

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

ITEM No.301
C.P. (IB)/9(AHM)/2024

Order under Section 7 IBC

IN THE MATTER OF:

Canbank Factor Ltd.

....Applicant

Vs.

M/s. Shrenik Ltd.

....Respondent

Order delivered on: 07/03/2024

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 the order. The order is pronounced in the 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.09/AHM/2024

(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 Canbank Factors Limited,
(CIN: U85110KA1991PLC011960)
TReDS Business Unit: No. 67/ 1,
2nd Floor, Kankapura Main Road,
Near Lalbagh West Gate,
Basavnagudi, Bangalore - 560004.

...Applicant/Financial Creditor

VERSUS

M/s. Shrenik Limited,
(CIN: L51396GJ2012PLC073061)
Having its registered office at:
No. 505 - 508, Ten / 11,
Beside Mardia Plaza,
C.G. Road, Ahmedabad – 380009.

...Respondent/Corporate Debtor

Order Pronounced on: 07.03.2024

CORAM:

**SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)**

Appearance:

For the Applicant : Mr. Urvesh K. Gor, Advocate

O R D E R
[Per: Bench]

1. The Present Application is filed on 26.12.2023 by the Applicant M/s. Canbank Factor Limited, (hereinafter referred to as **“the Applicant/Financial Creditor”**) against the Respondent M/s. Shrenik 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.1,05,57,534.35/-** including interest as on 30.11.2023. The date of default as stated to be 20.08.2020.
2. On perusal of Part-I of the Form-1 reveals that the application is filed by the Applicant/Canbank Factor Limited, is a subsidiary of Canara Bank is registered as a Non-Banking Finance Company (**“NBFC”**) incorporated under **“Indian Companies Act, 1956”**, having its Registered office at 67/1, 2nd Floor, Kanakpura Main Road, Near

Lalbagh West Gate, Basavnagudi, Bangalore-560004 through one Mr. Pradeep Kumar Solasa, working as Business Head who has been authorised by an the Power of Attorney issued on 14.07.2023 which is annexed at **Annexure-3** on pages 31 to 35 of the present application.

3. On perusal of Part-II of the Form-1 reveals that the Respondent is one M/s. Shrenik Limited having CIN No. L51396GJ2012PLC073061. The Respondent was incorporated on 20.12.2012 with Registration No:073061 and having registered office at Plot No. 505-508, Ten 11, Chimanlal Giridharlal Road, Beside Mardia Plaza, Ahmedabad, Gujarat-380009.
4. On perusal of Part-III of the Form-1 reveals that the Applicant has proposed the name of the Interim Resolution Professional (**'IRP'**) **Mr. Ravi Kapoor**, having registration No. IBBI/IPA-002/ IP-N00121/ 2017-18/ 10290. The proposed IRP has also filed his consent in Form-2, written communication annexed with the Application as Annexure-34 (Page-210-212) 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 pecuniary or personal relationship with any of the stakeholders entitled to distribution under Section 53 of 178 of the Code.

5. On perusal of Part-IV of the Form-1 reveals that total dues as claimed by the Applicant are **Rs.1,05,57,534.35ps** consisting of principle and interest up-to 30.11.2021.
6. The brief facts as contended by the Applicant are as under:-
- a. It is stated that the Respondent - M/s. Shrenik Limited is engaged in the business of wholesale trading in different types of papers like copier, maplitho, coated paper, FBB Board and a speciality paper commodity royal executive bond.
 - b. It is submitted that the Respondent Company has inked a Master Buyers agreement with one M/s. Mynd Solutions Pvt. Ltd. on 06.12.2019 for participation on TReDs Platform called M1 exchange, for discounting and rediscounting of the Trade Receivables of the Suppliers due from Buyers, through the Financier enrolled on M1. It is stated that the Respondent Company has also given a National Automated Clearing House Mandate dated 28.01.2023 authorising Mynd solutions Private Limited to debit upto a sum of Rs.1.00 Crore from its bank account bearing no.1003002100024159 in Punjab National Bank.
 - c. It is submitted that the Applicant has also inked Master Financer Agreement with M/s. Mynd Solutions Pvt. Ltd. on 09.01.2018. As stated that as per the agreement, the Applicant as a Financier had to provide

services subject to terms and conditions as mentioned therein. It is stated that the Respondent was one of the buyers under M1 platform with a Buyer Limit of Rs.200.00 Lakhs and therefore, the Financial Creditor had bided for the bills raised by Data Processing Forms Pvt. Ltd. against the Respondents. The details of invoices raised against the Respondent by its seller to whom the Applicant herein had paid are as under:

SL NO	INVOICE NO	INVOICE DATE	INVOICE VALUE	PURCHASE DATE	ORIGINAL DUE DATE
1	935/19	01/03/2020	6126652.00	11/03/2020	15/05/2020
2	934/19	01/03/2020	6048532.00	11/03/2020	26/05/2020
3	936/19	01/03/2020	5828502.00	11/03/2020	29/05/2020
TOTAL:			18003686.00		

A copy of Master Agreement dated 09.01.2018 has been annexed with the present petition as Annexure 7 at page nos. 47-68. Copies of invoices raised against the Respondents by its sellers to whom the Applicant has paid are annexed as Annexure 11 at page nos. 95-103 to the instant application.

- d. It is stated that the aforementioned invoices were due by the Respondent on its original due date towards discharge of their liability against the Applicant. As submitted, the Applicant/Financial Creditor had bided for 3 invoices bearing nos. 395/19, 934/19 and 936/19 and thereafter paid the amount of Rs.1,80,03,686/- as stipulated in the said invoices to Data Processing Forms Pvt. Ltd. who had supplied goods to the Respondents. A copy of the registered slip

showing various dates of disbursement done by the Applicant against the aforementioned invoices have been annexed as Annexure-6 to the present petition on page nos. 41-47.

- e. It is submitted that due to outbreak of COVID-19, the Respondent had failed to make timely payment of the aforementioned invoices. In view of the said circumstances, the Respondent had requested for extension of time for paying the outstanding dues. It is stated that the Applicant after considering the guidelines issued by the Reserve Bank of India (“RBI”) allowed the extension of timelines for the payment of outstanding dues to the Respondent. It is further stated that the Respondent failed to make payments on the extended due dates and committed a default under the provisions of the I.B. Code, 2016.
- f. It is submitted that the Applicant/ Financial Creditor granted extension of time to the Respondent as per the details given below:

SL NO	INVOICE NO	INVOICE DATE	INVOICE VALUE	PURCHASE DATE	ORIGINAL DUE DATE	1 ST EXTENSION DUE DATE
1	935/19	01/03/2020	6126652.00	11/03/2020	15/05/2020	14/07/2020
2	934/19	01/03/2020	6048532.00	11/03/2020	26/05/2020	25/07/2020
3	936/19	01/03/2020	5828502.00	11/03/2020	29/05/2020	28/07/2020

- g. It is submitted that the Respondent could not honour their commitment to pay on the extended due date also, and again requested for further extension on

account of severe cash crunch faced by them due to COVID-19. During July 2020, the Applicant permitted more 30 days as an extension and revised due dates as per the following details:

INVOICE NO	INVOICE DATE	INVOICE VALUE	PURCHASE DATE	ORIGINAL DUE DATE	2nd Extension Due Date
935/19	01/03/2020	6126652.00	11/03/2020	15/05/2020	13/08/2020
934/19	01/03/2020	6048532.00	11/03/2020	26/05/2020	24/08/2020
936/19	01/03/2020	5828502.00	11/03/2020	29/05/2020	26/08/2020

- h. It is submitted that the National Automated Clearing House Mandate (“NACH”) of the Respondent had bounced for all the invoices on 13.08.2020, 24.08.2020 and 27.08.2020 with remark of insufficient funds. Therefore, the Applicant issued a demand notice dated 11.09.2020 u/s of the Payment & Settlement System Act, 2007 seeking recovery of dues. A copy of the intimation showing insufficient balance in the account of the Respondent has been annexed as Annexure-12 at page nos. 104-106. A copy of the notice dated 11.09.2020 has been annexed herewith as Annexure-13 at page nos. 107-111.
- i. It is submitted that the Respondent has admitted that its financial conditions was not good due to COVID 19 Pandemic and asked for One Time Restructuring on 17.10.2020 and 13.11.2020 through email. The Financial Creditor has accepted the OTR offer for outstanding of 3 bills totalling for an amount of Rs. 1,62,79,686/- to be paid by 31.01.2021 with terms and

conditions mentioned in the sanction letter. A copy of the email wherein the respondent has asked for OTR has been annexed herewith and marked as Annexure 14 at page no. 112-114 A copy of the sanction letter by the Financial Creditor listing the terms and conditions of the OTR has been annexed herewith and marked as Annexure 15 at page no. 115-116.

- j. It is submitted by the Financial Creditor that though the entire request for timeline extensions and OTR were considered by it, there was no payment from the Respondents as committed. Hence, on 26.05.2021, the Financial Creditor was compelled to issue Legal Notice through its Advocate seeking recovery of its dues. It is categorically mentioned here that after a long overdue from the Respondents and despite several reminders, time extensions and OTR, the Financial Creditor has classified the account of the Respondent as NPA.
- k. It is submitted that the Respondent has through its Advocate replied to the notice of the Applicant on 16.06.2021 and has taken stand that they want to repay the dues of the Financial Creditor but because of COVID 19 they are financial imbalanced. The say of the Respondent is clear that they are admitting their dues, default and acknowledged their liability to repay to Financial Creditor and hence the debt of the Applicant is crystallised and undisputed. A copy of the reply sent by the respondent admitting the default has been

annexed herewith and marked as Annexure 18 at page no. 123-131.

1. It is submitted that the Respondent has again requested for OTR vide its email dated 15.06.2021 and letter dated 16.06.2021 which was replied on 19.06.2021 and confirmed on 19.06.2021 by the Respondent. The Applicant has then sanctioned OTR vide letter dated 25.06.2021 for payment of Rs.1,50,29,686/-in 17 EMI's out of which 16 EMI were of Rs. 10.00 Lakhs and 1st EMI was of Rs.4,36,482/- with terms and conditions stipulated in the sanction letter. A copy of the letter dated 15.06.2021, 16.06.2021, 19.06.2021 has been annexed herewith and marked as Annexure 17 at page no. 121-122.

m.It is submitted that though the OTR was sanctioned as demanded by the Respondent but still the Respondent failed to confirm the said sanction letter allowed by the Applicant. Despite various reminders on 07.07.2021, 26.07.2021 sent by the Applicant to the Respondent for confirmation of the OTR, the Respondent failed to confirm the same. As a result of which the Applicant was compelled to take legal recourse against the Respondent. A copy of the reminders sent by the Financial Creditor to the Respondent regarding the confirmation of OTR has been annexed herewith and marked as Annexure 19 at page no. 132-135. The Applicant has lastly on 06.08.2021 issued letter

demanding due payment of Rs.1,63,20,732.14/- as on 31.07.2021 within 15 days' time failing which the Applicant shall be compelled to file application under IBC Code 2016. A copy of the letter dated 06.08.2021 has been annexed herewith and marked Annexure 19 at page no. 132-135.

- n. It is submitted that after the harsh follow up was started by the Applicant, on 24.08.2021, the Respondent has replied to notices and assured to repay the dues in instalments of Rs.5.00 Lakhs monthly with OTR proposal. A copy of the letter dated 24.08.2021 has been annexed herewith and marked as Annexure 20 at page no. 136-140.
- o. It is submitted that on 17.11.2021, the Respondent has once again requested for OTR offer and intended to repay its dues and interest in 24 equal instalments of Rs.7,89,327.92/- by admitting its due amount toward Applicant for an amount of Rs.1,66,85,115.80/-. A copy of the letter dated 17.11.2021 has been annexed herewith and marked as Annexure 21 at page no.141.
- p. It is submitted that on 30.11.2021, the Applicant has sanctioned the OTR in the subject account by converting the outstanding liability into 24 EMIs amounting to Rs.7,89,327.92. As per the terms of the sanction letter the Respondent has to deposit 24 cheques for 24 instalments which will be paid on 10th

of every month starting from 10.12.2021 and last EMI will be paid on 10.11.2023. The Respondent had also agreed for the 12.50% interest applicable on the due amount and failing to adhere with any of the terms and conditions will lead the OTR to be cancelled. The Applicant states that the Respondent has inked Pronote and DPN dated 13.12.2021 in support of OTR sanctioned on 30.11.2021 in favour of Applicant and accepted its liability and willingness to pay with terms, conditions and interest acknowledging the dues, A copy of the letter dated 17.11.2021 has been annexed herewith and marked as Annexure 21 at page no. 4. A copy of DPN signed and executed by the Respondent with Applicant are annexed herewith and marked as Annexure 24 at page no. 146-149. A copy of Pronote signed and executed by the Respondent with Applicant are annexed herewith and marked as Annexure 25 at page no. 150.

- q. The Applicant states that Respondent has also passed a Board Resolution dated 14.10.2021 for inking the documents and OTR for Rs.1,66,85,115.80/- with Applicant, a copy whereof is annexed herewith and marked as Annexure 22 at page no. 142.
- r. The Applicant states that though the Respondent Company has initially agreed to pay dues in 24 equal instalments, vide letter dated 13.12.2021; however it has submitted 6 Cheques only with request to deposit

remaining 17 cheques shortly. It is submitted that on 19.04.2022 the Respondent Company has deposited 3 cheques with the Applicant but after that there was no payment or cheques were deposited by the Respondent Company to discharge its dues. A copy of letter dated 13.12.2021 addressed by the Corporate Debtor to Financial Creditor are annexed herewith and marked as Annexure 26 at page no.151. A copy of letter dated 19.04.2022 addressed by the Corporate Debtor to Financial Creditor are annexed herewith and marked as Annexure 27 at page no. 152.

- s. It is submitted that Applicant has addressed letter of reminder dated 19.09.2022, 17.11.2022, 28.12.2022 and 16.02.2023 to corporate debtor for delay in EMI payment and non-submissions of remaining cheque, is attached herewith and marked as Annexure 28 at page no.153-157.
- t. The Applicant states that though it has took regular follow up and demanded payment of due amount, deposit of cheques, there was no response from the Respondent Company, hence on 24.03.2023, the Financial Creditor has cancelled the OTR sanctioned to Respondent and OTR issued a letter informing the same with demand of due amounting to Rs. 1,03,54,054/- with 2.00% penal interest. A copy of the letter dated 24.03.2023 has been annexed herewith and marked as Annexure 29 at page no.158.

- u. The Applicant states that after there was no response from the Respondent company after cancellation of OTR, they issued demand notice on 03.04.2023, to Respondent for payment of due amount failing which the Applicant will be compelled to file application u/s 7 of the IBC Code, 2016 as the Respondent has lost its potential to repay its dues and have no solvency. A copy of the demand notice dated 03.04.2023 has been annexed herewith and marked as Annexure 30 at page no. 159-169.
- v. The Respondent has vide its letter dated 17.04.2023 replied to notice dated 03.04.2023 and acknowledged its default against the Financial Creditor. The Respondent admitted that it failed to discharge its liability towards the Applicant and did not give any concrete reply with regards to payment of the outstanding dues, A copy of the demand notice dated 17.04.2023 has been annexed herewith and marked as Annexure 30 at page no. 159-169.
- w. As submitted, the Petitioner has registered the default of Corporate Debtor with Information Utility for the dues as on October 2023, a copy whereof is annexed herewith and marked as Annexure - 31 at Page No. 1918. The Petitioner reserves its right to submit fresh NESL certificate as on November 2023 if required.
- x. It is submitted that the Applicant is entitled to charge the interest on dues as per agreed sanction letter of

OTR dated 30.11.2021, which is binding on the Respondent and which Respondent has agreed to pay to the Applicant.

y. It is submitted that the Respondent has failed to honour the terms and conditions of the credit facilities granted by the Applicant and hence, the Applicant has right to classify their account under the head of defaulted account. The last payment prior to cancellation of OTR was done by the Respondent to the Petitioner 11.04.2023 of Rs.2,00,000/-. Further the Respondent became Non-Performing Asset earlier on 31st March 2021 only. Moreover the Respondent after acknowledging the terms and conditions of the OTR, Corporate Debtor did not pay remaining monthly instalments on their respective due dates which has ultimately led the OTR cancelled. The Respondent vide its reply dated 24.03.2023 has admitted its default and its failure to discharge the liability towards the applicant.

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

Sr. No.	Annexure	Particulars	Page No.
1	--	Memo of Parties	1-2
2	---	Memo of Application Form 1 of IB Code, 2016 on behalf of Applicant of Applicant i.e. Canbank Factor Ltd.	3-27
3	1	Copy of Certificate of Registration of Applicant Non-Banking Finance Company (NBFC) with the Reserve Bank of India.	28

4	2	Copy of MCA Master Data and details of Applicant	29-30
5	3	Copy of letter of authority in favour of authorised signatory	31-35
6	4	Copy of Certificate of Incorporation by MCA to Respondent	36-38
7	5	Copy of OTR Sanction Letter dated 30.11.2021 issued by the Applicant	39-40
8	6	Copy of Statement of Account	41-47
9	7	Copy of Master Financer Agreement dated 09.01.2018 between Mynd Solutions Pvt. Ltd. And Canbank Factor Ltd.	48-68
10	8	Copy of Master Buyer Agreement Between Mynd Solutions Pvt. Ltd. And Shrenik Limited dated 06.12.2019	69-90
11	9	Copy of the Board Resolution Passed at the meeting of directors of the Corporate Debtor held on 11.11.2019	91-93
12	10	Copy of the NACH Mandate dated 28.01.2020	94
13	11	A copy of the Bid Acceptance by the Applicant dated 07.03.2020 for the bills raised by Data Processing Forms Pvt. Ltd. Raised to Corporate Debtor	95-103
14	12	Copy of the NACH Auto Debit bounced Advice dated 13.08.2020, 24.08.2020 and 27.08.2020	104-106
15	13	Copy of notice by Financial Creditor to Corporate Debtor demanding payment u/s. 25 of Payment & Settlement System Act, 2007 dated 11.09.2020	107-111
16	14	A copy of OTR Request letter submitted by the Respondent to the Applicant dated 17.10.2020 and 13.11.2020	112-114
17	15	A copy of Financial Creditor has accepted OTR offer for Outstanding of 3 bills totalling for an amount of Rs.1,62,79,686/- to be paid by 31.01.2021 with terms and conditions mentioned in the sanction letter	115-116
18	16	Copy of the legal notice issued through an Advocate by the Applicant dated 26.05.2021	117-120
19	17	Copy of Request of OTR vide its email dated 15.06.2021 and letter dated 16.06.2021 which was replied on 19.06.2021 and confirmed on	121-122

		19.06.2021 by the Respondent	
20	18	Copy of the Reply to notice by Respondent accepting the default and proposed for repay in instalments dated 11.06.2021 through its Advocate	123-131
21	19	Copy of Correspondence / letter dated 07.07.2021, 26.07.2021 and 06.08.2021 by the applicant to Respondent reminding to honour terms of OTR sanctioned	132-135
22	20	Copy of reply to notice by Respondent dated 24.08.2021	136-140
23	21	Copy of OTR requested by the Respondent to Applicant acknowledging its debt and willingness to repay in 24 equal instalments dated 17.11.2021	141
24	22	A copy of Board Resolution passed by the Respondent for Executing OTR with Financial Creditor dated 14.10.2021	142
25	23	Copy of OTS Sanctioned by Applicant as proposed by the Respondent with terms and conditions as on 30.11.2021	143-145
26	24	Copy of Take Delivery DPN signed and executed by the Respondent with Applicant for OTR amount dated 13.12.2021	146-149
27	25	Copy of Pronote signed and executed by the Respondent with Application for OTR amount dated 13.12.2021	150
28	26	Copy of letter addressed by the Respondent to Applicant dated 13.12.2021	151
29	27	Copy of letter addressed by the Respondent to Applicant dated 19.04.2022	152
30	28	Copy of reminder letters dated 19.09.2022, 17.11.2022, 28.12.2022 and 16.02.2023 issued by the Applicant to Respondent for delay in EMI payment and non-submissions of remaining cheque	153-157
31	29	Copy of OTR cancellation letter dated 24.03.2023 sanctioned to Respondent due to breach of terms and conditions	158
32	30	Copy of notice dated 03.04.2023 issued by the Applicant to Respondent	159-169

		under IBC Code for default in repayment of OTR Dues and reply of Respondent dated 17.04.2023 against the notice dated 03.04.2023 of Applicant	
33	31	The copy of record of the default with the Information Utility	170-189
34	32	The copy of order dated 27.10.2023 passed in CP(IB) No.143 of 2023 passed by this Tribunal	190
35	33	Affidavit verifying the Petition	191-209
36	34	A copy of Form 2 Consent letter of the proposed Interim Resolution Professional, Mr. Ravi Kapoor	210-212
37	35	Proof of Payment of Application Court Fees	213
38	36	Vakalatnama	214
39	37	Proof of dispatch of this Application to the Respondent Corporate Debtor	215

8. We heard the Learned Counsels from both the sides and perused the material available on record.
9. On perusal of the record, it is found that on 11.03.2020 the Applicant provided financial assistance of Rs.1,80,03,686/- to the Respondent by way of purchase of three Bills being invoices bearing nos. 395/19, 934/19 and 936/19 dated 01.03.2020 raised by Data Processing Forms Pvt. Ltd. against the Respondent for which various loan security documents were executed by the Respondent and M/s. Mynd Solutions Pvt. Ltd in favour of the Applicant. The said amount was originally to be repaid by 15.05.2020, 26.05.2020, 29.05.2020 towards discharge of the liability of each invoice by the Respondent to the Applicant.
10. However, due to outbreak of COVID-19, the Respondent failed to make timely payment of the aforementioned

invoices. In view of the said circumstances, the Respondent had requested for extension of time for paying the outstanding dues. The Applicant after considering the guidelines issued by the Reserve Bank of India (“RBI”) allowed the extension of timelines to the Respondent for the payment of outstanding dues of each invoice by 14.07.2020, 25.07.2020, 28.07.2020 respectively.

11. However, the Respondent again could not honour the commitment to pay on the extended due date also, and again requested for further extension on account of severe cash crunch faced by them due to COVID-19, during July 2020. The Applicant again permitted more 30 days as an extension and revised due dates for payment of outstanding dues of each invoice by 13.08.2020, 24.08.2020, 26.08.2020 respectively.
12. The National Automated Clearing House Mandate (“NACH”) of the Respondent had bounced for all the invoices on 13.08.2020, 24.08.2020 and 27.08.2020 with remark of insufficient funds. Therefore, the Applicant issued a demand notice dated 11.09.2020 u/s of the Payment & Settlement System Act, 2007 seeking recovery of dues.
13. Thereafter, the Respondent asked for One Time Restructuring which was also sanctioned from time to time. The last OTR was on 30.11.2021 which was subject account by converting the outstanding liability into 24 EMIs amounting to Rs.7,89,327.92. As per the terms of the

sanction letter the Respondent had to deposit 24 cheques for 24 instalments which will be paid on 10th of every month starting from 10.12.2021 and last EMI will be paid on 10.11.2023. The Respondent had also agreed for the 12.50% interest applicable on the due amount and failing to adhere with any of the terms and conditions will lead the OTR to be cancelled. The Respondent has signed Pronote and DPN dated 13.12.2021 in support of OTR sanctioned on 30.11.2021 in favour of Applicant and accepted its liability and willingness to pay with terms, conditions and interest acknowledging the dues.

14. However, the Respondent submitted only 9 Cheques and paid only 9 EMI upto 10.08.2022. Despite regular follow up and demanded payment of due amount, there was no response from the Respondent. Hence, on 24.03.2023, the Applicant cancelled the OTR sanctioned on 30.11.2021 to Respondent and issued OTR Cancellation Letter informing the same with demand of due amounting to Rs. 1,03,54,054/- with 2.00% penal interest. A copy of the letter dated 24.03.2023 has been annexed and marked as Annexure 29 at page no.158.
15. The Applicant has also filed Form-D issued by National E-Governance Services Limited (“NeSL”), being record debt and default in which date of default is recorded as **13.08.2020** with status “Deemed to be Authenticated” which is annexed and marked as Annexure 31 at page no.170.

16. This application has been filed under Section 7 of the I.B. Code, 2016 for default of amount of **Rs.1,05,57,534.35/-** due on 30.11.2023. Initially, the date of default recorded in Para-IV of the Form-1 as 31.03.2021 (being NPA date) i.e. after the ending of 10A exempted period.
17. Later on, the Applicant/Financial Creditor sought permission to rectify the Form-I in terms of Section 7(5)(b)(c) of the I.B. Code, 2016 which was allowed vide this Bench's order dated 30.01.2024.
18. On 06.02.2024, the Applicant rectified the defect in the clause of date of default by incorporating the date of default as **13.08.2020** which is in consonance with Form-D being record of default issued by National E-Governance Services Limited. However, the date of default as incorporated by the Applicant falls within the provision of Section 10A, which is an exempted period.
19. As per Section 10A of IBC, 2016, any default occurred between the periods 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.”

20. 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.*

21. 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.”

22. 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.....”

23. 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.....”*

24. 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.

25. 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.
26. In view of the above, we are of the opinion that the present application **CP(IB) No.09/7/AHM/2024** 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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