

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) NO.05/ALD/2022**

*In the matter of*

An application under Section 7 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority Rules, 2016)

*And*

*In the matter of:*

Yes Bank Ltd

Having its Registered office at

YES BANK HOUSE, Off Western Express

Highway, Santacruz(East), Mumbai-400055

And Branch Office at

Civil Lines, Kanpur

...

Financial Creditor

*Versus*

Laxmi Oil and Vanaspati Pvt. Ltd.

*Having its Registered Office at*

704, Kan Chamber, 7<sup>th</sup> Floor,

14/113, Civil Lines, Kanpur Nagar

Kanpur-208002

...

Respondent

Order reserved on 25.05.2022

Order pronounced on 13.06.2022

***Coram:***

Sh. Rajasekhar V.K.

: Member (Judicial)

Sh. Virendra Kumar Gupta

: Member (Technical)

***Appearances (via video conference):***

For Financial Creditor

: Sh. Ujjawal Satsangi, Advocate

For Corporate Debtor

: Sh. Aman Kumar Dwivedi, Advocate

**ORDER**

***Rajasekhar V.K., Member (Judicial)***

1. This application has been filed under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Yes Bank Ltd**, (*hereinafter referred as the Financial Creditor*) seeking initiation of Corporate Insolvency Resolution Process in respect of the **Laxmi Oil and Vanaspati Pvt. Ltd.** (*hereinafter referred as the Corporate Debtor*).

—Sd—

2. The facts, in brief, are that cash credit limit of ₹10 crore was sanctioned by the Financial Creditor for a period of twelve months *vide* master facility agreement dated 29.03.2017. The above limit was to expire on 15.03.2018. However, on 15.02.2018, another facility letter was executed, which extended not only the date of such facility upto 20.01.2019 but monetary limit was also excluded to ₹20 crore *vide* another facility letter dated 24.07.2019, the said such credit limit of ₹20 crore which was available up to 22 January 2019 was further renewed for a period of one year. However, the Corporate Debtor failed to adhere to the terms and conditions and defaulted on interest service. The plants also became in operative since May 2019. On 20.12.2019, the financial Creditor asked he Corporate Debtor to comply with the requirements as mentioned in the facility agreements, but the Corporate Debtor failed to make the repayment. Hence, the Financial Creditor claims that the default occurred on 28.02.2020.
3. It is further stated that, upon failure of the Corporate Debtor to comply with the requirements of facility letters/agreements and also considering the guidelines of RBI, the Corporate Debtor was declared as Non-Performing Asset (NPA) on 20.07.2020. On 27.08.2020, a loan recall notice was sent to the Corporate Debtor. It is further stated that, despite several reminders, the Corporate Debtor failed to make the payment. Hence, this application.
4. The learned counsel Mr. Aman Dwivedi appeared on behalf of the Corporate Debtor and sought time, which was not granted.
5. The Ld. Counsel appearing for the Financial Creditor after narrating the above-mentioned facts and submitted that the date of default was 28.02.2020 and date of NPA was 20.07.2020. On a query posed by the Bench as to how the date of default was ascertained as 28.02.2020, though the loan recall notice had been issued on 27.08.2020 and account was also classified as NPA on 20.07.2020, the learned counsel submitted that the facilities were given initially for one year which were subsequently extended from time to time. On 20 December 2019, the bank wrote a letter to the Corporate Debtor, wherein it was pointed out that the borrower has failed to repay the facility on respective due dates in spite of having sufficient time and opportunity.

—Sd—

6. In this background, the learned counsel pointed out that in the very same letter, the bank had asked the corporate debtor to take immediate and effective steps to regularise the facilities, failing which bank shall be constrained to take appropriate legal steps to recover the public money. On this basis, the date of default was ascertained as 28.02.2020.
7. On the aspect of date of declaration of NPA as well as significance of loan recall notice dated 27.08.2020 being relevant for determining the date of default, the learned counsel could not effectively controvert the queries posed by the Bench. However, the learned counsel continued to reiterate that the date of 28.02.2020 was determined in view of the letter dated 20.12.2019.
8. We have considered that submissions made by the learned counsel appearing on behalf of the Financial Creditor and material on record.
9. It is noted that, the facilities have been extended up to July 2020. We further find that in the letter dated 20.12.2019, no timeline has been given to repay the loan and service the interest and hence, it cannot be considered as loan recall notice. Further, no other steps have been taken by the Financial Creditor till July 2020 when the account of Corporate Debtor was classified as NPA. It is further noted that no legal steps have been taken until August 2020 when loan recall notice has been issued.
10. Therefore, in our view, there is no basis for determining the date of default as 28.02.2020. As noted, that loan recall notice has been issued on 27.08.2020, which falls in the period as specified u/s 10A of IBC, 2016. Hence, said date of default, in our view, has been fixed, just to circumvent the implications of the said section because if the default occurs during the period specified in the said section, an application under section 7 of IBC cannot be filed. Unless a loan recall notice is given or the date of default can be determined in a specific manner in terms of any guidelines given by the RBI, the Financial Creditor cannot be allowed to treat any date as date of default just because such a course would suit it.

—Sd—

11. Thus, considering the fact that the default has occurred during the prohibited period between 25.03.2020 and 31.03.2021, for which no action under section 7 can be taken in terms of provisions of section 10A of IBC, 2016, we hold that this petition is not maintainable. Accordingly, the same shall stand dismissed.
12. We may however clarify that the dismissal of this application under section 7 of IBC, 2016, would not preclude the rights of the financial creditor to pursue other legal remedies as may be available to it under the law for recovery of the amount due.
13. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.
14. File be consigned to records.

— Sd —

**Virendra Kumar Gupta**  
**Member (Technical)**

*Shubham Kr. Singh*  
PS

**Rajasekhar**  
**V K**

Digitally signed by Rajasekhar V K  
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**Rajasekhar V.K.**  
**Member (Judicial)**