essential condition for the restructuring leading to is failure. Accordingly, as per the clauses of the restructuring the bank had recalled the loan facility and after due notice filed SARFAESI case for loan recovery. The failure of restructuring therefore did not lead to any change in date of default.

39. The appellant further argued that the debt arrangement in this case should fall under the blanket protections of the Section 10A moratorium, as payments were restructured in March 2020 due to the COVID-19 pandemic. This interpretation is in consonance with the rationale in several judgments, including *Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited*, (2021) 3 SCC 224, and *Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. & Anr.*, (2022) SCC OnLine SC 1128. Both of these Supreme Court rulings emphasized that Section 10A provides broad protection for defaults occurring during the COVID-19 period, intending to shield financially distressed businesses from insolvency proceedings caused by the pandemic.

40. Yet, for the Section 10A protection to apply here, the appellant must demonstrate a direct link between the default and the COVID-19 impact, aligning with the findings in *Ramesh Kymal* and *Sanjeev Builder*s. In this case, the respondent's contention that the original default date was August 2, 2019, prior to the pandemic, suggests that the default was unrelated to COVID-19, and therefore falls outside Section 10A's scope. The appellant's argument is further complicated by the bank's actions, as the restructuring implies acknowledgment of the pre-pandemic default rather than a fresh default related to COVID-19. Thus, the respondent's substantiation of an August 2019 default date does not support the appellant's reliance on cases such as *Plus Corporate Ventures* and *Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Limited & Anr.*, (2019) 10 SCC 572, which both reinforce Section 10A's protections, but do not support defaults pre-dating the pandemic.

41. The appellant has also argued that the amendment of the default date by the respondent constitutes procedural manipulation aimed at bypassing Section 10A protections. However, it is seen that the amendment was duly made during the CIRP proceedings before the AA, as per laid down procedure following the principles of natural justice. The AA exercised its discretion appropriately in allowing the amendment. The appellant has not demonstrated any prejudice resulting from this amendment or any procedural irregularities in the tribunal's decision to permit it.

42. We have seen from the above discussion that as per the provisions of the Code, the NCLT is empowered to allow the parties to amend the pleadings before the final orders in CIRP proceedings are passed. This would however be subject to the procedure laid down in the code, as confirmed by Dena Bank (Supra). We have observed that the Adjudication Authority in this case has correctly followed the laid down process and the judgement of Dena bank (supra) is applicable squarely in this case. We therefore hold that the amendment of date of default has been correctly allowed by AA.

43. In determining the validity of the amended date of default, it is crucial to examine the evidence relied upon by the respondent. It is seen that RBI as the regulatory authority during the inspection of the bank found that compliance with the conditions laid down in the sanction letters were not met and hence the CD was ineligible for restructuring. Accordingly, due to non-compliance the extent sanction letter dated 17.03.2020 became void ab-initio and the same was not tenable in the eyes of law. Banks have to mandatorily comply with the guidelines of the RBI in this regard. Therefore, the date of

NPA became 01.11.2019 and the original date of default would be 02.08.2019 i.e., 90 days prior the date of NPA as per RBI IRAC Guidelines. The amended date of 02.08.2019 is also supported by records from the National E-Governance Services Limited (NESL) database, which confirms the occurrence of a default prior to the COVID-19 moratorium period.

44. Furthermore, the respondent's reliance on a recall notice issued on 07.12.2020 highlights the prolonged financial distress of the corporate debtor. The appellant's argument that the restructuring agreement of March 2020 reset the default timeline lacks merit. Restructuring agreements, while providing temporary relief, do not negate pre-existing defaults unless explicitly stated. The evidence presented does not suggest that the restructuring agreement created a fresh default timeline or nullified the earlier default of 02.08.2019. This finding aligns with the principles established in precedent cases, where the courts have consistently held that restructuring efforts do not alter the classification of a loan as a Non-Performing Asset (NPA), unless significant repayments or compliance with revised terms occur.

45. Section 10A of the IBC was introduced to provide relief to businesses affected by the economic impact of the COVID-19 pandemic by precluding insolvency proceedings for defaults occurring between 25.03.2020 and 25.03.2021. The appellant's reliance on Section 10A is premised on the initial default date of 31.10.2020, which falls within this protected period. However, the respondent's assertion of a default on 02.08.2019 predates the moratorium period, rendering Section 10A inapplicable. The appellant has failed to provide evidence that directly links the default to the impact of the

pandemic. The mere fact that restructuring occurred in March 2020 does not, in itself, establish that the default arose during the Section 10A period. Consequently, the appellant's reliance on precedents such as *Plus Corporate Ventures Pvt. Ltd. v. Transnational Growth Fund Ltd.* is misplaced, as these cases involved defaults unequivocally occurring within the protected period.

46. In addition, the appellant's claim that the restructuring agreement set a new repayment schedule that superseded the earlier obligations is not substantiated by the evidence on record. The Reserve Bank of India's guidelines on restructuring do not suggest that pre-existing defaults are automatically nullified by subsequent restructuring agreements. Rather, restructuring serves to provide temporary relief, while acknowledging the debtor's existing financial obligations. The documentation provided by the respondent supports the conclusion that the default occurred on 02.08.2019 and that subsequent restructuring efforts did not negate this default.

47. The respondent's actions in initiating CIRP are consistent with the objectives of the IBC, which prioritize the resolution of insolvency cases in a time-bound manner to maximize asset value and ensure the equitable treatment of creditors. The evidence presented demonstrates the corporate debtor's prolonged financial incapacity and failure to fulfill its debt obligations despite multiple opportunities to restructure and repay. The respondent, as a financial creditor, is entitled to seek relief under the IBC when defaults are established and substantiated by documentary evidence. The Hon'ble Supreme Court's decision in *Swiss Ribbons Pvt. Ltd. v. Union of India*

underscores the importance of balancing creditor rights and debtor obligations within the insolvency framework.

48. In light of the above discussion, we find no infirmity in the impugned order of the Adjudicating Authority. The appeal is dismissed, pending IAs if any, are disposed accordingly. There is no order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

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