

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

COURT No. V, MUMBAI BENCH

CP No. 115/(IB)-MB-V/2021

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 Axis Bank Limited
Axis house, 7th Floor, C-2, Wadia International Centre, Pandurang Bhudhkar Marg, Worli, Mumbai-400025.

... Petitioner/ Financial Creditor

Vs.

Maharashtra Theatres Private Limited
RNA Corporate Park, 3rd Floor, Next to Collector's Office, Bandra (East), Mumbai-400051, Maharashtra.

...Corporate Debtor

Order reserved on: 23.08.2021

Order Pronounced on: 05.10.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Petitioner: Mr. Ajay Kumar, Advocate i/b Samvad Partners.

For the Respondent: Mr. Aniruth Purusothaman, Advocate.

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. Axis Bank Limited (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against Maharashtra Theatres Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor has committed a default as on 31.10.2020 in the repayment of loan to the extent of Rs. 55,75,27,571/- including interest. This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the details of the defaulted amount are given. The date of first sanction for underlying facilities which are outstanding as on 31.10.2020 are as follows:

Facility	Date of sanction	Amount Sanctioned (limit) (in Crores)	Principal o/s as on 31.10.2020 (in Crores)
Overdraft	July 26, 2013	10.00	7.01
Term Loan (Power)	June 05. 2010	3.25	0.70
Term Loan-I	July 26, 2013	37.75	23.83
Term Loan-II	Dec 28, 2015	3.15	2.66
Term Loan-III	Dec 28, 2015	10.50	7.11
Total		64.65	41.31

Contentions of the Petitioner:

3. The present application filed under Section 7 of the Code ensues from the default incurred by the Corporate debtor, Maharashtra Theatres Pvt. Ltd. Towards repayment of the credit facilities tendered by the Financial Creditor, Axis Bank Limited. The Corporate Debtor approached the financial Creditor for funding options, wherein the Financial Creditor approved an amount of Rs. 22,50,00,000 crores (Rupees Twenty Two Crores and Fifty Lakhs) (subsequently enhanced to Rs. 23,87,00,000 crores) vide sanction letters dated 27.02.2008 and 16.12.2009.
4. The Corporate Debtor also availed a term loan facility of Rs. 3,18,00,000 crores (Rupees Three Crores and Eighteen Lakhs), approved by the Financial Creditor vide sanction letters dated 05.06.2010 and 22.09.2010.
5. The Corporate Debtor also availed a bank guarantee facility of Rs. 1,50,00,000 crores (Rupees One Crore and Fifty lakhs), approved by the Financial Creditor vide sanction letter dated 02.12.2012.
6. The Corporate Debtor, yet again approached the Financial Creditor for fresh credit and term loan facilities of Rs. 47,75,00,000 crores (Rupees Forty seven crores and Seventy Five Lakhs), which was approved vide sanction letter dated 26.07.2013. The same was reviewed and enhanced to Rs. 13,65,00,000 crores (Rupees thirteen Crores and Sixty Five lakhs) vide sanction letter dated 28.12.2015. The final review and renewal of all the credit facilities availed was approved by the Financial Creditor vide sanction letter dated 23.05.2017.
7. By virtue of all the aforesaid sanction letters vide inter alia credit facility agreements, the Financial Creditor was vested with several hypothecated rent receivables and a mortgage of the office premises

as collateral security against the credit facility. Mr. Anubhav Aggarwal and Mr. Anil Aggarwal executed guarantee deeds in favour of the Financial creditor as personal guarantors.

8. Despite the agreed repayment schedule agreed between the parties and several correspondences ensued thereof, the Corporate Debtor was unable to fulfill its obligations of making timely payments to the Financial Creditor. The Financial Creditor vide letter dated 23.01.2019, intimidated the Corporate Debtor regarding overdue payments in the Corporate Debtor's accounts since 30.10.2018 and demanded a payment of Rs. 2,98,00,000 (rupees Two Crores and Ninety Eight Lakhs) to clear the irregularity. However, no action was undertaken by the Corporate Debtor. The Financial Creditor declared the account of the Corporate Debtor as a Non-performing Asset ("NPA") on 29.01.2019 after the Corporate Debtor failed to clear outstanding amounts.
9. In furtherance to declaration of the Corporate Debtor's account as an NPA, the Financial Creditor recalled the aforesaid credit facilities vide letter dated 11.07.2019 and invoked the guarantees against the personal guarantors, demanding a payment of Rs. 50,99,00,000 (Rupees Fifty Crores and Ninety Nine Lakhs). The Corporate Debtor has failed to meet its obligations and has not deposited any amounts with the Financial Creditor in order to clear outstanding dues. Therefore, the Financial creditor has filed the present application.
10. The securities provided by the Corporate Debtor in favour of the Financial Creditor for the sanction of the revised credit facility of Rs. 23,87,00,000 (Rupees Twenty Three Crores Eight Seven Lakhs only) are as follows:
 - a. Deed of Hypothecation dated 27.03.2008 executed by the Corporate Debtor in favour of the Financial Creditor for Rs. 22,50,00,000 (Rupees Twenty Crores Fifty lakhs Only).

- b. Supplemental deed of Hypothecation dated 13.02.2010 executed by the Corporate Debtor in favour of the Financial Creditor for Rs. 23,87,00,000 (Rupees Twenty Three Crores Eight Seven Lakhs Only).
 - c. Deed of personal guarantee dated 13.02.2010 executed by Mr. Anubhav Aggarwal in favor of the Financial Creditor for Rs. 23,87,00,000 (Rupees Twenty Three Crores Eight Seven Lakhs Only).
 - d. Deed of personal guarantee dated 13.02.2010 executed by Mr. Anil Aggarwal in favour of the Financial Creditor for Rs. 23,87,00,000 (Rupees Twenty Three Crores Eighty Seven lakhs Only).
11. The securities provided by the Corporate Debtor in favour of the financial creditor for the grant of term loan to the extent of Rs. 3,18,00,000 (rupees three Crores Eighteen lakhs) vide sanction letters dated 05.06.2010 and 22.09.2010 are as follows:
- a. Deed of personal guarantee dated 29.09.2010 executed by Mr. Anubhav Aggarwal in favour of the Financial Creditor for Rs. 3,18,00,000 (Rupees three Crores Eighteen Lakhs only).
 - b. Deed of Personal Guarantee dated 29.09.2010 executed by Mr. Anil Aggarwal in favour of the Financial Creditor for Rs. 3,18,00,000 (rupees Three Crores Eighteen lakhs only).
12. The securities provided by the Corporate Debtor in favour of the Financial Creditor for the grant of an extended term Loan facility of Rs. 3,25,00,000 (Rupees three Crores Twenty Five lakhs only) vide sanction letter dated 05.06.2010 are as follows:
- a. An equitable mortgage was created over the 8th Floor, at RNA Corporate Park, Bandra € , Mumbai- 051 by the Corporate Debtor in favour of the Financial Creditor on 12.06.2010. A record of the same as captured in a letter dated 01.03.2013 executed by Mr.Anubhav Aggarwal and Mr. Anil Kumar

Aggarwal addressed to Punjab National Bank.

13. The securities provided by the Corporate Debtor in favour of the Financial Creditor for the grant of Credit Facilities and Overdraft Facilities vide sanction letter dated 26.07.2013 are as follows:
- a. Demand promissory note dated 27.07.2013 executed by the Corporate Debtor in favour of the Financial Creditor for Rs. 10,00,00,000 (Rupees Ten Crores Only).
 - b. Letter of Arrangement dated 27.07.2013 executed by the Corporate Debtor in favour of the Financial Creditor for Rs. 10,00,00,000 (Rupees Ten Crores Only).
 - c. Composite Hypothecation Deed dated 27.07.2013 executed by the Corporate Debtor in favour of the financial Creditor for Rs. 37,75,00,000 (Rupees thirty Seven Crores Seventy five Lakhs only).
 - d. Deed of Hypothecation of Book Debts dated 27.07.2013 executed by the Corporate Debtor in favour of the Financial Creditor for Rs. 47,75,00,000 (Rupees Forty Seven Crores Seventy Five Lakhs only).
 - e. Deed of personal guarantee dated 27.07.2013 executed by Mr. Anubhav Agarwal in favour of the Financial Creditor for Rs. 47,75,00,000 (Rupees Forty Seven Crores Seventy Five Lakhs only).
 - f. Simple mortgage deed dated 06.08.2013 for Rs. 47,75,00,000 (Rupees Forty Seven Crores Seventy Five Lakhs only) executed by the Corporate Debtor in favour of the Financial Creditor.
 - g. Simple Mortgage Deed to cover Additional Property dated 09.10.2014 for Rs. 47,75,00,000 (Rupees Forty Seven Crores Seventy Five Lakhs only) executed by the Corporate Debtor in favour of the Financial Creditor.
14. The securities provided by the Corporate Debtor in favour of the

Financial Creditor for the credit facilities vide sanction letter dated 28.12.2015 to the extent of Rs. 13,65,00,000 (Rupees Thirteen Crores Sixty Five Lakhs only) are as follows:

- a. Composite Hypothecation Deed dated 28.03.2016 executed by the Corporate Debtor in favour of the Financial Creditor for Rs. 13,65,00,000 (Rupees Thirteen Crores Sixty Five Lakhs only).
- b. Simple Mortgage Deed to cover Additional Property dated 29.11.2016 executed by the Corporate Debtor in favour of the Financial Creditor for Rs. 3,15,00,000 (Rupees three Crores Fifteen Lakhs only).
- c. Deed of Guarantee dated 28.03.2016 for Rs. 60,82,00,000 (Rupees Sixty Crores Eighty Two Lakhs only) executed by Mr. Anubhav Aggarwal and Mr. Saranga Aggarwal in favour of Financial Creditor.

Reply of the Corporate Debtor:

15. Corporate Debtor submitted that Ministry of law and Justice published in the Gazette of India on 05.06.2020 the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 which stated that due to the COVID-19 Pandemic the business, financial Markets and economy had been impacted and had created uncertainty and stress beyond control, due to the Nationwide Lockdown imposed on 25.03.2020 to combat the spread of COVID-19, this had added to disruption of normal business operations and hence it was difficult to find adequate number of resolution applicants to rescue the Corporate person who may default in discharge of their debt obligations. Therefore, by way of this Ordinance, Section 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 stood suspended. The Ordinance dated 05.06.2020 further inserted Section 10A in the Insolvency and Bankruptcy Code, 2016 which is reproduced hereunder:

“10A of pension of initiation of Corporate insolvency resolution process.

Notwithstanding anything contained in Section 7, 9 and 10, no application for initiation of Corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.

Provided that no application shall ever be filed for initiation of Corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

16. It is submitted that the Ministry of Corporate Affairs vide Notification F. No. 30/33/2020-Insolvency dated 24.09.2020 extended the suspension of Section 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 for a further period of three months from 25.09.2020. The Notification of the Ministry of Corporate Affairs is reproduced hereunder:

“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 September, 2020 for the purposes of the said section.”

17. It is submitted that the Ministry of Corporate Affairs vide Notification F. No. 30/33/2020-Insolvency dated 22.12.2020 extended the suspension of Section 7, 9 and 10 of Insolvency and Bankruptcy Code, 2016 for a further period of three months from 25.12.2020. the notification of the Ministry of Corporate Affairs is reproduced hereunder:

“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.”

18. It is submitted that the Financial Creditor had filed the captioned Company Petition on 30.12.2020 before The Hon'ble National Company Law Tribunal, Mumbai Bench. It is of pertinence to note that the Financial Creditor has filed the Company Petition during the suspension of the Section 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016. This suspension was affirmed vide Notification dated 22.12.2020 of Ministry of Corporate Affairs and hence the Petition is not maintainable due to the fact it was filed during the suspension of the Section 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016.
19. It is submitted that the Financial Creditor has filed the aforesaid Petition under Form 1 (Application by Financial Creditor(S) to initiate Corporate Insolvency Resolution Process Under Chapter II of part II/Under Chapter IV of Part II of the Code) under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules) 2016. In the aforesaid Form 1 filed by the Financial Creditor, the amount of due and claimed from the Respondent as on 31.10.2020 was Rs. 55,75,27,571/- (Rupees fifty-Five Crores Seventy-Five Lakhs Twenty-Seven Thousand Five Hundred Seventy-One Only) which includes unapplied interest and penal interest for default in payment.
20. Admittedly, the Financial Creditor has submitted, in Part IV of Form-1, that 31.10.2020 was the date of default. It is submitted that Section 10A of the Code states that notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of Corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020. As mentioned in the Para above, the Ministry of Corporate Affairs vide Notification F. No. 30/33/2020-Insolvency dated 24.09.2020 extended the suspension of Section 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 for a further period of three months from 25.09.2020. Thus, the Financial Creditor could not have filed an application for initiation of Corporate

insolvency resolution process of the corporate debtor under section 7 for a default which occurred on 31.10.2020.

Findings:

21. The Petitioner sanctioned an amount of Rs. 22.50 crores vide sanction letter dated 27.02.2008 and 16.12.2009. The limit was further enhanced to Rs. 23.87 crores. On 05.06.2010, the Corporate Debtor availed fresh Term Loan Facility of Rs. 3.25 crores. Corporate Debtor also availed Bank Guarantee facility of Rs. 1.5 crores vide sanction on 02.12.2012.
22. The Corporate Debtor again approached the petition for fresh credit and Term Loan Facility of Rs. 47.75 crores which was sanction on 26.07.2013. The same was reviewed and enhanced to Rs. 13.65 crores vide sanction letter dated 28.12.2015. The final review and renewal of all credit facility availed was approved by the Petitioner vide sanction on 23.05.2017.
23. The Corporate Debtor also executed mortgage of office premises as collateral security and assigned right which several hypothecated rent receivables. Mr. Anubhav Agarwal and Mr. Anil Agarwal executed guarantee deed in favour of petitioner as personal guarantor.
24. On 23.01.2019, the Petitioner sent a letter to the Corporate Debtor intimating that there are overdue payments in the Corporate Debtor's account till 30.10.2018 and demanded a payment of Rs. 2.98 crores to clear the irregularity. The Petitioner declared the account of Corporate Debtor as a NPA on 29.01.2019. On 11.07.2019, the Petitioner recalled the credit facility vide a letter and invoked the guarantee against the personal guarantor and further demanded payment of Rs. 50.99 crores. On 21.08.2019, the Corporate Debtor responded to the said recall notice. On 24.09.2019, the Petitioner issued notice u/s. 13 (2) of the SARFAESI Act, 2002 and on 06.02.2020, the Petitioner proceeded to

take symbolic position of the mortgaged properties situated at RNA Corporate Park, Kala Nagar, Bandra (E), Mumbai. On 13.02.2020, the possession notice was published by the Petitioner in Free Press and Navshakti newspapers.

25. However, the Petitioner in Part-4 of Form-1 had claimed an amount of Rs. 41,30,79,385.14/- being the principal outstanding due as on 31.10.2020. The date of default declared in Form-1 is 31.10.2020. The Corporate Debtor filed its reply and contended that the said petition suffers material defect and hence his liable to be dismissed with cost.
26. The Corporate Debtor claimed that the ministry of law and justice published a gazette of India on 05.06.2020, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 which stated that due to COVID -19 pandemic the business, financial markets and economy had been impacted and had created uncertainty and stress beyond control, due to the Nationwide Lockdown imposed on 25.03.2020, this had added to disruption of normal business operations and hence, it is difficult to find adequate number of resolution applicants to rescue the Corporate person who may default in discharge of debt obligations. Therefore, by way of this ordinance, Section 7, 9 and 10 of the Code stood suspended. The ordinance dated 05.06.2020 further inserted Section 10A of Code which is as follows:

“10A of pension of initiation of Corporate insolvency resolution process.

Notwithstanding anything contained in Section 7, 9 and 10, no application for initiation of Corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.

Provided that no application shall ever be filed for initiation of Corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

27. The Corporate Debtor also pointed out that Ministry of Corporate Affairs vide notification F. No. 30/33/2020-Insolvency dated 24.09.2020 extended the suspension of Section 7, 9 and 10 of Insolvency and Bankruptcy Code for a further period of three months from 25.09.2020. The Notification of Ministry of Corporate Affairs is reproduced below:

“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 September, 2020 for the purposes of the said section.”

28. Further, it is also pointed out the Ministry of Corporate Affairs vide notification F. No. 30/33/2020-Insolvency dated 24.09.2020 extended the suspension of Section 7, 9 and 10 of Insolvency and Bankruptcy Code for a further period of three months from 25.12.2020. The notification is reproduced below:

“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.”

29. In view of the above notification which extended suspension of Section 7, 9, 10 for a period of 9 months and this notification categorically held that the default has occurred during the said period of suspension, the petition for initiation of CIRP against the Corporate Debtor is not maintainable. The Petitioner in Form-1 claims that the date of default

as on 31.10.2020 and sought for an amount of Rs. 55,75,27,571/- as on 31.10.2020. The Petition was filed on 30.12.2020.

30. It is pertinent to look at the intention of legislature that no application for initiation of CIRP against Corporate Debtor shall be filed, for any default arising on or after 25.03.2020 and during the extended period of suspension of Section 7, 9 and 10.
31. This Bench is of the considered opinion that the notification dated 06.06.2020 categorically declared that no application for initiation of Corporate Insolvency Resolution Process of Corporate Debtor shall be filed for any default arising on or after 25.03.2020. The notification also provided an explanation for removal of doubt that this Section shall not apply to any default committed before 25.03.2020. In the instant case, the Petitioner in Form-1 claimed that the date of default is as on 30.10.2020 and claimed an amount of Rs. 55,75,27,571/-. An attempt was made to set back the Date of default by filing an Additional Affidavit by the Petitioner. However, the same is untenable as the date of default in Form-1 is 31.10.2020.
32. It is relevant to refer to judgement of Hon'ble Supreme Court in *Ramesh Kymal vs. Siemens Gamesa Renewal Power Private Limited (2021) 3 SCC* on 09.02.2021, wherein the Hon'ble Supreme Court at para 26 held as follows:

“26 The date of the initiation of the CIRP is the date on which a financial creditor, operational creditor or corporate applicant makes an application to the adjudicating authority for initiating the process. On the other hand, the insolvency commencement date is the date of the admission of the application. This distinction is also evident from the provisions of sub-section (6) of Section 7, sub-section (6) of Section 9 and sub-section (5) of Section 10. Section 7 deals with the initiation of the CIRP by a

financial creditor; Section 8 provides for the insolvency resolution by an operational creditor; Section 9 provides for the application for initiation of the CIRP by an operational creditor; and Section 10 provides for the initiation of the CIRP by a corporate applicant. NCLAT has explained the difference between the initiation of the CIRP and its commencement succinctly, when it observed:

“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 doubt¹⁹ by clarifying that such bar shall not operate in respect of any default committed prior to 25th March, 2020.”

27 We are in agreement with the view which has been taken by the NCLAT for the reasons which have been set out earlier in the

course of this judgment. We affirm the conclusion of the NCLAT. The appeal is accordingly dismissed. There shall be no order as to costs.

28 Pending application(s), if any, stand disposed of.”

33. The only issue fall for determination is whether the provision for Section 10A attracted to an application filed u/s. 7 on 30.12.2020 claiming the default occurred on 31.10.2020.
34. In the backdrop of the actual matric, it can be said that initiation of CIRP against the Corporate Debtor where a default has occurred after 25.03.2020 cannot be initiated in view of the provision engrafted in Section 10A which clearly barred filing of such application by the Petitioner for initiation of CIRP for the default which has occurred on 31.10.2020. The object of legislature was to suspend the operation of Section 7, 9 and 10 in ambit of default arising on or after March, 2020, the date on which nationwide lock down was imposed which affected normal business operation and impacted global economy. Hence, the Petition is dismissed on the ground that there was specific plea in initiating CIRP against Corporate Debtor where the default has occurred during the period when there was specific bar enforced by the statute under Section 10A.

35. Hence, the Petition is dismissed.

Sd/-

Chandra Bhan Singh
Member (Technical)

sd/-

Suchitra Kanuparthi
Member (Judicial)