

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

C.P. (IB) No. 313/KB/2022

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:

Canara Bank

... Financial Creditor

-Versus-

Rajgaria Timber Private Limited

[CIN: U01121WB2000PTC092582]

... Corporate Debtor

Date of Pronouncement: 30 April 2024

Coram:

Shri Rohit Kapoor	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via video conferencing/physically)

Mr. Sujash Ghosh Dostidar, Adv.	:	For the Financial Creditor
Mr. Sankari Roy, Adv.		
Ms. Sayoni Mukhopadhyay, Adv.		

Mr. Jishnu Saha, Sr. Adv.	:	For the Corporate Debtor
Mr. Shaunak Ghosh, Adv.		
Ms. Saheli Sen, Adv.		
Mr. Rajib Mullick, Adv.		
Ms. Shreyashi Maity, Adv.		

ORDER

Per Coram

1. The Court convened through hybrid mode.
2. This Petition has been filed by **Canara Bank/Financial Creditor** under section 7 of the Insolvency and Bankruptcy Code, 2016 (**“Code”**) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor seeks initiation of Corporate Insolvency Resolution Process (**“CIRP”**) in respect of **Rajgaria Timber Private Limited/Corporate Debtor**.
3. The Corporate Debtor was incorporated on 10 November 2000, having CIN: U01121WB2000PTC092582. It’s registered office is Raikva Building, 3A, Ram Mohan Mullick Garden Lane, 4th Floor, Room No. 10, P.S. Beliaghata, Kolkata-700010. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 14 November 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.13,91,79,381.44 (Rupees Thirteen Crore Ninety One Lakh Seventy Nine Thousand Three Hundred and Eighty One Forty four Paise) as on 31 November 2022. The date of default has been mentioned as 25 March 2022.

Submission of learned Counsel appearing for the Financial Creditor

5. The learned Counsel submitted that the Financial Creditor the first Sanction letter sanctioning Cash Credit facility of Rs.6,00,00,000/- and FLC of Rs.4,00,00,000/- was sanctioned on 08 August 2016.
6. On 02 April 2018, the aforementioned credit facility sanction was extended by letter dated 17 July 2019, the aforementioned credit facilities were once more renewed.
7. The terms and conditions were reviewed by the Board of Directors of the Corporate Debtor prior to loan sanction, and were subsequently approved by resolution. By adopting a resolution on 08 April 2019, the Board of Directors

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- of Corporate Debtor approved the terms and conditions for the credit facility renewal as stated in the sanction letter dated 19 July 2019.
8. Cash Credit limit was Rs. 6 Crore whereas on 29 November 2019 outstanding balance of the Corporate Debtor was Rs. 6,01,43,730.10. Since the Corporate Debtor exceeded the cash credit limit and the account remained continuously in excess of the sanctioned limit for 90 days, on the 91st day i.e. on 27 February 2020 the loan account of the Corporate Debtor was classified as Non-Performing Asset (“*NPA*”) in terms of provision of paragraph 2.2.1(i) of the Master Circular of the Reserve Bank of India.
 9. A notice under section 13(2) of SARFAESI Act was issued on 04 March 2020. Another notice dated 15 March 2022 demanded outstanding amount as on 14 March 2022 within 10 days from the date of the said notice. The Corporate Debtor by a letter dated 25 March 2022 requested the Financial Creditor to withdraw the notice in view of the appeal filed by the Corporate Debtor before the Hon’ble High Court at Calcutta.
 10. The Company Petition has been filed within 3 years from the date of classification of the account as NPA.
 11. The Learned Senior Counsel for the Corporate Debtor only pressed for the objection that the petition under section 7 of Code is barred under section 10 A of Code. On a plain reading of section 10A of Code, it appears that the prohibition as contained in said section 10A does not apply where the default arose before 25 March 2020 and after 25 March 2021.
 12. In the instant case it is an admitted fact that the loan was sanctioned for the first time on 08 August 2016 which were renewed by loan sanction letter dated 02 April 2018 and on 17 July 2019. The loan account of the Corporate Debtor was classified as NPA on 27 February 2020 and recall notice was sent on 15 March 2022. The corporate debtor has not raised any issue regarding limitation. Admittedly the petition under section 7 was filed within 3 years from the date of N.P.A i.e. 14 November 2022.
 13. In the present case, N.P.A was declared on 27 February 2020 which is before 25 March 2020 and thus, section 10 A of Code cannot be applied.
 14. The learned Counsel submitted that section 10 A of Code was interpreted by the Hon’ble Supreme Court in *Ramesh Kymal v. M/s Cements*

*Gamesha Renewable Power Pvt Ltd.*¹ it was held if the default is committed prior to the period prescribed in section 10 A of the Code and default continues there is no prohibition in initiating proceedings under section 7 of the Code. It was also held in the said paragraph that liability to pay interest which default committed prior to section 10 A period continues and is not obliterated by section 10A.

15. The learned Counsel placed reliance on *Beetel Teletech Limited v. Arcelia IT Services Pvt. Ltd*² passed by the Hon'ble NCLAT New Delhi wherein it was held that aim and objective of section 10A of the Code was to protect a Corporate Debtor from the filing of any insolvency application against it for any default committed during the period when Covid-19 pandemic was prevailing. In the said judgment it was also held that section 10A never intended to cover any default which occurred before section 10A period and continuing thereafter. It was further held that if the Corporate Debtor committed default prior to commencement of section 10A period, the Corporate Debtor was clearly not entitled to claim the benefit of section 10A period and the liability to pay interest having clocked prior to section 10A period he will have to pay the said interest.
16. The learned Senior Counsel appearing on behalf of the Corporate Debtor, placed reliance on the judgment of the Hon'ble NCLAT in *Ramdas Dutta v. IDBI Bank Limited & Anr.*³ Distinguishing the said decision, the learned Counsel submitted that the said decision has no manner of application in this case because the facts involved in the said decision are not similar to the facts of this case. The issue involved in the said decision was whether the application under section 7 of Code was filed beyond the period of three years from the date of default whereas in this case there is no issue of limitation involved.
17. The date of default in part IV of Form 1 it is stated that admittedly default was committed on 27 February 2020 when the account of the Corporate Debtor was classified as NPA
18. The learned Counsel placed reliance on a decision dated 05 December 2023 passed by Learned NCLT, New Delhi in the case of *PHL Fininvest Private*

¹ 2021 3 SCC 224

² C.A. (AT) (Ins.) No. 1459 of 2022

³ C.A. (AT)(Ins.) No. 1285 of 2022

Limited v. Kay Jay Leasing Limited wherein it was held that amendment of pleadings in an application filed under section 7 Code, can be done at any stage of the matter. Hence, in any event if this Adjudicating Authority finds that the date of default as mentioned in the in part IV of Form 1 is an error the financial creditor may be given an opportunity to rectify the defect as per proviso to section (5) of section 7 of the Code.

19. The Financial Creditor has placed the following documents on record:

- a. Copies of Sanction Letters dated 08 August 2016, 02 April 2018, 02 April 2019 and 17 July 20219 are annexed and marked as Annexure G;
- b. Copy of Loan Application dated 23 June 2016 is annexed and marked as Annexure H;
- c. Copy of Audited Balance Sheet for the Financial Year ending on 2021 is annexed and marked as Annexures AI.

20. The Financial Creditor has proposed the name of **Mr. Anil Agarwal**, registration number IBBI/IPA-001/IP-P00270/2017-18/10514, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submission of learned Senior Counsel appearing for the Corporate Debtor

21. The learned Senior Counsel submitted that the Corporate Debtor is engaged in the import and wholesale of trading timber.
22. The learned Senior Counsel asseverated that it is evident from the last sanction letter dated 17 July 2019, the same was valid for one year from the date of sanction i.e. 16 July 2019 till 16 July 2020. The facility expired on 16 July 2020 and the same was not renewed any further. The entire dues were not repaid, hence the default took place on 17 July 2020, hence, the no Company Petition could have been filed before this Adjudicating Authority for initiation of CIRP in view of the bar stated in section 10A of the Code.

23. It is further submitted that the Financial Creditor to somehow escape the rigours of section 10A Code has stated in Part IV of the Company Petition that the default has occurred on 25 March 2022. However, no reason has been stated as to how the date of 25 March has become the date of default.
24. The learned Senior Counsel led us through the Statement of the Loan Account of the Corporate Debtor filed by the Financial Creditor which would reveal that the default has occurred with the period as envisaged in section 10A of the Code. Further, it is evident that there has been no transaction on or after 17 July 2020.
25. It is further submitted that the statement that the account of the Corporate Debtor was NPA on 27 February 2020 is false as the Loan Account Statement of the Corporate Debtor shows that the account could not have been classified as NPA on 27 February 2020. As per the terms of the contract the date of default cannot be earlier than 17 July 2020. In support of his contention, the learned Senior Counsel placed reliance on the judgment of the Hon'ble NCALT in *Ramdas Dutta v. IDBI Bank Ltd. and Anr.*, wherein the Hon'ble NCLAT held that the date of default cannot be changed by the Bank and the date of NPA cannot be taken to be the date of default for the purpose of the period of limitation for filing CIRP application under the Code.
26. The stand taken by the Corporate Debtor is summarized hereinafter:-
- a. The Corporate Debtor had taken finance facility in the form of Letter of Credit from consortium of Bankers in which Financial Creditor was also a member. With the consortium of Bankers and the Financial Creditor having specific knowledge of the fact that the trade turn over period of Corporate Debtor company was 270 days and as such it was impossible for the Corporate Debtor to service their Letter of Credit for a period which is less than 270 days. The Financial Creditor arbitrarily stopped the Buyer's Credit facilities w.e.f. the year 2019.
 - b. The Decision taken by Financial Creditor to discontinue with the Buyer's Credit facility put the Corporate Debtor's trade in jeopardy as the Financial Creditor called upon Corporate Debtor to make payment of their dues against Letter of Credit even before completion of trade. This resulted in arbitrary classification of the account of Corporate Debtor as NPA. It would not have happened if usance period of Letter

of Credit had been made at 170 days being the turn over time required for trade.

- c. The Corporate Debtor sought to allow payment to be made under Letters of credit within 270 days from the date of shipment as was the practice prior to 31st of March, 2018. The Financial Creditor declined this request relying on RBI's letter dated 21st of May, 2018 and 27th of August, 2018 that the remittance on import obligation cannot be later than 180 days from the date of such shipment. These letters cannot override the provisions of Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 which came into effect on and after 17th of December, 2018 and other circulars mentioned in para 'd' of reply affidavit.
- d. The Financial Creditor resorted to technicalities for the purpose of denying Corporate Debtor of its legitimate benefits by stating usance period under Letter of Credit and period of Trade Credit are not the same. The various circulars have been issued by RBI and other authorities which specifically point out the fact that there is no buyer in giving 270 days usance period to the applicant as mentioned in para 'f' of this reply affidavit.
- e. The Financial Creditor along with lead bankers had resorted to computation of usance period report on the basis of audit reports of company and alleged the same to be 180 days. Such calculation is wholly incorrect and it would appear that the said calculation of cycle is based on cash credit facility granted to the petitioner not on the basis of Letter of Credit account opened at the instance of bank being non-fund based credit limit. The contention of bank is in nature of an afterthought as the decision communicated by the bank in the meeting held on 6th of September, 2019 being based on statutory guidelines and regulations was never withdrawn till date. The lead banker as well as the Financial Creditor bank having expressed its decision in the meeting cannot be entitled to withdraw the same.
- f. The Bank of Baroda is now stopped from denying 270 days usance period to the Corporate Debtor in respect of trade credits obtained by Corporate Debtor from Financial Creditor bank. Reliance is placed on

one letter dated 5th of September, 2019 marked as 'Annexure-I'. The Corporate Debtor had taken every possible steps for specific performance of the contract between the parties, however, the arrogant attitude of the Financial Creditor has ensured that the contract is not being specifically performed.

- g. Because of the illegal action on the part of Financial Creditor in discontinuing Buyer's credit facility led to huge business losses to the Corporate Debtor. The Corporate Debtor had initiated the mediation proceedings before mediation centre of Hon'ble High Court at Calcutta. However, Financial Creditor refused to participate in these proceedings, a non-starter report has been issued by the Mediation Centre. Writ petition proceedings were initiated prior to filing this petition under Section 7 of IBC 2016. Corporate Debtor has filed writ petition against State Bank of India, lead of consortium bankers before Hon'ble High Court of Calcutta which is pending adjudication wherein the State Bank of India is not complying the orders passed by Hon'ble High Court at Calcutta.
- h. Even after institution of the present proceedings on 24th of November, 2022, the Financial Creditor has proceeded with an application before DRT. This Adjudicating Authority cannot be used for recovery of disputed debts and therefore, this petition is liable to be rejected.

27. Further, a Supplementary Affidavit has been filed wherein a plea has been raised by the Corporate Debtor that the present petition is barred under section 10A of Code. The contents of this affidavit are summarized hereinbelow:-

- a. The working capital limit sanctioned vide letter dated 17th of July, 2019 was valid for a period of one year from 16th of July, 2019 till 16th of July, 2020. The aforesaid facility expired on 16th of July, 2020 and the same was not renewed any further. Entire dues at the relevant point of time were not immediately repaid. As such, the default if any, took place on 17th of July, 2020 therefore, no application could be filed in terms of Section 10A against the Corporate Debtor.
- b. It is wrongly mentioned by Financial Creditor the date of default as 25th of March, 2022. There is nothing to support this plea. The loan

agreement which was subsisting between the parties stood expired on 17th of July, 2020. There has been no transaction on or after 17th of July, 2020. Financial Creditor is trying to escape from the bar of Section 10A default, if any, cannot be earlier than 17th of July, 2020.

Rejoinder of the Financial Creditor to the Supplementary Affidavit

28. Reply to the Supplementary Affidavit has been filed by the Financial Creditor. The contents of which are summarized hereinbelow:-

- a. The credit limit was renewed on 17th of July, 2019 which was valid from the date of sanction subject to compliance of terms and conditions of sanction. However, due to non payment of overdue amount for more than 90 days as per RBIs master circular, the loan account of Corporate Debtor was classified as NPA on 27.02.2020 and the whole outstanding liability became payable by the Corporate Debtor.
- i. Further the bar of Section 10A is not attracted in the present case as;-
 - a. By the renewed sanction letter dated 17.07.2019 at page 103 to 112 in Volume no. I of the application, the Financial Creditor sanctioned over draft limit of Rs. 6 Crores whereas it will appear from the statement of account of the Financial Creditor that on 29.11.2019 the said overdraft limit was exceeded. It will further appear statement of account of the Financial Creditor that the Corporate Debtor did not pay the overdue amount that is the amount exceeded the sanctioned limit and therefore, as per the Master Circular of RBI, the said over draft loan of the Corporate Debtor became out of order.
 - b. As per the said master circular, a cash credit/overdraft account shall be treated as out of order if the outstanding balance in the overdraft account remains continuously in excess of the sanctioned limit/drawing powers for 90 days.

- c. As per the said master circular, a Non-Performing-Asset is a loan or an advance where the account remains out of order.
- d. Since the account of the Corporate Debtor became out of order, it was classified as Non-Performing Asset on 27.02.2020 and therefore, in this case the date of default arose on 27.02.2020.
- e. Bar of Section 10A applies when the default arose on or after 25th of March, 2020 for a period of 1 year from such date whereas in this case date of default arose on 27.02.2020. As such, the bar under Section 10A of the Code is not applicable in this case.
- f. From a bare reading of Section 10A of the Code, it is apparent that the default arising on or after 15th of March, 2020 up to 24 March, 2021 is the cutoff date whereas in this case the account having been classified as N.P.A. on 27.02.2020 the said date may be treated as “arising of default” on the part of the Corporate Debtor.

29. In view of facts stated above, it is denied that the default took place on 17.07.2020 as alleged.

Analysis and Findings

30. Heard the learned Counsel appearing on behalf of the Financial Creditor and the learned Senior Counsel appearing on behalf of the Corporate Debtor and perused the records.
31. Reply affidavit has been filed by the Corporate Debtor raising various grounds opposing the admission of this petition under section 7 of the Code. However, when the matter was final heard on 12 December, 2023 the Learned Senior Counsel while opposing this petition has only pressed for the objection that this petition is barred under section 10A of the Code. In view of this, we will first deal with the objection whether this petition is barred under section 10A.
32. The question for determination arises whether the date of NPA be considered as date of default for the purpose of section 7 of Code. Learned Senior Counsel

appearing for Corporate Debtor has submitted in the present case the date of NPA stated to be 27 February, 2020 although the date of default mentioned in Form 1 is 25 March 2022.

33. According to Learned Senior Counsel, the date of default cannot be altered and Learned Senior Counsel in this regard seeks to place reliance of an order dated 26 April 2023 passed by Hon'ble NCLAT in *Ramdass Dutta (supra)* reproduced hereinbelow:-

“ 19. The first question is as to whether the date of default can be changed by the Bank? In this regard, it has been held by the Hon'ble Supreme Court in the case of 'Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd., (2021) 3 SCC 224' that the date of default cannot be changed. It has also been held in the case of *Laxmi Pat Surana (Supra)*, *Babulal Vardharji Gurjar (Supra)*, *B.K Educational Services Pvt. Ltd. (Supra)* and *Jignesh Shah (Supra)* that the period of limitation would be attracted from the date when the default occurs and not from the date of declaration of NPA. Therefore, the date of NPA cannot be taken to be the date of default for the purpose limitation.”

34. The similar question was raised before Principal Bench of NCLT New Delhi vide order dated 01 February 2024 in the matter of State Bank of India v. Raebareilly Allahabad Highway Private Limited⁴ and the Principal Bench went into the various aspects touching this issue and after placing reliance on number of judgments including the judgment of Hon'ble NCLAT on this issue returned its finding in para 22-23 reproduced hereinafter:-

“22. Taking note of the decision in *Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622*, we are of the view, that ordinarily the Date of NPA can be considered as Date of Default but the right to apply under the Code accrues once there is a default (which is three months prior to Date of NPA). Hence, in the present case, even if we consider the Date of Default to be three month prior to the Date of NPA i.e. from 29.10.2016, the right to file the application was to be exercised within 3 years. It is noteworthy to mention herein that there has been subsequent acknowledgment by the Corporate Debtor acknowledging the debt through letter dated 31.3.2019, 2.12.2020, 03.04.2020, 02.04.2021, 05.04.2022. It has been settled by the catena of judgments that Section 18 of the Limitation Act is applicable to IBC proceeding. The Code does not exclude the application of Section 6, 14 or

⁴ C.P. (IB) Bo. 130/KB/2023

18 or any other provision of Limitation Act to proceeding under IBC provided that the said acknowledgments are made before the expiry of 3 years. Once an acknowledgment is done, a fresh cause of action arises, thereby extending the limitation period.

23. Thus, the stand taken by the CD, that the applicant has not mentioned the Date of Default, is wholly misconceived as the Adjudicating Authority is hardly left with any discretion to refuse the admission of the application under Section 7 once it is satisfied that the default has occurred (**M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387**):

11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

"3. Definitions.—In this Code, unless the context otherwise requires—

(12) "default" means 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;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

35. The factual aspect regarding the date of NPA has not been disputed or controverted. The argument was raised whether the date of default would fall under the purview of section 10A of the Code. Keeping in view the law laid down by the Principal Bench, New Delhi in the Order *supra*, even if we consider the date of default based on the date of NPA being 27 February 2020, it is clear that the date of default will be three months prior to date of NPA i.e. 25 December 2019 whereas this petition under Section 7 was filed on 14 November, 2022 after the default occurred on 25 December, 2019. Coming to the question of section 10A of the Code we have to consider the period from 25 March 2020 to 25 March 2021. From the above facts, it is clear that the date of default doesn't fall within period under section 10A of the Code.

36. In the order of Hon'ble NCLAT dated 26 April, 2023 relied upon by the Ld. Sr. Counsel for the Corporate Debtor, the question was whether the date of default

can be changed by the bank. This is not the issue in the present case. In the present case, the issue raised has been clearly put to rest by Principal Bench after placing reliance on catena of judgments of Hon'ble Supreme Court as well as Hon'ble NCLAT.

37. In the affidavit of reply, the Corporate Debtor has contended that the banks are also at fault due and failed to perform their part. In this regard, the law is very clear in the judgment passed by the Hon'ble NCLAT in para 15 in the matter of ***State Bank of India v. N.S. Engineering Projects Private Limited***⁵ which is reproduced below:

15. The Hon'ble Supreme Court has had occasion to examine the contours of Section 7 Application. The Hon'ble Supreme Court in Innoventive Industries Limited vs. ICICI Bank and Anr.- (2018) 1 SCC 407 had noted the Scheme of Section 7 of the Code and also contrasted it with the Scheme under Section 8 and 9. Paragraphs 28 and 29 of the judgment of the Hon'ble Supreme Court is as follows:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating

⁵ CA(AT)(Insolvency) 978, 1000 and 1039 of 2022

authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be. 29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code”.

Further in Para 16 of the same judgement, it has been inter-alia mentioned that :

16. The Hon'ble Supreme Court in the above case has observed that the moment Adjudicating Authority is satisfied that default has occurred, the Application must be admitted, unless it is incomplete.

38. In view of the above judgment, the contention of the Corporate Debtor that the Financial Creditor has not specifically performed the contract cannot be accepted. Thus, the debt and default both being established there is no impediment in admitting the Petition.
39. Coming to the question of limitation, the date of default i.e. 25 December 2019, the period of limitation would end on 22 December 2022. This petition under Section 7 was filed on 14 November 2022, hence the Company Petition has been filed within three years of limitation counting from the date of default worked out on the basis of the date of NPA as per the Master circular issued by RBI.
40. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establish that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
41. In the light of the above facts and circumstances, it is, hereby ordered as follows:
- a. The application bearing **CP (IB) No. 313/KB/2022** filed Canara Bank the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Rajgaria Timber Private Limited**, the Corporate Debtor, is **admitted**.
 - b. There shall be a moratorium under section 14 of the IBC.
 - c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

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- d.* Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e.* **Mr. Anil Agarwal**, registration number IBBI/IPA-001/IP-P00270/2017-18/10514, email id: anilagarwal@aaainsolvency.com, phone no. 9830090905, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f.* During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The Directors, officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g.* The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h.* The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- i.* The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
 - j.* In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
 - k.* Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
42. **CP (IB) No. 313KB/2022** to come up on **13-06-2024** for filing the periodical report.
43. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is signed on the 30th day of April, 2024.

GGRB_LRA/Zia_Steno