IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT-IV

CP (IB)/778(MB)/2024

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016, r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016].

In the matter of

NKGSB Co-operative Bank Limited

…Financial Creditor

V/s.

KSM Multitrade LLP

…Corporate Debtor

Pronounced: 12.06.2026

CORAM:

SHRI ANIL RAJ CHELLAN	**SHRI K. R. SAJI KUMAR**
HON'BLE MEMBER (TECHNICAL)	**HON'BLE MEMBER (JUDICIAL)**

Appearances :	***Hybrid***
For the Financial Creditor:	Adv. Sagar Wagle a/w Adv. Kashyap Samant i/b K&P Legal Combine LLP Ld. Counsel for the Financial Creditor.
For the Corporate Debtor:	Adv. Saurish Shetty i/b Adv. Jenil Shah a/w Adv. Krish Shah, Ld. Counsel for the Corporate Debtor

ORDER

1. Background

1.1. The present Application is filed by NKGSB Co-operative Bank Ltd (Financial Creditor/Applicant) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), in respect of KSM Multitrade LLP (Corporate Debtor).

1.2. The total amount claimed to be in default as per Part IV of the Application is Rs.7,55,25,988.27/- (Seven Crore Fifty-Five Lakh Twenty-Five Thousand Nine Hundred and Eighty-Eight Rupees and Twenty-Seven Paise) which includes principal amount of Rs. 4,64,16,622.60/- (Four Crore Sixty-Four Lakh Sixteen Thousand Six Hundred and Twenty-Two Rupees and Sixty Paise) and interest thereon @ 11% p.a. amounting to Rs. 2,91,09,365.70 (Two Crore Ninety-One Lakh Nine Thousand Three Hundred and Sixty-Five Rupees and Seventy Paise).

1.3. The Corporate Debtor was incorporated on 30.10.2012, having LLPIN: AAB-1882, under the Limited Liability Partnership Act, 2008. The registered address of the Corporate Debtor is at 2nd Floor, National Insurance Building, 204 Dr. DN Road, Fort, Mumbai City, Mumbai, Maharashtra- 400001. Therefore, this Bench has the jurisdiction to deal with this Application.

2. Submissions of the Financial Creditor

2.1. The Financial Creditor submits that, at the request of the Corporate Debtor, a cash credit facility of Rs. 4,50,00,000/- was sanctioned to the Corporate Debtor vide Sanction Letter dated 01.09.2018. Pursuant to the sanction of the said facility, the Corporate Debtor utilised the sanctioned cash credit facility from time to time.

2.2. Subsequently, as per the directives of the Reserve Bank of India, during the COVID-19 Pandemic, the Applicant was directed to provide an Interest Moratorium from March 2020 to August 2020, and accordingly, the Financial Creditor sanctioned a Funded Interest Term Loan.

2.3. The Applicant states that the default first occurred when the loan account of the Corporate Debtor was classified as a Non-Performing Asset, i.e., on 31st October 2020. Since the Corporate Debtor’s breach is continuous, the Default has continued thereafter, inasmuch as, even after classification of the Account as a Non-Performing Asset, the Corporate Debtor has made on-account payments from time to time, thereby defaulting on the balance amounts that remained due and payable. The Last such on-account payment was made on 20.11.2023 for Rs. 2,50,000/-.

2.4. The Applicant also submits that the Corporate Debtor has also defaulted on 28.03.2024, when the Ld. Arbitrator Mr. S.V. Tinaikar in Arbitration Case No. ARB/NKGSB/006 of 2021 passed an Arbitral Award in favour of the Financial Creditor, and when the Corporate Debtor failed to comply with the requisition contained in the said Award, it has therefore defaulted in terms of the provisions of the Code.

2.5. Pursuant to the liberty granted by the Tribunal, the Applicant filed an affidavit dated 08.01.2025 stating that the date of default is 28.03.2024 when the Arbitration Award was passed in favour of the Applicant. In support of the same, the Applicant has annexed a copy of the Record of Default issued by the National E-Governance Services Limited (NeSL).

3. Contentions of Corporate Debtor

3.1. The Corporate Debtor, through its designated partner, filed a reply affidavit dated 12.07.2025.

3.2. The Corporate Debtor submits that the Application is barred under Section 10A of the Code as per the date of default mentioned in Part IV of the Application, and the Financial Creditor itself admits that the loan account was classified as NPA on 31.10.2020.

3.3. It is submitted that the Corporate Debtor availed of credit facilities from the Financial Creditor in 2014, which were enhanced from time to time. The loan account of the Corporate Debtor was declared a Non-performing Asset on 31.10.2020, and a Demand Notice under Section 13(2) of the SARFESI Act 2002 was issued on 19.12.2020. Thereafter, the financial creditor-initiated arbitration under Section 84 of the Multi-State Co-operative Societies Act, 2002, by an invocation dated 03.03.2021.

3.4. The Corporate Debtor submits that the Arbitral Award dated 28.03.2024 does not give the Financial Creditor any fresh cause of action to initiate proceedings under Section 7 of the Code. It is further stated that the arbitration of financial debts was crystallised for a debt accrued as on 31.10.2020. Hence, the present Application is not maintainable, and the Financial Creditor cannot seek enforcement of the Arbitral Award before this Tribunal as an execution court.

3.5. The Ld. Counsel for the Corporate Debtor submits that the Financial Creditor has updated information on the Information Utility to alter the date of default. It is well settled in law that debt and default have to be ascertained from the supporting documents relied upon in the Company Petition. Upon perusal of the Demand Notice dated 19.12.2020, it is observed that default has occurred before 31.10.2020 and therefore is barred under Section 10A of the Code.

3.6. The Corporate Debtor further submits that it is a going concern, solvent, and capable of paying its outstanding debts. The Corporate Debtor has other secured and unsecured creditors and is making efforts to make timely payments on its loan facilities. The Corporate Debtor is a bona fide borrower

with a good reputation in the industry. Despite the alleged non-cooperation by the Financial Creditor, the Corporate Debtor has complied with all its obligations under the Loan Documents. If the Corporate Debtor is admitted into CIRP against the mandatory provisions of the Code, it shall be a gross miscarriage of justice and against the settled principles of law and in violation of provisions of Section 10A of the Code.

3.7. Based on the above, the Corporate Debtor submits that the Company Petition filed by the Financial Creditor does not justify invoking the Code in right intention and therefore, the Company Petition shall be dismissed with costs.

4. Analysis and Findings

4.1. We have heard both the Ld. Counsel for the Financial Creditor and the Corporate Debtor. We have also perused the documents and pleadings available on record and considered the arguments advanced by them.

4.2. The undisputed facts are that the Corporate Debtor availed Cash Credit Limit/Facility to the extent of Rs.4.50 Crore pursuant to the Sanction Letter dated 01.09.2018. As per the terms of the Sanction Letter, the sanctioned limit was valid for one year, i.e., up to 31.08.2019. Although no documents evidencing renewal of the facility have been produced, the Financial Creditor asserts that the loan account was classified as an NPA in its books on 31.10. 2020, a fact that has been unequivocally admitted by the Corporate Debtor. Subsequently, the Financial Creditor initiated arbitration proceedings under the provisions of the Multi-State Co-operative Societies Act, 2002, in respect of the debt, in addition to pursuing enforcement actions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which culminated in the passing of the Award on 28.03.2024.

4.3. While the debt and default are admitted, the only question remaining for our consideration pertains to the application of Section 10A of the Code. As per Section 10A of the Code, no application for initiation of corporate insolvency resolution process shall ever be filed for any default committed during 25.03.2020 to 24.03.2021. Consequently, Section 10A imposes a permanent bar for defaults occurring during the aforesaid period.

4.4. The case of the Financial Creditor is that the first default occurred on 31.08.2019, when the Corporate Debtor failed to repay the facility on the expiry of its tenure, the second default occurred on 31.10.2020 when the Loan Account was classified as an NPA and the third default occurred on 28.03.2024, when the Arbitral Award was passed by the Learned Sole Arbitrator and finally on 03.05.2024, when the Corporate Debtor failed to make payment pursuant to a demand made in writing in pursuance of the Arbitral Award. The Ld. Counsel for the Financial Creditor argues that there can be multiple defaults in respect of the loan and that there is no requirement that an application under Section 7 needs to be filed on the first default. In support of this argument, reliance is placed on the judgment of the Hon'ble NCLAT in *Koncentric Investments Ltd. v. Standard Chartered Bank, London* [(2022) ibclaw.in 90 NCLAT].

4.5. We may first notice the nature of the loan transaction between the parties. As per the Sanction Letter dated 01.09.2018 issued by the Financial Creditor and the Facility Agreement dated 25.09.2018, the Corporate Debtor is obligated to repay the Cash Credit Facility of Rs.4.50 Crore forthwith on demand in writing made by the Financial Creditor or at the expiry of one year from the date of sanction of the said Facility, whichever is earlier, unless the said facility is renewed by the Financial Creditor for a further period at such expiry. Given that the loan account was classified as NPA only on 31.10.2020, it follows that the loan Facility was renewed by the Financial Creditor. Consequently, the assertion that the first default occurred on 31.08.2019 has no basis. The date of NPA classification was admittedly on 31.10.2020, which falls within the 10A period. As the Cash

Credit Facility is payable on demand, it has only one default date for the principal amount. This is in contrast to the case of *Koncentric Investments* (supra), which pertains to a loan payable in installments. Consequently, the judgement in *Koncentric Investments* (supra) is not applicable to the facts of the present case.

4.6. The Applicant asserts that there are further defaults after the 10A period due to the passing of the Arbitral Award on 28.03.2024, and subsequent failure of the Corporate Debtor to make payment pursuant to the demand made. The Financial Creditor submits that the present Application has been premised on the default related to the obligations contained in the Arbitral Award, which arose subsequent to the 10A period. Consequently, it is argued that the Application is not barred under Section 10A of the Code. The Ld. Counsel also placed reliance on the judgement of the Hon'ble Supreme Court in *Kotak Mahindra Bank Limited v. Balakrishnan & Anr.* [Civil Appeal No.689 of 2021], which held, thus:

"26. It could thus be seen that this Court in the case of Dena Bank (supra) in paragraphs 136 and 141, has in unequivocal terms held that once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the Recovery Certificate. It has further been held that issuance of a certificate of recovery in favour of the financial creditor would give rise to a fresh cause of action to the financial creditor, to initiate proceedings under Section 7 of the IBC for initiation of the CIRP, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid."

4.7. It is important to observe that Section 10A is prefaced with a non-obstante provision, which effectively bars initiation of corporate insolvency resolution process under Sections 7, 9, and 10. The proviso to Section 10A further fortifies 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". The expression "shall ever be filed" is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred during the specified period. The provision cannot be read to mean that the application can be filed concerning the same defaults after a fresh demand is made. If such an interpretation is accepted, the whole purpose and object shall be defeated. Thus, the embargo contained in Section 10A must be construed purposively to advance the object sought to be achieved by enacting the provision. The judgement in Kotak Mahindra Bank Limited (supra) is with respect to the period of limitation, and not with respect to defaults during the 10A period. Therefore, we are of the view that this judgment does not help the case of the Financial Creditor.

4.8. It is also to be noted that the Hon'ble Supreme Court upheld the order of Hon'ble NCLAT and observed in *Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.,* [(2021) ibclaw.in 08 SC] as under:

"23 Adopting the construction which has been suggested by the appellant would defeat the object and intent underlying the insertion of Section 10A. The onset of the Covid-19 pandemic is a cataclysmic event which has serious repercussions on the financial health of corporate enterprises. The Ordinance and the Amending Act enacted by Parliament, adopt 25 March 2020 as the cut-off date. The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP "for the said default occurring during the said period". The expression "shall ever be filed" is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25 March 2020 for a period of

six months, extendable up to one year as notified. The explanation which has been introduced to remove doubts places the matter beyond doubt by clarifying that the statutory provision shall not apply to any default before 25 March 2020. The substantive part of Section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of the CIRP in respect of a corporate debtor for a default occurring on or after 25 March 2020; the embargo remaining in force for a period of six months, extendable to one year. Acceptance of the submission of the appellant would defeat the very purpose and object underlying the insertion of Section 10A. For, it would leave a whole class of corporate debtors where the default has occurred on or after 25 March 2020 outside the pale of protection because the application was filed before 5 June 2020."

4.9. The present Application under Section 7 of the Code is therefore not maintainable as it relates to a default which occurred during the Section 10A period, which is statutorily barred from forming the basis of insolvency initiation under the provisions of the Code. In view of the provisions contained in Section 10A of the Code and based on the judgement of the Hon'ble Supreme Court in Ramesh Kymal Case (Supra), we are of the considered view that the Application deserves to be rejected. Accordingly, CP. No. 778/2024 is rejected. It is made clear that the rejection of the Application is without prejudice to the Applicant's rights under any other law.

Sd/-	Sd/-
ANIL RAJ CHELLAN	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**