

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No.301
C.P.(IB)/15(AHM)2023

Order under Section 7 IBC

IN THE MATTER OF:

Canara Bank
V/s
RY Midas Alluminiums Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 05/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.15/AHM/2023

(An application 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)

In the Matter of:

M/s. Canara Bank

(Identification No: U67190KA1906PLC001069)

A body corporate engaged in Banking Business
Incorporated under Banking Companies
(Acquisition and Transfer of Undertakings) Act, 1970.

Having its registered office at:

112, JC Road,
Bangalore – 560002.

...Applicant/Financial Creditor

VERSUS

**M/s. RY Midas Aluminium Private Limited,
(CIN: U27203GJ2006PTC049228)**

Having its registered office at:
Plot No. 117, Tribhuvan Industrial Estate,
Kathwada-Signarva Road,
Kathwada, Ahmedabad – 382430.

...Respondent/Corporate Debtor

Order Pronounced on: 05.02.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Ravi Pahwa, Learned Advocate

For the Respondent: Mr. Tirth Nayak, Learned Advocate



ORDER
[Per: Bench]

1. The Present Application is filed on 06.01.2023 by the Applicant M/s. Canara Bank, (hereinafter referred to as **“the Applicant/Financial Creditor”**) against the Respondent M/s. RY Midas Aluminium Private Limited (hereinafter referred to as **“the Respondent/Corporate Debtor”**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“IBC, 2016”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as **“IRP”**) and declare the moratorium for having defaulted payment of its outstanding dues **Rs.42.57 Crores** including interest.
2. On perusal of Part-I of the Form-1 reveals that the application is filed by the Applicant/Canara Bank, body corporate engaged in Banking Business incorporated under the Banking Companies (Acquisition and transfer of Undertakings) Act, 1970, having its Registered office at 112, JC Road, Bangalore through its Manager by one Mr. Vinod Kumar who has been authorised by an Authority letter which is annexed at **Annexure-I** on page 08.
3. On perusal of Part-II of the Form-1 reveals that the Respondent is one M/s RY Midas Aluminium Private



Limited having CIN No. **U27203GJ2006PTC049228**. The Respondent was incorporated on 13.10.2006 and having registered office at Plot No. 117, Tribhuvan Industrial Estate, Kathwada-Signarva Road, Kathwada, Ahmedabad – 382430, Gujarat.

4. Part-III of the Form-1 reveals that the Applicant has proposed the name of the Interim Resolution Professional (**'IRP'**) **Mr. Sunil Kumar Kabra**, having registration No. IBBI/IPA-001/ IP-P01011/ 2017-18/ 11662. The proposed IRP has also filed his consent in Form-2, written communication annexed with the Application as Annexure-III (Page-18) of the present petition as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.
5. Part-IV of the Form-1 reveals that total dues as claimed by the Applicant is Rs.42.57 Crores consisting of principle and interest up-to 17.12.2022.
6. The brief facts as contended by the Applicant are as under:-
 - a. It is stated that in the year 2009, the Respondent approached the Applicant in the need of financial



assistance. Upon his request, the Applicant had then sanctioned ODBT limit of Rs.300/-Lakhs vide a sanction letter dated 18.11.2009 which is annexed with the present petition as Annexure-IV.

b. It is stated that such financial facility was renewed and enhanced from time to time and the last sanction was of Rs.34.00 Crores which was renewed and enhanced vide sanction letter dated 30.08.2019 annexed as Annexure-VII to the present petition.

c. It is further stated that the Applicant had also sanctioned ad-hoc Limit of Rs.4.00 Crores vide sanction letter dated 30.08.2019 annexed as Annexure- XIV to the present petition.

d. It is stated that the Respondent failed to service the debts, the account of the Respondent was declared as non-performing asset on 30.03.2021.

e. It is stated that the Applicant had filed O.A. No.647 of 2021 before the Debts Recovery Tribunal-I, Ahmedabad which is pending for its adjudication.

7. The Applicant has submitted the following documents as under:-

Sr. No.	Annexure	Particulars	Page No.
1	--	Affidavit in Support of initiation of CIRP by Applicant u/s. 7 of IBC.	6-7



2	I	Copy of the general power of attorney dated 8.2.2018 passed by the Applicant authorising Shri Vinod Kumar, Manager.	8-16
3	II	Data provided above is as per the Companies Master Data as available on the Ministry of Corporate Affairs website.	17
4	III	Copy of Consent of IRP in Form- AA.	18-19
5	IV	Copy of sanction letter dated 18.11.2009 issued by Applicant in favour of Corporate Debtor.	20-30
6	V	Copy of sanction Memorandum 31-38 dated 7.12.2018 issued by Applicant in favour of Corporate Debtor.	31-38
7	VI	Copies of bank statements showing disbursement of debt from the Applicant to the Corporate Debtor.	39-85
8	VII	Copy of Common Hypothecation Deed dated 18.11.2009 executed between the Corporate Debtor and the Applicant as well as Supplemental Common Hypothecation Agreement was dated 30.08.2019.	86-108
9	VIII	Copy of acknowledgement of debt made by Corporate Debtor through communication dated 18.12.2018.	109
10	IX	Copy of Recall Notice dated 26.10.2020	110-112
11	X	Copy of Demand Notice u/s. 13(2) of SARFAESI Act dated 31.07.2021	113-116
12	XI	Copy of Legal Notice dated 24.08.2021 issued on behalf of Applicant to Corporate Debtor.	117-124
13	XII	Copy of reply dated 27.08.2021 issued on behalf of Corporate Debtor to Applicant	125-145
14	XIII	Copy of letter dated 14.06.2018 addressed by Applicant sanctioning term loan in favour of Corporate Debtor.	146-159
15	XIV	Copy of ad-hoc letter dated 30.08.2019 addressed by Applicant to Corporate Debtor sanctioning ad-hoc facilities.	160-163B
16	XV	Copy of original Application No. 647 of 2021 filed before DRT-I, Ahmedabad by Applicant against Corporate Debtor for recovery of amount.	164-219
17	XVI	Copy of Balance-Sheet of Corporate	220-249



		Debtor for the F.Y. 2020-21	
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8. The Applicant has also filed Form-D issued by National E-Governance Services Limited (“NeSL”) on 05.09.2023 vide Diary No:D3375, being record debt and default in which date of default is recorded as **22.10.2020** with status “Deemed to be Authenticated.”
9. The Respondent, in response to the present Application has filed its reply-affidavit on 17.07.2023 vide Diary No.D2647, contending that the Applicant himself has not come to this Tribunal with clean hands.
 - a. The Respondent contended that the instant Application filed by M/s Canara Bank under Section 7 of the I.B. Code is barred by the limitation and thus not maintainable.
 - b. It is stated by the Respondent that Section 238A was inserted in the IBC with an intention of making applicable the provision of the Limitation Act, 1963 (“Limitation Act”) to the proceedings under the I. B. Code, 2016. The Respondent relied on the provisions of the Section 18 of the Limitation Act, 1963.
 - c. It is further contended by the Respondent that he acknowledged its debt in December 2018 and therefore the period of limitation shall begin from December 2018. Therefore, the instant Application is barred by the limitation period.



- d. The Respondent in support of his contentions, relied on the decision of Hon'ble Supreme Court in the matter of ***M/s. Swiss Ribbons Pvt. Ltd. V/s. Union of India & Ors (2019) 4 SCC 17*** and stated that the primary object of the I.B. Code is the resolution of the Corporate Debtor and not a recovery of debts. It is contended that the Applicants are trying to utilise this forum as a 'recovery mechanism.'
- e. The Respondent further contended violation of NCLT Rules for non-filing of English translated copies of annexures. Based on such grounds, he claims that the Application may be rejected.
10. We heard the Learned Counsels from both the sides and perused the material available on record.
11. On perusal of the records, it is found that on 18.11.2009 the Applicant provided financial assistance of Rs.30.00 Crores to the Respondent for which various loan security documents were executed by the Respondent in favour of the Applicant. The said financial assistance was renewed and enhanced from time to time. The Respondent vide Letter dated 18.12.2018 (Annexure-VIII) also acknowledged the debt liability. The Respondent again approached the Applicant for grant of more financial assistance by way of enhancement of existing OCC/OBD Limit from Rs.30.00 Crores to Rs.34.00 Crores for Working Capital as well as ad-



hoc Limit of Rs.4.00 Crores and again executed and signed various loan and security documents on 30.08.2019 (Annexure-VII & Annexure-XIV)) in favour of Applicant.

12. However, after availing the aforesaid Loan/Credit Facilities, the Respondent failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular as the Respondent defaulted its repayment. Consequently, the said account of the Respondent was recalled by the Applicant vide Recall notice dated 26.10.2020 (Annexure-IX). Later on, loan account was classified as N.P.A. on 30.03.2021 and a Demand Notice u/s. 13(2) of SARFAESI Act dated 31.07.2021(Annexure-X) was served upon the Respondent. Thereafter, Applicant served another Legal Notice dated 24.08.2021(Annexure-XI) to the Respondent to repay the outstanding dues which was duly replied by the Respondent vide Reply dated 27.08.2021 (Annexure-XII). Subsequently, an O.A. No.647 of 2021 was filed by the Applicant before the Debt Recovery Tribunal-1 at Ahmedabad on 29.10.2021 (Annexure-XV) for recovery of Rs.36,71,45,718.80ps. which is pending for adjudication.
13. The Applicant has also filed Form-D issued by National E-Governance Services Limited (“NeSL”) on 05.09.2023 vide Diary No:D3375, being record debt and default in which date of default is recorded as 22.10.2020 with status “Deemed to be Authenticated.



14. This Bench, vide its order dated 16.10.2023 has recorded that:

“After a brief hearing in the matter, Learned Proxy Counsel for the applicant seeks time to explain the issue as to how the date of default to be the date of NPA and not to the date of recall notice, which was issued prior to the issuance of demand notice under Section 13(2) of the SARFAESI Act.”

15. In order to get a clear picture, the Applicant was asked to furnish an affidavit with regard to the above order and to clarify how the date of default has been considered the date of Non-Performing Asset and not to the date of recall notice.

16. In compliance of our above order, the applicant filed an Affidavit on 17.01.2024 vide Diary No.D418, thereby in para 2, 3 & 4 of the affidavit the applicant has admitted that:-

2. *“I say that it is true that the recall notice issued by Petitioner Bank is dated 26.10.2020 whereby the Petitioner bank had recalled the entire loan and called upon the Corporate Debtor to pay the entire loan to the Petitioner bank. As per Sec.10A of the IB Code, no Application u/s. 7 or 9 of IB Code would lie during one year period between 25.03.2020 and 25.03.2021. Therefore, the Petitioner bank had not taken any action against the Corporate Debtor during this period. The present Petition is filed after this period. Therefore, in*



the humble submission of the Petitioner, this Hon'ble Adjudicating Authority may entertain this Application.

3. *I say that last payment which was made by respondent on 06.03.2020 in account no. 0174261005269 of Rs. 3.00 lakh and in the term Loan account no. 0174766000018 Rs. 1,75,666 on 15.04.2020. Thereafter as on date no payment was made by the respondent.*

4. *I say that the date of default mentioned in National E Governance services Limited is systematically generated and this Hon'ble Adjudicating Authority may be pleased to consider the date of default as after the expiry of period prescribed u/s. 10A of IB Code, i.e. any date after 25.03.2021. That is the reason we have mentioned date of default 30.03.2021 in form 1.”*

17. The Applicant filed this application, showing the date of default as 30.03.2021 (being NPA date), i.e. after the ending of 10A exempted period. It is pleaded by the Applicant that as per Sec.10A of the IB Code, no Application u/s. 7 or 9 of IB Code would lie during one year period between 25.03.2020 and 25.03.2021. Therefore, Applicant had not taken any action against the Respondent during this period. Hence, the present Application has been filed after this exempted period.



18. It is very much clear that the Applicant herein had issued a Recall Notice dated 26.10.2020 to the Respondent and recalled the entire loan and called upon the Respondent to pay the entire loan to the Applicant. Form-D issued by National E-Governance Services Limited (“NeSL”) on 05.09.2023 vide Diary No:D3375, being record debt and default in which date of default is recorded as 22.10.2020 which falls during the exempted period as mentioned under Section 10A of the IBC.
19. It is also seen from the additional affidavit of the applicant dated 17.01.2024 that a Recall Notice was issued by the Applicant which is dated 26.10.2020 whereby the Applicant had recalled the entire loan. It is an admitted position that date of NPA precedes recall notice. Hence, in our view, the date of NPA and date of default as mentioned by the applicant as 30.03.2021 is not correct. The date of default has to precede the date of NPA.
20. However, as per Section 10A of IBC, 2016, any default occurred between the period 25.03.2020 to 25.03.2021 is exempted and no IBC proceedings shall ever be initiated against the Corporate Debtor for the default which occurred during the period from “25th March, 2020 to 25th March, 2021. In the present case the default exactly fell within that exemption period. Section 10A of the IBC is reproduced hereunder:-

Suspension of initiation of corporate insolvency resolution process.



10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be fixed, 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. In pursuant to the above section, the Central Government issued two notifications. They are as follows:-

45a. *Inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 w.e.f. 5-6-2020.*

45b. Notification No. S.O. 3265(E), dated 24-9-2020: *In exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) [as inserted by section 2 of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 (17 of 2020)], the Central Government hereby notifies further period of three months from the 25th September, 2020 for the purposes of the said section.*

Notification No. S.O. 4638(E), dated 22-12-2020: *In exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies further period of three months from the 25th December, 2020, for the purposes of the said section.*

22. Hon’ble Supreme Court in Civil Appeal No:4050 of 2020, in the matter of **Ramesh Kyamal V/s. Siemens Gamesa Renewable Power Pvt. Ltd.** On 09.02.2021 has affirmed the view taken by the Hon’ble NCLAT which was as under:

“13. Reading the two definition clauses in juxtaposition, it emerges that while the first viz. 'initiation date' is referable to filing of application by the eligible applicant, the later viz. 'commencement date' refers to passing of order of admission of application by the Adjudicating



Authority. The 'initiation date' ascribes a role to the eligible applicant whereas the 'commencement date rests upon exercise of power vested in the Adjudicating Authority. Adopting this interpretation would leave no scope for initiation of CIRP of a Corporate Debtor at the instance of eligible applicant in respect of Default arising on or after 25th March, 2020 as the provision engrafted in Section 10A clearly bars filing of such application by the eligible applicant for initiation of CIRP of Corporate Debtor in respect of such default. The bar created is retrospective as the cut-off date has been fixed as 25th March, 2020 while the newly inserted Section 10A introduced through the Ordinance has come into effect on 5th June, 2020. The object of the legislation has been to suspend operation of Sections 7, 9 & 10 in respect of defaults arising on or after 25th March, 2020 i.e. the date on which Nationwide lockdown was enforced disrupting normal business operations and impacting the economy globally. Indeed, the explanation removes the doubt by clarifying that such bar shall not operate in respect of any default committed prior to 25th March, 2020.”

23. Hon'ble National Company Law Appellate Tribunal in the matter of **Mr. Anil Kaushal V/s. M/s. Colliers International (India) Property Services Private Limited and Ors.** held as follows:-

“9..... Section 10A of IBC was introduced during turbulent times due to pandemic and the intention of Section was to minimize Insolvency and Bankruptcy Proceedings. Time during pandemic was allowed to all corporate entities to strengthen themselves and keep moving as going concern to avoid Insolvency &



Bankruptcy cases. It helped economy and society at large. In this background any default arising on or after 25th March, 2020 initially for a period of six month which could be extended by notification, barred for initiation CIRP Proceeding upto 1 year under Section 7, & 10 of IBC.....”

24. The Hon’ble Supreme Court in Civil Appeal No. 2734 OF 2020 titled as **Laxmi Pat Surana v. Union Bank of India**, (2021) 8 SCC 481. has observed as follows:-

“37. 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 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.....”

25. In the matter of Company Appeal (AT) (Insolvency) No. 840 of 2021 **Edelweiss Asset Reconstruction Company Ltd Vs. Perfect Engine Components Pvt. Ltd. – NCLAT New Delhi**



on 22.12.202 also held that Date of default does not mean a strict interpretation that it has to be the date of NPA.

26. In the matter of Company Appeal (AT) (Ins) No. 1285 of 2022 **Ramdas Dutta Vs. IDBI Bank Ltd. – NCLAT New Delhi** on 26.04.2023 also held that the date of default cannot be changed by Bank and the date of NPA cannot be taken to be the date of default for filing CIRP application under IBC.
27. In fact, the Applicant has shifted the date of default from 22.10.2020 to 31.03.2021 on the pretext that as per Section 10A of the IB Code, no Application u/s. 7 or 9 of IB Code would lie during one year period between 25.03.2020 and 25.03.2021. Further, the Applicant had not taken any action against the Respondent during this period. The date of default mentioned in National E Governance services Limited is systematically generated and this Hon'ble Adjudicating Authority may be pleased to consider the date of default as after the expiry of period prescribed u/s. 10A of IB Code, i.e. 30.03.2021 (being date of NPA) to avoid the case from exempted period U/s 10A of the IBC. However, the date of original default cannot be allowed to be shifted as per Section 10A of IB Code, 2016.
28. In view of the above, we are of the opinion that the present application **CP(IB) No.15/7/AHM/2023** filed under Section 7 of the IBC, 2016 is not maintainable as being hit by the exempted period under Section 10A of the IB Code, 2016 and the same is dismissed with no order as to costs.



-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

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