NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 07/2025
(IA Nos. 45, 46 & 47/2025)

In the matter of:

Kurien Thomas,
The Suspended Director of
Koravampady Estates and
Enterprises Private Limited,
Having Registered office at Post
Bag No.3, Agali Post, Mannarkad
Taluk, Palakkad – 678 581. **… Appellant**

V

1. **The South Indian Bank,**
   Having registered office at SIB
   House, TB Road, Mission Quarters,
   Thrissur, Kerala – 680 001.
   Having its branch office at No.74,
   Ward No.111, Front Side Sumeru
   Towers, Brigade Road,
   Bangalore – 560 025.
   Represented by Chief Manager,
   Recovery Cell.

2. **Mr. Jasin Jose,**
   IBBI Registration Number – IBBI/IPA
   -001/IP-P000695/2017-2018/11225.
   Having address at Ponmattam Madaserry
   House, Mookkannoor PO, Ernakulam,
   Kerala – 683 577. **...Respondents**

Present :

For Appellant : Mr. Ajeesh Kumar S & Mr. Srihari S, Advocates

For Respondents : Mr. M.L. Ganesh, Advocate for R1

ORDER
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

Brief facts of the case are that, M/s. Koravampady Estates and Enterprises Private Limited, was the company, which stood incorporated as per the provisions of the Companies Act, 1956, as back as on 30.09.1998. The company in itself was engaged in the business of growing agricultural crops such as coffee, pepper and cardamom. For the purposes of augmenting of the business activities in which the Appellant company was involved, they required such financial assistance which was granted by the Financial Creditor in form of working capital facility limit of INR. 312.99 lakhs, renewable annually, on 05.10.2015 and in relation thereto, a sanction letter was issued by the bank to the Appellant company sanctioning the aforesaid Cash Credit Agriculture Loan (CCAL). On account of the aforesaid sanction of the agricultural loan and to bind the terms of loan, the Appellant executed an Agreement of Hypothecation and a demand promissory note in favour of the Respondent Bank on 08.10.2015. Further, an earmarking agreement was executed on 09.10.2015 and Memorandum of Deposit of Title Deeds (MOTD) was executed on 13.10.2015 between Appellant, Corporate Debtor and the Respondent Financial Creditor. The Corporate Debtor continued to avail the said credit facilities and the Respondent/Financial Creditor renewed and sanctioned the same on 24.09.2018 and on 14.12.2020.

2. When the aforesaid Cash Credit Agricultural Loan (CCAL) facility was renewed on 24.09.2018 and thereafter it was renewed on 14.12.2020, the Corporate Debtor executed the necessary agreements in form of the Hypothecation Deed, and the corresponding Demand of Promissory Note for a sum of Rs.3,12,99,000/- on both occasions. Admittedly, in continuation of the aforesaid bank transactions, as against the advancement of the financial assistance, the Corporate Debtor and its guarantors, the Appellant herein, issued acknowledgement of the debt and security issued by the Appellant company, confirming and acknowledging balance of the outstanding amount of INR. 2,86,41,686/- towards the credit facility, as extended on 23.09.2018. Further one more acknowledgment of debt and security was issued by the Corporate Debtor and its guarantors, the Appellant herein to the Bank confirming and acknowledging the balance outstanding amount of INR. 3,84,23,630/- payable towards CCAL on 14.12.2020.

3. In continuation to the request of conversion of CCAL facility to a term loan made 19.10.2020, the Appellant yet again wrote a letter to the bank on 15.03.2021, requesting for the conversion of the CCAL facility to a term loan. It is contended by the Appellant that before the aforesaid request of conversion of the CCAL limit into a term loan could be crystallized, the Respondent bank declared the account as to be the NPA on 31.05.2021 alleging the default on the Appellant in the repayment of the dues to be paid to the Financial Creditor. The aforesaid declaration of the account as NPA was uploaded and the records of default were placed on the NeSL Portal with 31.05.2021 as the date of default.

4. The Respondent bank issued a recall notice on 03.07.2021 to the Appellant, giving him a final chance to pay the total outstanding amount of INR. 3,53,47,509.46/- arising out of the said credit facility. Subsequently on 22.07.2021, the Respondent bank, proceeded to initiate the proceedings under Section 13(2) of the SARFAESI Act and issued the Demand Notice, calling upon the Appellant to pay the outstanding dues of Rs.4,22,44,638.75/-, which was shown to have been due to be paid as on 21.07.2021.

5. Instead of settling the dues as demanded in the notice under Section 13(2) of the SARFAESI Act, the Appellant company (Corporate Debtor) preferred a Writ Petition being **Writ Petition No.448/2022,** before the Hon'ble High Court of Karnataka praying for a writ of mandamus to the Respondent Bank for conversion of CCAL facility into a term loan and for various other prayers as sought for therein the Writ Petition. The Hon'ble High Court of Karnataka initially passed an Interim Order on 25.01.2023, that, "till the issue of conversion of CCAL facility into the term loan, is not considered, the Respondents were restrained to enforce the notices issued under Section 13(2) of the SARFAESI Act".

6. It is contended by the Appellant that during the pendency of the Writ Petition and the operation of the said Interim Order, the Respondent bank has initiated a parallel proceedings under Section 7 of the I & B Code, 2016, by filing Section 7 Application before the NCLT, Kochi Bench. He has further contended that the Bank proceeded further with SARFAESI Proceedings and issued e-auction

notice on 08.01.2024, by way of a general public advertisement, notifying the sale of the immovable commercial property of the Corporate Debtor, which was situated in the Church Street, Bengaluru, to be held on 13.02.2024 on "as is where is" "as is what is" and "whatever there is" basis at a reserve price of Rs.26,61,67,000/-.

7. Further on 14.02.2024, the Respondent Bank issued the 2nd E-Auction Sale Notice, notifying that the sale of the said immovable property would be conducted on 05.03.2024 with a reduced reserve price of Rs.23,96,00,000/-. It is an admitted case of the parties that the sale of the property was carried through **an auction conducted on 05.03.2024** and the sale certificate was issued on 13.03.2024 in favour of the auction purchasers Mr. Mohamad Omar Farook and Mrs. Nasima Farook Sundka and the intimation with regard to the confirmation of sale, was also conferred upon the Appellant by the issuance of a communication by the Financial Creditor on 28.03.2024, where the Appellant was intimated that out of the sale proceeds, Rs.3,82,11,953/- being the balance outstanding in the Corporate Debtor CCAL account is parked with the authorised officer of the Bank and will be appropriated towards the loan dues after obtaining necessary orders/directions from the Hon'ble High Court of Karnataka in WP 448/2022 and that the balance Rs.15,74,02,556/- has been credited to the Appellant's saving bank account 0108053000009872.

8. The Appellant herein once again approached the Hon'ble High Court of Karnataka by filing a **Writ Petition No.10365/2024** on 03.04.2024 challenging the issue of Sale Certificate of 13.03.2024 and obtained an interim stay order on 05.04.2024. Meanwhile, in the proceeding under Section 7 of the I & B Code, Learned Adjudicating Authority on 30.05.2024 passed the Impugned Order under Section 7 of the I & B Code, whereby admitting the Corporate Debtor, M/s. Koravampady Estates and Enterprises Private Limited in to Corporate Insolvency Resolution Process (CIRP).

9. Based upon the reasoning, which has been assigned in para 6 & 7 of the Impugned Order, Learned Adjudicating Authority has proceeded to pass the said order making the observation thereof, that, based on documents that have been produced, the debt is Rs.3,64,09,280/- which is beyond the threshold of Rs.1 Crore as stipulated in the code, that the date of default as per NeSL record is 31.05.2021 and therefore the application will not hit by Section 10A of the Code and that since petition is filed on 23.11.2023, it will be within limitation period under law.

10. The Learned Adjudicating Authority while passing the Impugned Order had observed that the definition of the "Financial Creditor", as contemplated under Section 5(7) means **"a person from whom the financial debt is owed and it includes a person to whom such debt has been legally assigned or transferred to"**, that the records show that there is an existing debt and the said debt is quantified and qualifies to be financial debt as defined under Section 5 (8) of the

Code, which is more than the threshold of Rs.1 Crore and since there is default, which has been established to have been committed by the Corporate Debtor and accordingly directed the commencement of proceedings under Section 7 of the I & B Code, 2016, by passing the impugned order.

11. The Appellant has developed a case, that, the proceedings under Section 7 would be barred by Section 10A of the I & B Code, owing to the fact that the Loan (CCAL facility) was renewed on 14.12.2020, the default should have occurred on 14.03.2021 and if date of NPA is 31.05.2021 as per Financial Creditors own admission, date of default should be at least 90 days prior to it which will be 01.03.2021, both of which will fall within 10A period (25.03.2020-25.03.2021) and that the Respondent has deliberately fixed it to be 31.05.2021 to escape the implication of the provisions prescribed under Section 10A. He has further contended that Hon'ble High Court had given a status quo order in SARFAESI proceedings because the Financial Creditor sought to sell the agricultural land of the Corporate Debtor and in order to circumvent the same, Financial Creditor has filed the Application under Section 7 of the Code and hence the impugned order admitting the said application will be bad in law. He has further submitted that the Financial Creditor sold the Bengaluru property to the Appellant/guarantor for an amount much higher than the total dues of the Corporate Debtor and when that amount remained at its disposal, the Financial Creditor should not have continued the CIRP Proceedings leading to the issue of impugned order. He has further contended that Learned NCLT has rendered various observations on the date of

default, based on contradictory notions as recorded in para 7 of the impugned order, that it has relied on mere conjectures and assumption to observe that subsequent agreement may give rise to a new date of default and that as per the demand notice, as per CCAL renewal agreement ands as per date of declaration of NPA it is clear that date of default in the instant case will fall within 10A period and hence the impugned order will be bad in law and is liable to be set aside.

12. The said submission made by the Learned Counsel for the Appellant is vehemently opposed by the Respondent contending thereof that none of the contentions raised by the Appellant could be considered to be sustainable for the reason being that all the legal rights of the Appellant as against the Impugned Order of 30.05.2024, passed under Section 7 of I & B Code, application by the Learned Adjudicating Authority and all the actions taken subsequent to passing of the order, will cease to exist on account of the letter dated 28.08.2024, in which the **Appellant sought for the settlement of the loan account by undertaking to repay the outstanding amount** as per the Demand Notice.

13. The Learned Counsel for the Respondent has further contended that, the aforesaid act of the Appellant would amount to an unqualified admission of default, and his liability to pay and that having issued an offer of settlement to the Financial Creditor with an undertaking to pay, and having not disclosed the said fact in the Appeal, the Appellant would have to be considered as not having approached the

Tribunal with clean hands by a material concealment of fact which would be having bearing on the appeal and which ought to have been disclosed.

14. The Respondent Financial Creditor has submitted that the entire claim of the Appellant, would be vexatious as he has executed a fresh loan security, on 14.12.2020, wherein after a fresh action has arisen. In relation to the argument extended pertaining to Section 10A of the I & B Code, he submits that the entire case of the Appellant is falsified as Section 10A pertains to a period which is not the case in the present context. Section 10A which is extracted hereunder: -

> *"**10-A. Suspension of initiation of corporate insolvency resolution process** —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 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.]"*

15. Thus provision of Section 10A will have no bearing under the facts and circumstances of the instant case for the reason being, that the default in the present case has arisen after 24.03.2021, that demand notice under section 13(2) of SARFAESI Act mentions date of NPA as 31.05.2021 only, that the Corporate Debtor was not able to service the interest on the CCAL loan on 31.10.2019 that it

is a continuing default. He has submitted that owing to the RBI guidelines and in view of the directions given by the RBI due to the pandemic situation, and in view of the ratio laid down by the Hon'ble Apex Court in the matters of ***Small-Scale Industries Manufacturers Association Vs Union of India and others***, as adjudicated upon 23.03.2022, there are various governing facts which has to be taken into consideration pertaining to, as to what would be, the expanse of exercise of powers of judicial review as contemplated in para 71 & 72 of the said Judgment. Relevant para 72 & 72 is extracted hereunder: -

> *"71. The correctness of the reasons which prompted the Government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the Government.*
>
> *72. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate".*

16. He submitted that owing to the fact that the RBI had issued a notification dated 07.04.2021 which has empowered all the financial institutions to declare asset classification for the period commencing from 01.09.2020, as per income recognition, Asset classification and Provisioning (IRAC) norms issued by RBI,

that the Financial Creditor has acted as per the said circular and since the said loan account was irregular, it was classified as the NPA on 31.05.2021 in the normal course and this date, being outside of 10A period, will not be falling within the ambit of exemption as provided under Section 10A of I & B Code, 2016.

17. It is submitted by Learned Counsel for the Respondent that since the Financial Creditor, had initiated the SARFAESI proceedings in respect of the personal loan account of the Appellant and not in respect of the CCAL facility availed by the Corporate Debtor company, the pendency of the Writ Petition will have no bearing, for the reason being that, the Financial Creditor always has a right under doctrine of election either to elect for the SARFAESI proceedings or for drawing of the IBC proceedings, since the law does not prohibit the Financial Creditor from initiating the parallel proceedings, the Financial Creditor cannot be accused of contravention of any of the established covenants of law for initiation of the proceedings for drawing the CIRP proceedings against the Appellant. He further submitted that since Section 7 was filed as back as on 17.11.2023 and subsequent to it there was a proposal of settlement, the debt and default stand admitted, coupled with the fact that SARFAESI Proceedings were undertaken in respect of personal loan account of the Appellant and the excess sale consideration obtained from the auction held on 06.03.2024 cannot adjusted against CCAL account on account of interim stay of the Hon'ble High Court obtained at the behest of the Appellant, the present Appeal seeking to challenge the Impugned Order, would be bad in the eyes of law because all elements for the purposes of drawing

a proceeding under Section 7 of the I & B Code stood satisfied, owing to the establishment of debt and the date of default, being outside 10A period, the application made within period of limitation, the admission of liability, coupled with assurance to pay and thereafter defaulting on the same, despite of assurance. Apart from it, since the sale has already been proceeded under the SARFAESI Act and which now stands confirmed by the issuance of the Sale Certificate, the entire proceedings by way of the instant appeal, while putting the challenge to the admission of the Corporate Debtor into the CIRP Proceedings, would be bad and cannot be sustained in the eyes of law. Thus, owing to the above, the Appeal lacks merit, and the same is accordingly dismissed, more particularly when the Appellant while approaching this Appellate Tribunal had concealed material fact about the pendency of the Writ Petitions and his own consent extended in the CIRP Proceedings for the settlement of dues, which amounts to be an admission of debt and default, which are the prime factors requires to be satisfied for commencement of Section 7 proceedings by admitting the Corporate Debtor into CIRP by Respondent No.1. Thus, the Company Appeal lacks merit and the same is accordingly dismissed for the aforesaid reasons.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

06.08.2025
VG/MS/RS