

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT-I, MUMBAI BENCH**

**C.P. No. 779/IBC/MB/2023**

Under Section 7 of the Insolvency and  
Bankruptcy Code, 2016  
*In the matter of*

**Kotak Mahindra Bank Limited**  
**CIN: L65110MH1985PLC038137**

Having registered office at:  
27 BKC, G Block, C 27, Bandra Kurla  
Complex, Bandra (East),  
Mumbai – 400 051.

... Financial Creditor/Petitioner

Vs

**India Steel Works Limited**

(CIN: L29100MH1987PLC043186)

Registered office at: India Steel Works  
Complex, Zenith Compound, Khopoli,  
Maharashtra – 410 203.

.....Corporate Debtor

**Order delivered on: 07.02.2024**

**Coram:**

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

**Appearance :-**

For the Operational Creditor : Mr. Rohit Gupta, Learned Counsel  
a/w Mr. Nikhil Rajani, Advocate  
i/b V. Deshpande & Co.

For the Corporate Debtor : Mr. Rishabh Shah, Advocate a/w  
Mr. Karan Kapoor, Advocate  
Ms. Ragini Singh, Advocate  
Ms. Pooja Pandey, Advocate  
i/b Ragini Singh & Associates

*[Per: Justice (Retd.) V. G. Bisht, Member (J)]*

1. This is an application filed by operational creditor/applicant under section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as “IB Code” for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Process (“CIRP” for short).

**Brief facts:-**

2. The Financial Creditor had earlier filed the application under Section 7 of the IB Code for the purpose of initiating Corporate Insolvency Resolution Process against the present Respondent being case no. C.P.(IB)No. 1000/MB-IV/2021. However, the said application came to be dismissed on the ground that it was barred under Section 10A of the IB Code as the default, as set out in the said application, had occurred during the 10A period.
3. According to the Financial Creditor, the petition originally filed was for multiple loan facilities. It also inadvertently included Working Capital Term Loan and Funded Interest Term Loan, which were actually sanctioned and disbursed as follows –
  - (a) The Applicant had under sanction letter bearing Ref No. ARD/FITL2/33428594/07092020 dated 07.09.2020, under the COVID 19 reliefs, has proceeded to grant interest deferment reliefs for the instalment which are payable in the month of June/July/August 2020 and the same was converted into Funded Interest Term Loan Facility of Rs. 15,98,707/-

(b) The Applicant had under sanction letter bearing Ref No. ARD/ECLGS/33428594 dated 01.12.2020, was sanctioned with the additional facility in the form of Working Capital Term loan facility in the form of working capital term loan facility on the said terms and conditions therein as per the earlier sanction in the sum of Rs. 80 Lakhs.

4. According to the Financial Creditor, even assuming that the other loan facilities were defaulted during the Covid period then in that case as far as this loan transactions are concerned same were sanctioned and disbursed during the Covid period and was recalled on 02.07.2021 and thus is outside purview of 10A period. However, the same was not segregated inadvertently in the application filed prior in point of time.
5. Despite the aforesaid legal notice on 21.07.2021, the Corporate Debtor failed to make payment. The date of default as given in part IV is 21.07.2021 and total amount claim is Rs. 2,04,54,264.70/-. Therefore, the present petition.
6. The Corporate Debtor has resisted the petition by filing its affidavit-in-reply and at the very outside denied the liability of the purported amount of Rs. 2,04,54,264.70/-.
7. According to the Corporate Debtor, the first application i.e. C.P.(IB) No. 1000/MB-IV/2021 was filed under section 7 of the Insolvency and Bankruptcy Code. The Financial Creditor had itself indicated the purported date of default which was within the Section 10A period of the IB Code and

therefore same was dismissed by this Tribunal. Now, the present application is once again filed under Section 7 of the Code on the ground that purported amount in default i.e. Rs. 2,04,54,264.70/- as on 25.05.2023 pertains to two accounts viz-FITL and WCTL, which was inadvertently made part of the 1<sup>st</sup> application. Relying on the judgment given in ***Daryao & Others Vs. State of U.P. and Ors., (1962) 1 SCJ 702*** decided on 27.03.1961 wherein the Hon'ble Apex Court held at paragraph 26 that if matter is decided on merit as a contested matter would continue to bind the parties unless reversed or modified by Appellate Court and therefore in view of this dictum the present petition is not tenable, contends Corporate Debtor. The present application is simply filed by changing the date of default to escape the rigors of Section 10A of the Code.

8. Heard, Mr. Rohit Gupta, learned Counsel for the Financial Creditor and Mr. Rishabh Shah, learned Counsel for the Corporate Debtor. Learned Counsel has also filed written submissions along with citations in support of the stand taken by the Corporate Debtor. Perused.
9. Prior to commencement of the present proceeding, there had been first round of litigation between the parties which is no longer in dispute and stand concluded by the findings of fact by this Tribunal on 03.02.2020. We say so because admittedly no appeal was preferred by the Financial Creditor. So, the claim attended finality on 03.02.2020 as no appeal was preferred by the Financial Creditor. This becomes very relevant as in the present second round of litigation, based on the same set of facts which were basis

of first litigation, there is re-iteration of same set of fact albeit with some justification.

10. From the record it is seen that the Financial Creditor herein had filed an application under Section 7 the IB Code bearing C.P. (IB) No. 1000/MB/C-IV/2021 on the ground that there was an alleged default on the payment of the dues against four facilities namely, Letter of Credit (“LC”), Cash Credit and Overdraft (“CCOD”), Working Capital Term Loan (“WCTL”) and Funded Interest Term Loan (“FITL”) purportedly amount to Rs. 13,77,85,111/-. It is worth mentioning here that in the column of “date of default”, the applicant had indicated the purported date of default to be 30.11.2020. This Tribunal on appreciation of facts and material on record found that since the date of default was within the Section 10 A period prescribed under the IB Code it was pleased to reject the petition. As already noted since there was no appeal against the said order of the Tribunal, the claim of the Financial Creditor attended finality on 03.02.2023.
11. There is absolutely no quarrel or dispute on the above noted material facts. The Financial Creditor in the present petition has also candidly admitted about the rejection of the earlier petition which admittedly included the claim amount which is now subject matter of the present petition. The Financial Creditor has given two-fold justification for including claim amount in the second round of litigation again which was subject matter of the earlier petition. First, inadvertently default amount was not segregated in the application filed

at earlier point of time. Secondly, the date of default for the purpose of the present petition was 21.07.2021.

12. In our considered opinion both the justifications are devoid of merits and need to be rejected straight away for the reasons stated hereinafter.
13. At the cost of repetition, we again note that claim of the Financial Creditor attained finality on 03.02.2023 as no appeal was preferred by the Financial Creditor. Herein comes the doctrine of *res-judicata*. It is a rule of the estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause. The very basic to decide the applicability of question of *res-judicata* is first to ascertain what were the matters in issue in the previous litigation/proceeding and what was heard and decided.
14. Before we venture to decide the applicability of the doctrine of *res-judicata* or otherwise we would like to allay the doubts of either of the party as to its applicability particularly when it is said that provisions of Civil Procedure Code are not applicable to proceeding under the IB Code. In this regard we quote with an advantage two pronouncements of the Hon'ble Apex Court. In ***Bombay Gas Co. Ltd. Vs. Jagannath Pandurang & Others, (1975) 4 SCC 690*** in paragraph 11 it is held that the doctrine of *res-judicata* is a whole some one which is applicable not merely to matter governed by the provisions of the Code of Civil Procedure but to all litigations. It proceeds on the principle that there should be no unnecessary litigation and whatever claims and defences are open to parties should all be put forward

at the same time provided no confusion is likely to arise by so putting forward all such claims. Similarly, in the case of ***Kaushik Co-operative Building Society Vs. N. Parvathamma and Others, (2017) 13 supreme Court Cases 138*** it is held that the doctrine of res judicata is a wholesome one which is applicable not merely to matters governed by the provisions of the Code of Civil Procedure but to all litigations. The application of the rule by the courts should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law. The rule of res judicata while founded on ancient precedent is dictated by a wisdom which is for all time. The basic character of this principle is public policy and preventive as to give finality to the decision of the court of competent jurisdiction and prevent further litigation.

15. From the above pronouncements, no one should harbour any doubt in the mind that the doctrine of res judicata is alien to the subject in hand. Needless to say, the general principle underlined the doctrine of res judicata is based on consideration of public policy that is to say the decision pronounced by Court of competent jurisdiction should be final, unless they are modified or reversed by the Appellate Authorities.
16. Reverting back to the case in hand and as earlier noticed that it is imperative to ascertain what were the matters in the issue in the previous proceeding and what was heard and decided so as to found the applicability of doctrine of res judicata. Admittedly, in the first round of litigation and in the words of the Financial Creditor itself the present

claim was already included in the first petition in as much as the same was not in-advertently segregated. The Financial Creditor itself has to blame for the mess. Similarly, the date of default in the first round of litigation was 30.11.2020 which now has been changed to 21.07.2021 which is not permissible in law.

17. There must be due regard to the fact that both the petition emanated from same set of facts giving rise to same cause of action in the first round of litigation. Moreover, it is well established that the date of default once admitted, same cannot be changed on subsequent event. This Tribunal while rejecting the earlier claim petition took into consideration the date of default and found that same fell between the period specified under Section 10A of the IB Code. The Corporate Debtor in the present case also opposes the petition on the above said two grounds.
18. Admittedly, for record, the said findings of the Tribunal was not challenged and thus has attended finality for all purposes.
19. For the aforesaid reasons, we do not find merit in the petition and are, therefore, inclined to dismiss the same. Therefore, the following order.

**ORDER**

- 1) Company Petition No. 779/2023 filed under section 7 of I & B Code, 2016, filed by Kotak Mahindra Bank Ltd. Financial Creditor/Applicant against India Steel Works Limited Corporate Debtor for initiating

Corporate Insolvency Resolution Process is **dismissed.**

- 2) We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.
- 3) Any other pending IAs'/MAs' if any, in the present Company Petition stand **disposed of.**
- 4) File be closed and consigned to record.

**Sd/-**

**PRABHAT KUMAR  
MEMBER (TECHNICAL)**

**Sd/-**

**JUSTICE VIRENDRASINGH BISHT  
MEMBER (JUDICIAL)**

*Sapna*